Miguel Rodríguez Blanco
(Ed.)

Taxation, Religions and Philosophical and Non-Confessional Organisations in Europe

Fiscalité, religions et organisations philosophiques ou non confessionnelles en Europe

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This volume is dedicated to Jiří Rajmund Tretera, distinguished scholar and priest, who was elected to the European Consortium for Church and State Research in 2007 and has been an emeritus member since 2017.

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PREFACE

This volume contains the proceedings of the XXXIst Annual Meeting of the European Consortium for Church and State Research, held in Luxembourg on 14–16 November 2019, on the topic "Taxation, Religions and Philosophical and Non-Confessional Organisations in Europe".

The conference was divided into six working sessions:

I. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations
II. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations
III. Taxation of Monastic Communities /Orders
IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)
V. Taxation of Religious Ministers and for Leaders of Philosophical and Non-Confessional Organisations
VI. Church and Philosophical and Non-Confessional Organisations Taxes.

Each session was introduced by a paper, giving a comparative pan-European analysis, and suggesting themes for group discussion.

The purpose of the meeting was to analyse the legal framework regulating the tax system applied to religions and philosophical organisations in European countries, showing the criteria followed by European states under the prism of the principles of non-discrimination and neutrality.

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L'IMPOSITION DES ORGANISMES RELIGIEUX ET DE CONVICTION PHILOSOPHIQUE EN AUTRICHE

Wolfgang Wieshaider

I. Les différents statuts

La taxation des communautés religieuses en Autriche doit être étudiée au vu de leurs différents statuts qui sont :

a. la société religieuse reconnue, collectivité de droit public ;
b. la communauté confessionnelle, collectivité de droit privé ;
c. l'association à but non lucratif, collectivité de droit privé.

Tandis que les deux premiers statuts sont réservés aux organismes religieux, le dernier est de nature générale, accessible aux organismes religieux, non religieux, philosophiques et autres, aux termes de l'alinéa 1(3) de la loi sur les associations.[1]

À ce jour, les sociétés religieuses reconnues sont[2] l'Église catholique,[3] l'Église luthérienne et réformée,[4] l'Église grecque-orientale avec des congrégations grecques, russes ainsi qu'avec la serbe, la roumaine, la bulgare et celle d'Antioche,[5] la Société religieuse israélite,[6] la Communauté religieuse islamique et la Communauté religieuse

[1] *Vereinsgesetz 2002,* Bundesgesetzblatt I nº 66, modifiée en dernier lieu par Bundesgesetzblatt I nº 211/2021 ; Herbert Kalb, Richard Potz & Brigitte Schinkele, *Religionsrecht,* Wien : Facultas WUV, pp. 129 sq. ; Richard Elhenický, Oliver Ginthör & Martin Haselberger, *Vereinsgesetz 2002,* 2e éd., Wien : Verlag Österreich 2019, p. 12.

[2] <https://www.bundeskanzleramt.gv.at/agenda/kultusamt/kirchen-und-religionsgemeinschaften.html> (20 juin 2022).

[3] Voir *Konkordat zwischen dem Heiligen Stuhl und der Republik Österreich,* Bundesgesetzblatt nº 2 II 1934.

[4] Voir *Bundesgesetz über äußere Rechtsverhältnisse der Evangelischen Kirche,* Bundesgesetzblatt nº 182/1961, modifiée en dernier lieu par Bundesgesetzblatt I nº 166/2020.

[5] Voir *Bundesgesetz über äußere Rechtsverhältnisse der griechisch-orientalischen Kirche in Österreich,* Bundesgesetzblatt nº 229/1967, modifiée en dernier lieu par Bundesgesetzblatt I nº 68/2011.

[6] Voir *Gesetz betreffend die Regelung der äußeren Rechtsverhältnisse der israelitischen Religionsgesellschaft,* Bundesgesetzblatt nº 57/1890, modifiée en dernier lieu par Bundesgesetzblatt I nº 166/2020.

(islamique) alévie,[7] l'Église arménienne-apostolique, l'Église syrienne-orthodoxe et l'Église copte-orthodoxe,[8] l'Église vielle-catholique, l'Église évangélique-méthodiste, l'Église de Jésus-Christ des saints des derniers jours, l'Église nouvelle-apostolique, la Société religieuse bouddhiste, les Témoins de Jéhovah et les Églises libres.[9] En plus, les communautés confessionnelles enregistrées sont[10] la Communauté religieuse vielle-alévie, la Communauté religieuse bahaïe, la Communauté chrétienne, la Société religieuse hindoue, la Communauté religieuse islamique-chiite, l'Église adventiste du septième jour, l'Église pentecôtiste Assemblée de Dieu, l'Église de l'unification, l'Église unie pentecôtiste et la Communauté religieuse libre-alévie.

Le statut le plus ancien pour les organismes religieux est celui des sociétés religieuses reconnues et c'est celui auquel la législation fiscale se réfère en règle générale. L'introduction du statut supplémentaire des communautés confessionnelles en 1998 n'a rien changé à cet égard. Cette différenciation a suscité des critiques de la part de la doctrine.[11] La Cour constitutionnelle a pourtant souligné la constitutionnalité de la différenciation entre des sociétés religieuses reconnues, ayant la personnalité de droit public, et d'autres comme les communautés confessionnelles et les associations.[12] Les différenciations du droit fiscal reposent soit directement sur le statut de droit public des sociétés religieuses reconnues – comme pour l'impôt foncier ou la déduction des cotisations –, soit sur la poursuite d'un but privilégié – comme pour l'impôt sur le revenu des personnes morales.[13] Cette dernière notion est pourtant plus large et peut dépasser les limites du statut de droit public.[14]

[7] Voir *Islamgesetz 2015,* Bundesgesetzblatt I nº 39, modifiée en dernier lieu par Bundesgesetzblatt I nº 146/2021.

[8] Voir pour ces trois dernières églises *Orientalisch-orthodoxes Kirchengesetz,* Bundesgesetzblatt I nº 20/2003.

[9] Voir pour les dernières *Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften,* Reichsgesetzblatt nº 68/1874.

[10] <https://www.bundeskanzleramt.gv.at/agenda/kultusamt/religiose-bekenntnisgemeinschaften.html> (20 juin 2022) ; voir *Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften,* Bundesgesetzblatt I nº 19/1998, modifiée en dernier lieu par Bundesgesetzblatt I nº 146/2021.

[11] Cf. Kalb, Potz & Schinkele, *Religionsrecht,* pp. 438–442 ; Patrick Warto, 'Anerkannte Kirchen und Religionsgesellschaften im Abgabenrecht' dans Walter Hetzenauer (dir.), *Jehovas Zeugen in Österreich als Körperschaft des öffentlichen Rechts,* Wien : Verlag Österreich 2014, pp. 215–234 (pp. 216–218) ; voir en revanche Dietmar Aigner, Georg Kofler & Michael Tumpel, 'Die Besteuerung anerkannter Kirchen und Religionsgesellschaften', *Österreichisches Archiv für Recht & Religion* 62 (2015) pp. 225–275 (pp. 227 & 231 sq.).

[12] Verfassungsgerichtshof 12 déc. 1988, B 13/88 & B 150/88, VfSlg. 11931 ; Verfassungsgerichtshof 20 juin 2012, G 142/11 ; voir aussi Verwaltungsgerichtshof 26 fév. 2004, 2001/16/0366, *Österreichisches Archiv für Recht & Religion* 53 (2006) 98–198 (commenté par Richard Potz).

[13] Aigner, Kofler & Tumpel, *Die Besteuerung anerkannter Kirchen und Religionsgemeinschaften,* pp. 229 sq.

[14] Voir tout de suite.

En droit fiscal, la notion de collectivité est synonyme de la personne morale en général, peu importe qu'il s'agisse d'une collectivité au propre sens du mot, d'un établissement, d'une fondation ou d'un fonds.[15]

II. Les Buts privilégiés du Code fédéral fiscal

Avant de traiter les impositions établies par les différentes lois fiscales, il convient d'exposer les dispositions du code fédéral fiscal[16] dont le paragraphe 34 reconnaît l'intérêt général de certaines activités et en déduit une taxation privilégiée des personnes morales qui les exercent. Cet intérêt est reconnu aux buts d'utilité publique, charitables ou religieuses.

Le paragraphe 35 *leg. cit.* range dans la catégorie d'utilité publique les buts qui aident la population dans le domaine intellectuel, culturel, moral ou matériel. L'aide sociale, la formation et l'éducation figurent parmi les exemples mentionnés par l'alinéa 35(2) *leg. cit.* L'alinéa 36(1) *leg. cit.* précise qu'un cercle clos comme une association avec un nombre fixe de membres ne peut pas remplir ces critères constitutifs d'utilité publique.[17]

Selon le paragraphe 37 *leg. cit.,* les buts charitables sont l'appui aux personnes dans le besoin.[18]

Aux termes de l'alinéa 38(1) *leg. cit.,* les buts religieux sont la promotion des sociétés religieuses reconnues. L'alinéa 38(2) *leg. cit.* énumère à titre d'exemple la construction, la maintenance et la décoration des édifices de culte et des foyers des communautés locales, l'organisation des offices, des prières et d'autres événements religieux ou pastoraux, la formation des ministres du culte et des religieux, l'enseignement religieux, l'enterrement et la mémoire religieuse des défunts, l'administration du patrimoine de la société religieuse, la rétribution des ministres du culte et de ses employés, leur prévoyance vieillesse et invalidité, la pension des veuves et des orphelins, y compris la création et la gestion des établissements pour cette catégorie des personnes.

Tandis que les deux premiers buts reconnus sont au fond ouvert à n'importe quelle personne morale, privée ou publique – y compris les communautés confes-

[15] Markus Achatz, Martin Mang & Wolfgang Lindinger, *Besteuerung der Körperschaften öffentlichen Rechts,* 3e éd., Wien : Verlag Österreich 2014, marginal 22.

[16] *Bundesabgabenordnung,* Bundesgesetzblatt nº 194/1961, modifiée en dernier lieu par Bundesgesetzblatt I nº 228/2021.

[17] Peter Unger dans Franz Althuber, Michael Tanzer & Peter Unger, *BAO Handbuch,* Wien : LexisNexis 2016, pp. 151 sq.

[18] *Ibid.,* 155 sq.

sionnelles, les associations religieuses et de conviction philosophique[19] –, le dernier est restreint à la promotion des collectivités religieuses de droit public.[20]

Aux termes de l'alinéa 41(1) *leg. cit.,* le statut ou un document équivalent de la collectivité doit préciser explicitement et clairement, l'activité exclusive et immédiate relative à un but d'utilité publique, charitable ou religieux.

Une entreprise commerciale d'une personne morale à but privilégié est exonérée aux termes de l'alinéa 45(2) *leg. cit.* si elle satisfait aux conditions indispensables des établissements auxiliaires, c'est-à-dire si :

a. l'activité commerciale est principalement orientée vers l'accomplissement des buts d'utilité publique, charitables ou religieux,
b. ces buts ne sont atteints qu'au moyen de l'entreprise commerciale,
c. cette entreprise n'entre pas en concurrence avec des entreprises imposables sauf dans les cas indispensables pour l'accomplissement de ses buts.

III. L'impôt sur le revenu des personnes morales

Les collectivités sont assujetties à l'impôt sur le revenu des personnes morales aux termes de l'alinéa 1(1) de la loi sur l'impôt sur le revenu des personnes morales.[21] Conformément à l'alinéa 1(2) *leg. cit.,* sont imposables, selon le droit commun sans avantages spécifiques, les collectivités dont le siège ou la direction se trouve à l'intérieur du pays et qui sont des personnes morales de droit privé, des entreprises commerciales des collectivités de droit public ou des associations de personnes, des établissements, des fondations et d'autres patrimoines d'affectation dépourvus de la personnalité morale.

Les collectivités de droit public et les collectivités dont ni la direction ni le siège se trouvent à l'intérieur du pays sont assujetties à une obligation fiscale limitée selon l'alinéa 1(3) *leg. cit.*[22]

Les collectivités à buts d'utilité publique, charitables ou religieux[23] sont exonérées de l'imposition illimitée selon la division 5/6 *leg. cit.* Pour qu'une entreprise commerciale d'une société religieuse reconnue soit exonérée de l'impôt sur le revenu des personnes morales, elle doit satisfaire aux conditions de l'alinéa 45(2) du code fédéral fiscal.[24] Une exonération additionnelle s'applique selon la sous-division 5/12/a

[19] Kalb, Potz & Schinkele, *Religionsrecht,* pp. 438 ; Achatz, Mang & Lindinger, *Besteuerung der Körperschaften öffentlichen Rechts,* marginal 36.

[20] Peter Unger dans Franz Althuber, Michael Tanzer & Peter Unger, *BAO,* pp. 158 sq.

[21] *Körperschaftsteuergesetz 1988,* Bundesgesetzblatt nº 401, modifiée en dernier lieu par Bundesgesetzblatt I nº 10/2022.

[22] Achatz, Mang & Lindinger, *Besteuerung der Körperschaften öffentlichen Rechts,* marginaux 48 sq.

[23] Voir ci-dessus, chap. II.

[24] *Ibid*.

de la loi sur l'impôt sur le revenu des personnes morales aux entreprises commerciales des collectivités de droit public dont l'activité ne consiste qu'à organiser des événements conviviaux ou sociaux, promouvant et finançant les buts reconnus d'utilité publique, charitables ou religieux qui ne dépassent pas 72 heures par an.

IV. LA TAXE SUR LA VALEUR AJOUTÉE

Selon l'alinéa 2(3) de la loi sur la taxe sur la valeur ajoutée,[25] les collectivités de droit public ne sont assujetties à la taxe sur la valeur ajoutée que dans le cadre de leurs entreprises commerciales qui ne sont pas exonérées de l'impôt sur le revenu des personnes morales aux termes de la division 5/12 de la loi sur l'impôt sur le revenu des personnes morales.

V. L'IMPÔT FONCIER

La propriété foncière est soumise à l'impôt foncier aux termes du paragraphe 1 de la loi sur l'impôt foncier de 1955.[26] Selon la division 2/5 *leg. cit.* en est exonérée la propriété :

a. dédiée à l'office d'une société religieuse reconnue,
b. appartenant à une collectivité de droit public et utilisée par une société religieuse reconnue pour la pastorale ou l'enseignement religieux,
c. pour son administration ou
d. pour une maison de retraite sans but lucratif et ouverte au public.

En plus, la propriété foncière d'une collectivité de droit public – y compris une société religieuse reconnue – est exonérée, si elle est utilisée pour des buts scientifiques ou éducatifs aux termes de la sous-division 2/7/a *leg. cit.*

VI. LES COTISATIONS

Les collectivités religieuses décident de manière autonome de demander des cotisations à leurs membres. La perception en est organisée par les sociétés religieuses reconnues elles-mêmes sur la base de leur statut et comme le ferait n'importe quelle association, avec comme seule exception que la déclaration des arriérés auprès de la plupart des sociétés religieuses reconnues passe pour un titre exécutoire du droit administratif aux termes du paragraphe 14 de la loi sur la reconnaissance des sociétés religieuses.[27] Par exception, l'Église catholique, l'Église luthérienne et réformée et

[25] *Umsatzsteuergesetz 1994,* Bundesgesetzblatt nº 663/1994, modifiée en dernier lieu par Bundesgesetzblatt I nº 10/2022.

[26] *Grundsteuergesetz 1955,* Bundesgesetzblatt nº 149, modifiée en dernier lieu par Bundesgesetzblatt I nº 45/2022.

[27] Voir ci-dessus note 9 et Kalb, Potz & Schinkele, *Religionsrecht,* pp. 111 & 395.

l'Église vielle-catholique sont renvoyées au droit civil aux termes de l'alinéa 3(1) de la loi sur les cotisations ecclésiastiques.[28] La même voie judiciaire est ouverte aux collectivités religieuses et de conviction philosophique de droit privé aussi.

La division 18(1)5 de la loi sur l'impôt sur le revenu[29] permet à ceux qui cotisent en faveur des sociétés religieuses reconnues d'obtenir une déduction d'impôt sur le revenu, d'un montant maximal de 400 euros.[30] Des organismes religieux équivalents aux sociétés religieuses reconnues ayant leur siège à l'intérieur de l'Espace économique européen bénéficient de ce même traitement.

En plus, sont déductibles, des dons pour des activités à but éducatif et scientifique menées surtout à l'intérieur de l'Espace économique européen selon la division 4a(2)1 *leg. cit.* La loi précise les conditions que doivent remplir les personnes morales pour être éligibles à la réception d'un don déductible. Pour le domaine des collectivités religieuses et de conviction philosophique, la division 4a(3)6 *leg. cit.* rend éligibles à ces avantages des personnes morales qui sont exclusivement chargées de la recherche ou de l'éducation et qui poursuivent un but d'utilité public aux termes des paragraphes 34–36 du code fédéral fiscal. Des dons accordés pour des objectifs charitables sont également déductibles, selon la division 4a(2)3 de la loi sur l'impôt sur le revenu. L'alinéa 4a(5) *leg. cit.* définit les personnes morales éligibles à ce mécanisme, en désignant les collectivités de droit privé, les collectivités de droit public, les entreprises commerciales de ces dernières et les collectivités étrangères comparables ayant leur siège dans un État de l'Espace économique européen. L'éligibilité doit être vérifiée par les autorités fiscales sur la base des conditions précisées par les alinéas 4a(7–8) *leg. cit.*[31]

[28] *Gesetz über die Erhebung von Kirchenbeiträgen im Lande Österreich,* Gesetzblatt für das Land Österreich, nº 543/1939 ; Kalb, Potz & Schinkele, *Religionsrecht,* pp. 412 sq.

[29] *Einkommensteuergesetz 1988,* Bundesgesetzblatt nº 400, modifiée en dernier lieu par Bundesgesetzblatt I nº 63/2022.

[30] Aigner, Kofler & Tumpel, *Die Besteuerung anerkannter Kirchen und Religionsgemeinschaften,* pp. 262–268.

[31] *Ibid,* pp. 268–271.

FISCALITÉ, RELIGIONS & ORGANISATIONS PHILOSOPHIQUES NON CONFESSIONNELLES EN BELGIQUE

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Autant la littérature belge relative aux cultes (et philosophies) est-elle devenue abondante sur la question de leur financement direct[1] et des subventions publiques au bénéfice des cultes et de l'assistance morale laïque, autant les commentaires sont-ils rares[2] à propos de leur taxation et leur régime fiscal,[3] qui est pourtant, on va le voir, un instrument important de leur financement *indirect.*

On observera que le régime fiscal belge applicable aux cultes demeure assez proche des autres systèmes européens, à savoir peu exorbitant d'un droit fiscal commun. Ceci est d'autant plus frappant que le régime direct de financement des cultes en

[1] Pour l'état le plus récent de cette littérature, voy. Wattier, S., *Le financement public des cultes et des organisations philosophiques non confessionnelles. Analyse de constitutionnalité et de conventionnalité*, préface de Louis-Léon Christians et Marc Verdussen, Bruxelles, Bruylant, 2016, 990 pp.

[2] Pour de rares études générales, voy. Sepulchre, V., « Le financement des cultes et de la laïcité : aspects fiscaux », in Husson, J.F. (dir), *Le financement des cultes et de la laïcité. Comparaison internationale et perspectives*, Editions namuroises, 2006, pp. 215-245 ; Rosoux, R., « Les exonérations fiscales (impôts directs) prévues en faveur des cultes et de la morale laïque », *Revue trimestrielle de la fiscalité belge*, 2007, 8, 162-197.

[3] Pour des études sur des questions fiscales plus ponctuelles, voy. not. Denotte, Th. « Fiscaal statuut onroerende goederen », *Recht, Religie en Samenleving* (RRS), 2008/2 ; Denotte, Th., « Les établissements d'assistance morale du Conseil Central Laïque. Quelques aspects liés à la pratique notariale », RRS 2011/2 pp. 29-51 ; Modael, P., "De vrijheid van eredienst en de opheffing van onroerende voorheffing voor de niet-confessionele gemeenschap", *T.B.P.*, 1996, pp. 749-750; Heeren,-J., "De fiscus en... de godshuizen, de rusthuizen en de rusten verzorgingsinstellingen", *R.W.,* 1992, pp. 1454-1463; Maes, L., "Exonération de précompte immobilier pour la communauté non confessionnelle", *Fiscologue*, 1996, 568, pp. 1-3; Overbeeke, A., « Vrijstelling van onroerende voorheffing voor de openbare eredienst in het Vlaams regeerakkoord: privilege én pressiemiddel », *Actua Leges,* n° 2019/46; Sepulchre, J.F., "L'établissement des impôts et des taxes et le respect de la liberté de conscience et de la vie privée", in ID., *Droits de l'homme et libertés fondamentales en droit fiscal*, Bruxelles, Larcier, 2004 ; Verstraete, H., "Vrijstelling onroerende voorheffing klooster : verzamel voldoende bewijzen - Bespreking arrest van het Hof van Cassatie van 20 maart 2014 betreffende *Zusters van liefde van J.M. te Sijsele VZW v. Vlaams Gewest*", R.R.S., 2015/1-2, 127-134.

Belgique, sur budget général, se maintient quant à lui dans une configuration devenue aujourd'hui assez originale en Europe.

On verrait une première explication à la rareté de la littérature belge en la matière de fiscalité des cultes dans la rareté même d'un matériau fiscal qui serait spécifique aux cultes. Peu d'exemptions, peu de régimes particuliers et dès lors peu de contentieux significatif[4] pour une analyse des spécificités juridiques du fait religieux. Une deuxième explication tiendrait à la nature même des règles fiscales : à savoir leur application sans bruit, dotée de peu d'instruments d'évaluation et de contrôle, de peu de visibilité et finalement de peu d'opportunités politiques, une fois le système adopté — à la différence d'une technique de subventionnement, où chaque cas est discuté sur dossier et implique des appréciations individualisées et des évaluations chiffrées : rien de tout cela en matière fiscale.[5]

Il n'en reste pas moins que les quelques occurrences de droit fiscal belge qui sont spécifiques aux cultes constituent autant d'indices qui permettent de tester de façon originale le régime belge des cultes et d'en souligner les lignes de forces et les fractures. Derrière sa haute technicité, le droit fiscal peut en effet tenter de dissimuler ou contraire de marquer symboliquement des enjeux nouveaux dans le traitement juridique du religieux.

Après avoir rappelé les grands traits du régime belge des cultes, on se limitera dans les pages qui suivent à scruter ces quelques éléments fiscaux spécifiques, sans dresser un manuel fiscal de droit commun dont il s'agirait d'appliquer les généralités auxdits cultes. Le plan sera celui qui a été fixé transversalement pour chacun des rapports nationaux : (A) Le régime fiscal des organisations religieuses et des organisations philosophiques ou non confessionnelles ; (B) Le régime fiscal foncier des organisations religieuses et des organisations philosophiques et non confessionnelles ; (C-D) Le régime fiscal des communautés religieuses et des ordres monastiques ; Le régime fiscal des institutions sociales religieuses et celles des organisations philosophiques et non confessionnelles (charité, éducation, etc.) ; (E) Le régime fiscal des ministres du culte et des organisations philosophiques ou non confessionnelles ; (F) L'impôt, les cultes et les organisations philosophiques ou non confessionnelles. On fera enfin quelques considérations prospectives (G) en guise de conclusion.

[4] On dénombre seulement une soixantaine de décisions de justice publiées en la matière.

[5] Pour une étude de droit belge sur les relations entre subvention et fiscalité, y compris dans des effets de répartition de compétences entre les différents législateurs belges issus de la régionalisation, voy. Sepulchre, V., « Les subsides et la fiscalité », in Renders, D. (dir.), *Les subventions*, Bruxelles, Larcier, 2011, 607-690.

A) Approche générale du régime fiscal des organisations religieuses et des organisations philosophiques ou non confessionnelles en Belgique

Le **cadre constitutionnel belge** est celui de la garantie de liberté de religion et d'autonomie des cultes pour tous (art. 19 de la Constitution) doublé d'un régime de rémunération publique pour les agents agréés des cultes et philosophies « reconnues » (art. 181 de la Constitution). Ces dispositions constitutionnelles ne comportent aucune garantie en matière fiscale ou de taxation. Cette absence de mention constitutionnelle implique qu'il n'existe *pas d'obligation* pour le législateur de prendre des mesures spécifiques en matière fiscale. En revanche, cette absence n'implique nullement une *interdiction* pour le législateur de prévoir certaines règles spécifiques à l'égard des religions ou philosophies, reconnues ou non. C'est donc une *faculté* qui est laissée au législateur, sous la réserve évidente des normes belges relatives à la non-discrimination et au principe général de neutralité de l'Etat, et sous la réserve des normes européennes et internationales ayant effet direct.

Le régime de reconnaissance s'applique à six cultes (catholique, anglican, juif, protestant, islamique (1974), orthodoxe (1985)) et au mouvement de la laïcité organisée (2002). Ces différentes organisations sont placées sur un pied d'égalité formelle dans la Constitution, mais l'ampleur du support public fixé par la loi varie selon leur ampleur, voire, de facto, selon leur ancienneté. Sont en négociation les reconnaissances du bouddhisme (déjà partielle) et de l'hindouisme.

Actuellement, il n'existe pas en droit belge de législation homogène visant spécifiquement les cultes non reconnus. Au gré des législations, le champ d'application des normes rapportées aux cultes varie de façon très instable : parfois est visé l'ensemble des cultes (reconnus et non reconnus), parfois sont seulement visés les cultes reconnus, sans que toujours l'une ou l'autre alternative soit claire. On observera en tout cas que les législations nouvelles tendent à concentrer leurs normes spécifiques sur les seuls cultes reconnus, ce que va attester notre examen des évolutions récentes du droit fiscal.

Normes de rang législatif et régionalisation. Le régime des cultes reconnus, qui était à l'origine unique, a été partiellement « régionalisé » en 2001.[6] Il relève désormais également des compétences législatives de quatre régions (flamande, wallonne, bruxelloise, « germanophone »). Le régime des philosophies reconnues est quant à lui demeuré de l'unique compétence du législateur fédéral. Le cœur des compétences de droit fiscal demeure encore national, mais des étapes progressives de régionalisation

[6] Loi spéciale du 13 juillet 2001 portant transfert de diverses compétences aux régions et communautés, *Moniteur belge* (M.B.), 3 août 2001.

sont en cours, à commencer par la taxe foncière (précompte immobilier), particulièrement importante pour les cultes, régionalisée dès 1989.[7]

Parmi les normes fiscales de rang purement législatif, on note une grande diversité : certaines spécifient un statut favorable pour les seuls cultes et philosophies *reconnues*, d'autres visent spécifiquement *tous* les cultes (reconnus ou non), et enfin (le plus généralement), c'est le droit fiscal commun des associations sans but lucratif (asbl) qui s'applique à l'ensemble des cultes et philosophies, sans les mentionner.

Au sein des cultes et philosophies reconnus, on notera le régime spécifique des patrimoines affectés aux communautés locales, à travers des établissements de droit *public* dénommés classiquement « fabrique d'église » pour les cultes chrétiens ou « comité de gestion » pour d'autres. D'autres patrimoines, privés ceux-là, des communautés locales peuvent être gérés par des structures distinctes. Ils relèvent d'autres finalités et se trouvent souvent soumis à la législation des asbl.

Certains avantages fiscaux, comme principalement l'exonération de l'impôt foncier sur les immeubles, a toujours été classiquement ouvert à l'ensemble des cultes et philosophies, sans privilège pour les organisations reconnues. L'administration fiscale rejette toutefois généralement la qualification de « culte » tant qu'une juridiction ne lui impose pas au moins une première fois d'assurer l'exemption pour cette dénomination. De la sorte, on pourrait estimer que c'est le pouvoir judiciaire qui détermine en premier lieu quelles sont les organisations cultuelles et leurs édifices pertinents, au regard du précompte immobilier. Des modifications notables sont en cours depuis la régionalisation de cet impôt foncier dénommé « précompte immobilier ». On reviendra sur ce point à la section (B) infra.

Au gré des interprétations législatives ou judiciaires, l'ensemble des bénéfices assurés aux cultes reconnus l'est aussi aux organisations philosophiques non confessionnelles reconnues. Du fait qu'une seule organisation philosophique est actuellement reconnue (la laïcité organisée), il convient de noter qu'elle est parfois nommément désignée, à la différence des cultes reconnus, mentionnés de façon indifférenciée.

En matière d'impôt sur les revenus des « fidèles », la déductibilité fiscale des libéralités (à partir d'un montant de 40 euro/an) est admise au seul profit d'organisations agréées, mais uniquement en matière académique, culturelle, sportive, artistique, scientifique, et *non en matière religieuse ou philosophique*. On notera d'ailleurs de facto que les cultes et philosophies ne sont pas agréés comme bénéficiaires de libéralités déductibles. De iure, les libéralités à finalité religieuse (ou philosophique) doivent se faire au bénéfice des établissements publics en charge de leur temporel affecté respectif, et sont donc exclues de tout droit à déductibilité dans le chef du

[7] Loi spéciale du 16 janvier 1989 relative au financement des communautés et des régions, M.B. 17 janvier 1989 ; Loi spéciale du 13 juillet 2001 portant extension des compétences fiscales des Régions, M.B. 3 août 2001.

donateur. De facto, des associations privées, en quelque sorte satellites de chaque univers convictionnel, sont dotées d'une finalité recevable au terme de la loi (par exemple, la promotion des droits de l'homme, par les organisations philosophiques non confessionnelles etc.) et permettent alors d'ouvrir un droit à déductibilité, mais au profit d'associations privées et pour d'autres finalités non explicitement religieuses ou laïques.

L'impôt sur le revenu des organisations religieuses et philosophiques pourrait relever de *l'impôt sur les sociétés* mais à défaut de caractère lucratif il semble peu probable que cette qualification soit retenue. Il reste qu'aucune exclusion n'est formellement prévue au bénéfice des organisations religieuses et philosophiques. Le droit commun s'appliquerait selon les cas. C'est au titre général des *personnes morales* qu'un impôt sur le revenu peut plus probablement être perçu. Il convient de distinguer les établissements publics en charge de cultes reconnus qui ne sont en principe tenus que sur le revenu cadastral de leurs biens immeubles et sur les revenus et produits de capitaux et biens mobiliers. Sont ainsi par exemple concernés les grands séminaires les congrégations hospitalières, les fabriques d'église ou encore les chapitres de cathédrale. L'assimilation des cultes à ce régime des établissements publics date d'une loi du 17 janvier 1990. Avant cette date ces organismes étaient soumis au droit commun des personnes morales à savoir une taxation sur les revenus immobiliers, sur certaines plus-values, sur certaines charges non justifiées et sur certaines pensions. Il semblerait que l'assimilation des organisations philosophiques par cette loi de 1990 soit incertaine.

En matière de TVA, les établissements de droit public des cultes et philosophies reconnus sont bénéficiaires de l'exemption des pouvoirs publics. Sont également exemptés les congrégations hospitalières de femme. Les associations qui ne sont pas des organismes publics peuvent également être hors champ d'application de la TVA pour leurs activités lucratives accessoires comme celles des cercles paroissiaux ou des groupements qui poursuivent un objectif de nature philosophique.[8]

[8] Le Code de la taxe sur la valeur ajoutée assure ainsi l'exemption des établissements publics de gestion du temporel des cultes (« fabriques d'églises » et al), au titre général des établissements publics. : Art. 6 « L'Etat, (…) et les établissements publics ne sont pas considérés comme des assujettis pour les activités ou opérations qu'ils accomplissent en tant qu'autorités publiques, même lorsqu'à l'occasion de ces activités ou opérations, ils perçoivent des droits, redevances, cotisations ou rétributions ». Pour les autres entités, non publiques, l'Art. 44 (…) §2 prévoit que « Sont aussi exemptées de la taxe : 1° les prestations de services et les livraisons de biens qui leur sont étroitement liées, effectuées, dans l'exercice de leur activité habituelle, par les établissements hospitaliers et psychiatriques, les cliniques et les dispensaires ; les services d'aide familiale ; les transports de malades et de blessés par des moyens de transport spécialement équipés à ces fins; (…) 2° les prestations de services et les livraisons de biens étroitement liées à l'assistance sociale, effectuées par des organismes qui ont pour mission de prendre soin des personnes âgées et qui sont reconnus comme tels par l'autorité compétente et qui, lorsqu'il s'agit d'organismes de droit privé, agissent dans des conditions sociales comparables à

En matière de droits d'enregistrement et de droits de succession, il n'existe pas de régime spécifique pour les cultes et philosophies. Mais les établissements de droit public des cultes et philosophie reconnus bénéficient là aussi du traitement préférentiel des pouvoirs publics : gratuité de l'enregistrement pour les sessions amiable d'immeuble, réduction des droits d'enregistrement pour les donations entre vifs à 6,6 %, réduction des droits de succession à 6,6 %. Pour les asbl dont l'objet est relatif aux cultes ou à la laïcité, les droits de succession et de mutation sont réduit à 8,8 %. Il en va de même pour les donations.

On notera aussi **l'exemption spécifique de la taxe d'affichage** pour les affiches des ministres des cultes reconnus relatives à l'exercice du culte et aussi pour les affiches annonçant des réunions publiques dans un but de propagande religieuse : selon le texte de l'art. 198, 4° et 5° du Code des taxes assimilées au timbre» toujours en vigueur depuis 1927 : « les affiches des ministres des cultes reconnus par l'État, relatives aux exercices, cérémonies et offices du culte; les affiches annonçant des conférences ou réunions publiques, qui sont organisées dans un but d'enseignement ou de propagande politique, philosophique ou religieuse et pour lesquelles il ne sera perçu aucun droit ».

B) Le régime fiscal foncier des organisations religieuses et des organisations philosophiques et non confessionnelles en Belgique

C'est la matière « fisc & religion » qui suscite la jurisprudence et la littérature les plus abondantes.[9] On indiquera d'abord que sont exemptés de l'impôt foncier, le

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celles des organismes de droit public ; les prestations de services et les livraisons de biens qui leur sont étroitement liées, effectuées, dans l'exercice de leur activité habituelle, par les crèches et pouponnières et par les institutions reconnues par l'autorité compétente et qui, en vertu de leurs statuts, ont pour mission essentielle d'assurer la surveillance, l'entretien, l'éducation ou les loisirs des jeunes; (…) 4° les prestations de services ayant pour objet l'enseignement scolaire ou universitaire, la formation ou le recyclage professionnel ainsi que les prestations de services et les livraisons de biens qui leur sont étroitement liées, telles que la fourniture de logement, de nourriture, de boissons et de manuels utilisés pour les besoins de l'enseignement dispensé, effectuées par des organismes qui sont reconnus à ces fins par l'autorité compétente, par des établissements qui sont annexés à de tels organismes ou en dépendent; les prestations de services ayant pour objet des leçons données par des enseignants et portant sur l'enseignement scolaire ou universitaire, la formation ou le recyclage professionnel ; (…) 10° la mise à disposition de personnel ***par des institutions religieuses ou philosophiques*** pour les activités visées aux 1°, 2° et 4°, ou dans un but d'assistance spirituelle ; 11° les prestations de services et les livraisons de biens qui leur sont étroitement liées, effectuées par des **organismes n'ayant aucun but lucratif**, moyennant le paiement d'une cotisation fixée conformément aux statuts, au profit de et dans l'intérêt collectif de leurs membres, à condition que ces organismes poursuivent des objectifs de nature politique, syndicale, **religieuse**, humanitaire, patriotique, philanthropique ou civique; le Roi peut imposer des conditions supplémentaires aux fins d'éviter des distorsions de concurrence ; (…)

[9] Voy. not. Denotte, Th. « Fiscaal statuut onroerende goederen », *Recht, Religie en Samenleving* (RRS), 2008/2 ; Modael, P., "De vrijheid van eredienst en de opheffing van onroerende voorheffing voor

revenu cadastral des biens immobiliers qui ont le caractère de domaines nationaux, sont improductifs par eux-mêmes et sont affectés à un service public ou d'intérêt général. Cette disposition du Code belge des impôts sur les revenus (CIR art. 253, 3°) reprend les formules de la loi révolutionnaire française du 3 frimaire an VII. Or, dans le cadre du régime des cultes reconnus, la plupart des biens affectés appartiennent à des établissements ou institutions de droit public et répondent à ces conditions. Le Commentaire des impôts sur le revenu (Comm. I.R. n°253/102) donne explicitement comme exemples les biens immobiliers qui appartiennent aux fabriques d'église, des églises et temples consacrés à l'exercice d'un culte public, les archevêchés, évêchés, séminaires, presbytères, séminaires épiscopaux… .[10, 11]

Mais une seconde exemption concerne cette fois explicitement les biens affectés au culte, sans but de lucre, quel qu'en soit le propriétaire. Cette exemption, prévue depuis une loi du 13 juillet 1930, reprise par les art. 12 et 253, 1° CIR, a été étendue par une loi du 21 mai 1996 aux immeubles affectés à l'assistance morale laïque : « Est exonéré le revenu cadastral des biens immobiliers ou des parties de biens immobiliers qu'un contribuable ou un occupant a affectés sans but de lucre à l'exercice *public* d'un culte,[12] ou de l'assistance morale laïque, à l'enseignement, à l'installation d'hôpitaux,

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de niet-confessionele gemeenschap", *T.B.P.,* 1996, pp. 749-750; MAES, L., "Exonération de précompte immobilier pour la communauté non confessionnelle", *Fiscologue*, 1996, 568, pp. 1-3; OVERBEEKE, A., « Vrijstelling van onroerende voorheffing voor de openbare eredienst in het Vlaams regeerakkoord: privilege én pressiemiddel », *Actua Leges,* n° 2019/46.

[10] Dans une Circulaire ministérielle du 14 juillet 1997 relatives aux édifices du culte - implantation de stations-relais Mobistar ou Proximus sur ces édifices, on trouve trace d'une autre discussion relative à l'effet des revenus tirés du placement d'antennes de téléphonie sur un édifice affecté au culte : « Les églises sont improductives par elles-mêmes et affectées à un service d'utilité générale ; dès lors, elles sont exemptées de la contribution foncière. Par sa lettre du 2 juin 1997, le Ministre des Finances a fait savoir que l'installation d'antennes et d'équipements comparables par des sociétés telles que PROXIMUS et MOBISTAR sur les édifices du culte *n'était pas de nature à compromettre l'exonération, comme autrefois*, du précompte immobilier sur base des articles 12 et 253 du Code des Impôts sur les revenus (C.I.R.92); en outre, l'administration des contributions directes a confirmé également que les redevances, payées pour l'installation de tels équipements, ne sont pas considérées comme des revenus immobiliers) » .

[11] Depuis 1994, la Région de Bruxelles-Capitale a dérogé à ce texte pour en restreindre le champ d'application.

[12] Une circulaire du 15 septembre 1998 commentant la loi du 21 mai 1996, précise que « Le remplacement des mots l'exercice d'un culte public par les mots l'exercice public d'un culte n'apporte aucune modification sur le plan de l'appréciation de cette condition d'affectation. Le législateur a souhaité maintenir le critère d'accessibilité publique et, en faisant porter le mot «public» tant sur l'exercice d'un culte que sur l'exercice de l'assistance morale laïque, souligner l'égalité de traitement entre les biens immobiliers affectés, d'une part, à un culte et, d'autre part, à l'assistance morale laïque. Par conséquent, le commentaire administratif définissant le concept culte public repris au nº 253/24, Com. I.R. 92 reste d'application et doit également être utilisé, mutatis mutandis, comme fil conducteur pour

de cliniques, de dispensaires, de maisons de repos, de homes de vacances pour enfants ou personnes pensionnées, ou d'autres oeuvres analogues de bienfaisance ».

On a déjà mentionné que l'administration fiscale, contrairement au texte de la loi qui vise *n'importe quel* culte, a toujours eu pour pratique de systématiquement refuser ce bénéfice à tout autre culte qu'un des cultes *reconnus*. Ce n'est que sur première condamnation judiciaire que l'administration admet à ce bénéfice d'autres mouvements qualifiés de « cultes » par les tribunaux. On notera que le texte ne vise qu'un seul concept d' « assistance morale laïque » sans non plus restreindre cette dernière à une philosophie *reconnue*. Il reste que l'adjectif « laïque » correspond en Belgique à la dénomination de la seule organisation philosophique non confessionnelle reconnue en ce moment. Il faudra attendre la future reconnaissance du bouddhisme, qui entend être reconnu comme autre organisation philosophique non confessionnelle, pour vérifier l'interprétation de ces formules et l'applicabilité de l'adjectif « laïque » au bouddhisme. En tout cas, des circulaires administratives définissent la portée actuelle de cet adjectif pour viser : les centres d'assistance morale de l'Unie van de Vrijzinnige Verenigen, du Centre d'action laïque et des centres du Conseil central des communautés philosophiques non confessionnelles de Belgique ; des centres du Service laïque d'aide aux personnes ; des centre du Service laïque d'aide aux justiciables ; des Maisons de la Laïcité agrées à cette fin, de même que des lieux mis à la disposition de l'assistance morale par les pouvoirs publics ou les institutions publiques ».[13]

Une jurisprudence assez abondante s'est développée sur le champ d'application cultuel de cette exemption. C'est une des rares occasions de voir posée en droit belge la question de la définition d'une religion, et en l'occurrence d'un « culte ». Le Commentaire administratif officiel en fait une nomenclature précise. Ainsi, ce commentaire se réfère-t-il encore actuellement à un arrêt de la Cour d'appel de Gand du 14 janvier 1885 (*Pas*. 1885, II, 120) pour définir le culte comme « celui qui se manifeste par des rites solennels et publics et qui est sérieux, digne de nous ». De même, un arrêt de la cour d'appel de Liège du 28 février 1949 est-il mentionné pour exclure le spiritisme, qui à défaut de ministre sacré, n'a pas été tenu pour culte. L'exclusion du culte Antoiniste est aussi rappelée par référence à un arrêt de la même cour d'appel de Liège du 21 novembre 1949 qui invoque l'absence d'un corps de doctrine et de rites qui sont « pour ainsi dire inexistants et se bornent à des lectures moralisantes » (Comm. I.R. n° 253/ 24 et suivants). En revanche, le Commentaire mentionne l'admission des Baha'i à l'issue d'un examen très méticuleux par la cour d'appel de Bruxelles du 12 octobre 1960, ou encore la qualification de culte pour les

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apprécier la condition d'affectation à l'exercice public de l'assistance morale laïque ». Voy. LOUVEAUX, H., « Immunisation du revenu cadastral », Jura, Kluwer, 2015.

13 Circulaire n° CI.R.H. 222/509.586 (15.09.1998).

Témoins de Jehovah dès un arrêt de la cour d'appel de Bruxelles du 24 janvier 1962 (Comm. I.R. n° 253/ 28 et suiv.).[14]

Les choses changent toutefois quant à l'extension de cette exemption. En raison de la régionalisation de cette matière, les évolutions que l'on va décrire diffèrent ponctuellement selon les législateurs régionaux, mais attestent d'une même tendance : celle de soumettre désormais l'exemption à un critère plus restrictif de *reconnaissance* : non seulement la reconnaissance par l'Etat fédéral de la dénomination religieuse ou philosophique en général, mais aussi la reconnaissance régionale de la communauté locale dont relèverait l'édifice à taxer. Cette restriction ainsi est inscrite dans l'accord de gouvernement du Gouvernement flamand pour la mandature qui s'ouvre en 2019,[15] mais elle est déjà l'objet d'une Ordonnance de la Région de Bruxelles-Capitale du 23 novembre 2017, qui a été validée par la Cour constitutionnelle de Belgique dans un arrêt n° 178 du 14 novembre 2019.

Le raisonnement de la Cour permet d'abord d'entrevoir les raisons de cette restriction nouvelle. Il s'agit moins d'une politique dépréciative à l'encontre de dénominations non reconnues par l'Etat fédéral (comme par exemple les Témoins de Jéhovah, requérants devant la Cour constitutionnelle) que d'une mesure visant à pousser les mosquées qui n'ont pas encore sollicité leur reconnaissance régionale à le faire.

Il s'agit de rappeler qu'en droit belge, la reconnaissance globale du culte islamique, depuis une loi du 19 juillet 1974, n'a pas pour effet d'intégrer automatiquement l'ensemble des mosquées dans le cadre du régime de reconnaissance, mais simplement de permettre aux mosquées qui le souhaitent de déposer chacune à leur tour, un dossier régional de reconnaissance individuelle. Or, ce mouvement s'est déployé très lentement à partir des années 2000 et s'essouffle déjà alors qu'une septantaine seulement de mosquées sont reconnues sur un nombre total supérieur à trois cents.

Pour donner une assise solide à l'autorité représentative islamique (l' « Exécutif des Musulmans de Belgique ») et pour assurer une meilleure coordination globale avec les pouvoirs publics, il a pu sembler important d'inciter fiscalement les mosquées hésitantes à entrer dans le régime de reconnaissance, en leur faisant, à défaut, perdre

[14] De nombreux autres mouvements religieux minoritaires ont été admis classiquement au bénéfice de cette exemption fiscale. Ainsi le mouvement Mahikari : Bruxelles, 3 février 2005, cité par *Fiscologue*, n° 974, 25 mars 2005 : « Le mouvement Mahikari produit son règlement et démontre l'existence d'un culte et d'un rituel réguliers, ouvert à tout public, sans préinscription ni paiement. Une certaine activité lucrative ne remet pas l'exemption en cause dès lors que les montants obtenus servent à l'entretien de l'édifice et à la pratique du culte, sans avantage personnel pour le membres de l'asbl. Les témoignages rapportés devant la Commission d'enquête parlementaire sur les sectes ne contredisent pas le caractère non lucratif et la nature religieuse de l'activité de ce mouvement dans l'édifice visé. »

[15] Sur ce point, voy. OVERBEEKE, A., « Vrijstelling van onroerende voorheffing voor de openbare eredienst in het Vlaams regeerakkoord: privilege én pressiemiddel », *Actua Leges,* n° 2019/46.

un avantage jusque-là acquis. Jusque-là, l'exemption bénéficiait en effet à toutes les mosquées et salles de prières qui en faisaient la demande fiscale. Dorénavant, en Région de Bruxelles-Capitale, de telles mosquées non reconnues individuellement seront privées d'exemption fiscale.

On remarquera que les travaux préparatoires de la nouvelle législation bruxelloise évoquent des lieux de culte « clandestins ». Ce vocabulaire est périlleux : la Constitution belge garantit le libre exercice de tout culte, sans aucune obligation de reconnaissance préalable. Un édifice « non reconnu » peut se revendiquer de cette liberté constitutionnelle, et dès lors ne peut de ce seul fait être disqualifié comme clandestin. Sans évoquer explicitement des questions de sûreté nationale liées à des suspicions locales de radicalisation, une autre signification semble être avancée plus aisément pour justifier à ce type de discours péjoratif : il s'agit de faire référence au non-respect de normes d'urbanisme et de sécurité-incendie. De nombreuses salles de prières, non déclarées comme telles, ne répondent en effet pas aux conditions de sécurité et d'évacuation fixées par les services incendies. Enfin, sont évoquées des fraudes pures et simples d'affectation fictive à un soi-disant exercice du culte alors qu'une autre activité est poursuivie de fait.[16] Quel que soit le motif en définitive, il s'agit là encore d'inciter fiscalement ces salles à se déclarer.

La Cour constitutionnelle, dans son arrêt du 14 novembre 2019, a estimé que cette nouvelle limitation de l'exemption aux seules entités préalablement reconnues n'était pas contraire à la garantie de liberté de religion, ni de non-discrimination.[17] Pour mener à bien son raisonnement, la Cour se fonde non seulement sur la tradition constitutionnelle belge mais également sur la jurisprudence de la Cour européenne des droits de l'homme.

Pour la Cour, le critère de reconnaissance préalable « est pertinent au regard de l'objectif poursuivi de lutte contre la fraude fiscale. En effet, pour obtenir leur reconnaissance, les cultes doivent répondre à des critères d'organisation et de fonctionnement et ils ne peuvent dès lors être considérés comme des cultes fictifs, qui ne peuvent donc plus bénéficier de l'exonération du précompte immobilier (B.9). La Cour vérifie

[16] *Doc. parl.,* Parlement de la Région de Bruxelles-Capitale, 2016-2017, n° A-554/1, pp. 9-10.

[17] Il est important et symptomatique de noter que la même Cour constitutionnelle, dans un arrêt du 29 mars 2018, avait imposé une interprétation *extensive* des catégories exemptées de la taxe foncière par le même texte, au titre du principe de non-discrimination : Cour const. 29 mars 2018, n° 44/2018 : [Les dispositions fixant les exemptions] violent les articles 10 et 11 de la Constitution dans l'interprétation selon laquelle les « oeuvres analogues de bienfaisance » sont uniquement les institutions qui fournissent des soins physiques ou psychiques ; elles ne violent pas les articles 10 et 11 de la Constitution dans l'interprétation selon laquelle les institutions qui fournissent, sans but de lucre, une aide *autre que* des soins physiques ou psychiques à des personnes ayant besoin d'aide sont considérées comme des « oeuvres analogues de bienfaisance ». En 2019, la Cour se borne à estimer que « lorsqu'il détermine sa politique en matière fiscale, le législateur ordonnanciel dispose d'un pouvoir d'appréciation étendu ».

encore « si le législateur ordonnanciel, en choisissant le critère de la reconnaissance du culte et de l'établissement local qui gère le temporel du culte, n'a pas créé d'effets disproportionnés pour les cultes non reconnus, tels que les parties requérantes, et porté atteinte à leur liberté de religion » (B.10). La Cour rappelle d'abord que « La liberté de religion n'implique pas que les Églises ou leurs fidèles doivent se voir accorder un statut fiscal différent de celui des autres contribuables (CEDH, décision, 14 juin 2001, *Alujer Fernandez et Caballero Garcia c. Espagne,* p. 8). L'article 9 de la Convention européenne des droits de l'homme n'implique pas non plus le droit pour une association religieuse d'être exonérée de tout impôt (Comm. eur. D.H., 16 avril 1998, n° 30260/96, *Association Sivananda de Yoga Vedanta*). Toutefois, une mesure de taxation d'une association religieuse constitue une ingérence dans l'exercice des droits garantis par l'article 9 précité lorsqu'elle a pour effet de couper les ressources vitales de l'association, de sorte que cette dernière n'est plus en mesure d'assurer concrètement à ses fidèles le libre exercice de leur culte, et qu'elle menace la pérennité, sinon entrave sérieusement l'organisation interne, le fonctionnement de l'association et ses activités religieuses (CEDH, 30 juin 2011, *Association les Témoins de Jéhovah c. France*, § 53) » (B.11.1). La Cour poursuit en notant que « conformément à l'article 255 du CIR 1992, tel qu'il est applicable dans la Région de Bruxelles-Capitale, le précompte immobilier s'élève à 1,25 % du revenu cadastral tel que celui-ci est établi au 1er janvier de l'exercice d'imposition. Les parties requérantes ne démontrent pas qu'un précompte immobilier calculé sur une telle base, même majoré des centimes additionnels communaux et des centimes additionnels au profit de l'agglomération bruxelloise, est disproportionné par rapport aux ressources des cultes non reconnus et menacerait leur pérennité ou entraverait sérieusement leur organisation interne, leur fonctionnement et leurs activités religieuses » (B.11.2). On notera que les requérants établissaient à 45.000 euro par an le montant de la taxe contestée.

Enfin, la Cour conclut en soulignant que les requérants pouvaient eux-mêmes solliciter la reconnaissance de leur culte, comme cela est loisible à l'ensemble des cultes non (encore) reconnus…. : « la circonstance que le bénéfice de l'exonération du précompte immobilier prévue par la disposition attaquée est lié à la reconnaissance du culte et de l'établissement local chargé de la gestion du temporel du culte n'entraîne pas d'effets disproportionnés pour les cultes non reconnus, *étant donné que ceux-ci peuvent solliciter la reconnaissance de leur culte.* Pour le surplus, la procédure de reconnaissance des cultes, critiquée par les parties requérantes, n'est pas régie par la disposition attaquée, de sorte qu'elle ne fait pas l'objet du présent recours ». (B.12.3)

Ainsi validée par la Cour constitutionnelle, on aurait pu retenir comme évolution principale que l'exemption fiscale de la taxe foncière pouvait dorénavant varier selon que l'édifice relève ou non du régime de *reconnaissance publique* des cultes et philosophies.

La Cour européenne des droits de l'homme, dans un arrêt du 5 avril 2022 (*Assemblée Chrétienne des Témoins de Jéhovah d'Anderlecht Et Autres c. Belgique,*

n° 20165/20), en a toutefois décidé autrement en condamnant la Belgique pour discrimination envers les cultes non reconnus, en l'occurrence les Témoins de Jehova. On retiendra ici deux étapes particulières dans le raisonnement européen. La Cour européenne rappelle des jurisprudences antérieures (condamnant notamment la France au profit également des Témoins de Jéhovah), dans lesquelles elle a estimé contraires à la Convention européenne, toutes politiques publiques conduisant à des baisses soudaines et significatives des ressources financières des cultes, quel que soit le régime des cultes, dès lors que cette baisse de ressources met en difficulté l'exercice de base de la liberté de religion des communautés de fidèles concernées. Comme c'est le cas de baisse forte de subventions, de hausses fortes de taxation, d'interdiction soudaine de financements privés ou étrangers etc. Dans ces affaires antérieures, la Cour se prononçait directement sur l'exercice de la liberté de religion et y appliquait un examen de proportionnalité limitant les cas de condamnation aux entraves financières les plus massives. La Cour condamne la Belgique alors que l'entrave financière est bien présente mais moins massive que dans les affaires précédentes. C'est qu'en l'espèce le dossier n'est pas directement porté sur l'exercice direct de la liberté de religion, mais sur la discrimination des politiques publiques en la matière. Les Témoins de Jehovah estiment en effet ne pas être traités comme les autres religions et philosophies, et ce type d'affaire peut conduire à une condamnation de l'Etat même en cas d'atteinte plus légère à la liberté de religion. Tout constat de discrimination non justifiée en matière de religion conduit à une condamnation mécanique des Etats.

Apparaît ensuite un second enseignement décisif de l'arrêt du 5 avril 2022 de la Cour européenne, que les formules prudentes de la Cour constitutionnelle laissaient également entrevoir : il n'est pas admissible de renvoyer à une procédure de reconnaissance si celle-ci présente elle-même des risques d'arbitraire et de discrimination. Or, aux yeux de la Cour européenne, la procédure belge de reconnaissance est laissée au bon vouloir des Ministres de la Justice, sans indications prévisibles ni critères précis. Aucune loi ne vient fixer les modalités à respecter dans le cadre de la démarche auprès du Ministre. Plus encore, l'intervention ultime, purement politique, du Parlement n'absout pas ces reproches. La Cour européenne a déjà condamné, dans d'autres affaires, les régimes des cultes abandonnés à des votes parlementaires dès lors qu'ils sont menés en termes de simple opportunité politique, purement discrétionnaire.

Même en constatant que le régime belge de reconnaissance des cultes et philosophies demeure facultatif et ne met pas en cause l'exercice de base des libertés constitutionnelles de tous cultes et philosophie non reconnus, il reste que, même facultatif, l'accès à ce régime de reconnaissance ne peut pas être lui-même discriminatoire. L'aggravation du régime fiscal de cultes non-reconnus ne pouvait donc pas être justifiée par le simple renvoi de ces cultes à la possibilité qu'ils avaient de solliciter une reconnaissance.

Laissant cette question et revenant à la pratique générale de l'exemption de la taxe foncière pour les bâtiments affectés à l'exercice public de tout culte, d'autres différences peuvent encore survenir selon les Régions.

En effet, la jurisprudence classique relative à l'exemption de la taxe foncière ne concerne pas seulement *l'identité* cultuelle de l'affectation du bâtiment, mais aussi la *nature* cultuelle de chaque espace à exonérer fiscalement, non pas par parcelle cadastrale mais pièce par pièce (chapelle, dortoir, caféteria, espace jeunes, salle d'enseignement etc). Il s'agit de déterminer classiquement si l'affectation de ces espaces est *nécessaire* à l'exercice public du culte (nécessaire, en ce sens que le culte ne puisse pas être exercé à défaut de ladite affectation, selon la jurisprudence de la Cour de cassation, 22 décembre 1988, *Bull*. n°686, p. 1858).

Selon le Commentaire administratif, « l'affectation même indirecte au culte public pouvant être retenue, l'immunité du RC peut être accordée non seulement pour l'église ou la chapelle affectée au culte public mais aussi pour la sacristie, la salle du chapitre, les caves ou bâtiments annexes avec installations de chauffage. Il en est de même pour le logement des desservants, les locaux prévus pour leur usage domestique ou leur formation spirituelle. Ainsi, en ce qui concerne un complexe occupé par des religieux vivant en communauté cloîtrée selon une règle monastique qui nécessite la présence continuelle de jour et de nuit des membres de la communauté à proximité de l'église publique qu'ils desservent et où ils pratiquent le culte selon la règle monastique qu'ils ont librement adoptée, doivent bénéficier de l'immunité, outre l'église et ses dépendances proprement dites, les bâtiments ou locaux suivants, prévus pour l'usage domestique ou la formation spirituelle des religieux : logement, cuisine, réfectoire, salles d'études, bureaux, laboratoires, salles de chapitre, vestiaire, bibliothèque, lavoir et séchoir, pharmacie, infirmerie, salle de retraite, WC et parloirs, remise, hangars, grange, galerie, couloirs, etc. Les bâtiments ou parties d'immeubles non nécessaires à la réalisation du but poursuivi, tels que laiterie, fromagerie, brasserie, atelier de menuiserie, moulin à farine, hôtellerie, etc., ne sont pas exonérés » (*Comm. I.R*. 253/30).

La Cour d'appel de Gand, dans un arrêt du 21 octobre 2014 confirme la jurisprudence : « L'exigence selon laquelle le bien immobilier ou la partie du bien immobilier doit être affecté à l'exercice public d'un culte implique qu'il doit exister un rapport de nécessité entre cette affectation et le culte, en ce sens que, sans cette affectation, le culte ne pourrait pas être exercé. Il ne suffit pas que le bien immobilier ou la partie du bien immobilier puisse être simplement utile au culte. » Il s'agissait, en l'espèce, d'une ASBL de Témoins de Jéhovah qui demande l'exonération pour un appartement ordinaire. Selon la Cour, « cette exonération a été refusée à juste titre, étant donné que l'ASBL ne démontre pas que l'appartement est nécessaire à l'exercice du culte ou, autrement dit, que le culte ne pourrait être exercé sans la mise à disposition de l'appartement. Pouvoir disposer d'un logement est une nécessité qui existe pour chacun, quelle que soit la profession ou l'activité que l'on exerce, que l'on soit riche

ou que l'on vive dans la pauvreté, et est indépendante de tout exercice d'un culte. Le seul fait que les occupants de l'appartement assument des tâches à plein temps dans l'exercice du culte ne signifie pas, en soi, que cet appartement devienne nécessaire à l'exercice du culte. Il n'est pas démontré que l'exercice par les occupants de leur fonction au sein du culte est absolument incompatible avec l'exercice d'une activité professionnelle rémunérée. L'allégation selon laquelle les intéressés ont fait voeu d'obéissance et de pauvreté ne suffit pas pour arriver à une conclusion différente, pas plus que des textes religieux, des brochures et l'affirmation que les occupants sont à disposition jour et nuit ».[18] Il en est allé de même pour une communauté de fidèles catholiques vivant en habitat groupé pour animer les activités spirituelles d'un oratoire au sein d'un domaine privé destiné à accueillir des retraitants. La Cour d'appel de Bruxelles, par arrêt du 27 octobre 2015 (non publié) invoque à ce propos l'arrêt du 28 octobre 2011 de la Cour de cassation (n°F.10.0122.F) : « l'affectation de l'immeuble ou de la partie d'immeuble doit être nécessaire à l'exercice d'un culte. Tel n'est pas le cas lorsque, comment espèce, l'assistance aux activités d'hommage à Dieu est libre et que l'hébergement dans les lieux d'ermitage n'est pas subordonné la participation à ces activités ».[19]

On notera que l'Ordonnance de la Région de Bruxelles-Capitale du 23 novembre 2017 modifie sur d'autres points les conditions d'octroi de l'exemption fiscale. Elle prévoit désormais que le lieu doive être « utilisé *exclusivement* à l'exercice public d'une religion reconnue ou de l'assistance morale selon une conception philosophique non confessionnelle ». Cette condition nouvelle d'exclusivité modifie le critère administratif antérieur qui était celui de la « nécessité » de ce lieu pour l'exercice du

[18] Gand, 21 octobre 2014, *Fiscologue*, 2015, n° 1456, 16.

[19] D'autres cas de jurisprudence sont cités par Louveaux, H., « Immunisation du revenu cadastral », Jura, Kluwer, 2015, qui se montrent favorables à des exemptions étendues pour les couvents catholiques classiques (Cass. 27 octobre 1953, Monastère de la Visitation Sainte-Marie, Pas. 1954, I, 142 ; Bruxelles 19 février 1953, *Zusters Clarissen Colletienen* ; Bruxelles 27 janvier 1994, RF 142/89 ; Bruxelles 30 septembre 1993, RF 342/91 ; Mons 18 octobre 2002, 1996/FI/124) ; Anvers 7 octobre 2003, F.J.F. 2004, n°14 , Anvers 7 octobre 2003 (*F.J.F.* 2004, 51) : « Un couvent est affecté dans sa totalité à l'exercice public d'un culte puisque la vie en couvent constitue un élément essentiel du culte catholique. L'exercice public d'un culte ne peut être réduit au seul service religieux. La vie en couvent exige en effet tout le temps et l'énergie des religieux » (trad.). Une maison utilisée pour des cours de catéchèse est assimilée à un lieu de culte pour l'exemption du précompte immobilier (Anvers, 5 mars 1979*, R.W.,* 1978-79, col. 2329, avis du Min. Publ.). On lit également dans un arrêt de la Cour d'appel d'Anvers, du 26 juin 2001 (Asbl de *Vrienden van Sibo, J.F.,* 2001, 197) : « Attendu que, la demanderesse avance avec raison qu'étant donné l'élargissement et l'évolution dans l'approche liturgique et pastorale, l'exercice du culte doit être compris dans un sens bien plus large que les seules activités dans l'église » (trad.). Comp. toutefois VERSTRAETE, H., "Vrijstelling onroerende voorheffing klooster : verzamel voldoende bewijzen - Bespreking arrest van het Hof van Cassatie van 20 maart 2014 betreffende *Zusters van liefde van J.M. te Sijsele VZW v. Vlaams Gewest*", R.R.S., 2015/1-2, 127-134 (rejet de l'exemption d'un couvent de soeurs âgées, se présentant comme maison de repos).

culte ou de l'assistance. Le critère de l'exclusivité va rendre plus ardue la définition de ce qu'est un culte mais aussi de ce qu'est « exclusivement » l'assistance morale.[20] La suite du texte de l'ordonnance semble toutefois atténuer cette exigence d'exclusivité en prévoyant que « ne sont pas visés par l'exonération mentionnée à l'alinéa précédent (…) b) les salles de fête ou de réunion, à moins que ne soit apportée la preuve qu'il s'agit là du lieu *principal* d'exercice public du culte ou de l'assistance morale et que des évènements de culte ou d'assistance morale s'y tiennent *en moyenne au moins trois fois par semaine »*. Une autre restriction prévue par l'Ordonnance concerne généralement la condition d'une utilisation non seulement « exclusive » mais aussi « fréquente ».

C-D) **Le régime fiscal des communautés religieuses et des ordres monastiques et des institutions sociales religieuses (charité, éducation, etc.) en Belgique**

Seul *l'exercice du culte au sens strict* (ses ministres, ses bâtiments) font l'objet de certaines normes spécifiques. Les abbayes, couvents et monastères, de même que les membres de ces communautés religieuses sont dépourvus de statut spécifique. Ainsi, si ces bâtiments comportent un lieu destiné à l'exercice public du culte, ils prométitent une exemption de taxe foncière, pour les espaces nécessaires, mais pas en raison de leur caractère « monastique ». Si certains religieux ont été affectés à un mandat reconnu de ministre du culte (dans le cadre d'une paroisse reconnue), ils seront rémunérés par l'Etat, mais pas en raison de leur caractère « monastique ». Plus généralement, les Abbayes et communautés religieuses ne disposent pas d'un régime spécifique de personnalité juridique. Seul le droit commun des *associations sans but lucratif (ASBL)* est à leur disposition, à la simple condition qu'elles en

[20] Comp. Civ. Bruxelles 17 novembre 2010 (R.G. N° 2008/ 9573 et 13750 /A) : « La remise du précompte immobilier au titre de bien affecté à l'assistance morale laïque a été refusée à juste titre par l'administration pour certains locaux de l'immeuble comme un auditorium/salle de spectacle, un foyer/bar ou une salle de rédaction d'un journal communautaire. S'il est vrai que des préoccupations d'ordre culturel ne sont pas en contradiction avec la notion de « morale laïque », le texte légal (art. 12 § 1er, CIR 92) instaure toutefois des limites visant précisément à cibler des activités concrètes : il doit s'agir d'une « assistance » « morale », ce qui se distingue en soi d'une simple démarche culturelle. Correspondent idéalement à cette notion d' « assistance morale », l'intervention d'un conseiller laïc dans un hôpital, une prison ou l'armée, dans les mêmes conditions et avec une finalité équivalente à celle caractérisant l'intervention d'un curé, d'un imam ou d'un rabbin, ou l'organisation de cérémonies de mariage, de communions ou baptêmes laïcs, de cours de morale ou de philosophie ou, comme en l'espèce, de fêtes juives. La requérante ne démontre pas que les activités d'assistance morale proprement dites, qu'elle délivre assurément, trouvent à s'organiser ailleurs que dans les locaux admis comme tels par l'administration, alors qu'elle a, tout aussi visiblement, des activités culturelles, voire de pur loisir qui ne correspondent pas à la finalité légalement retenue. Elle ne démontre pas davantage que les locaux litigieux sont des accessoires nécessaires à l'exercice des activités d'assistance morale menées dans les locaux retenus par l'administration ».

fassent la déclaration et la publication au journal officiel belge (le 'Moniteur belge'), et déposent ensuite annuellement leurs comptes auprès du tribunal compétent.

Les écoles et hôpitaux confessionnels ont également un statut de droit commun : celui des institutions scolaires ou hospitalières de droit privé. C'est à ce titre 'scolaire' ou 'hospitalier' que ces institutions entrent dans un régime fiscal, parfois d'exemption, mais nullement en raison de leur rattachement religieux.

E) Le régime fiscal des ministres du culte et des responsables de mouvements philosophiques et non confessionnels en Belgique

L'administration fiscale, tenue par les règles de confidentialité, ne dispose d'aucune statistique concernant le niveau de revenu de catégories professionnelles comme celle de ministre des cultes, ni ne documente les contentieux par cette rubrique.

La législation sur **l'impôt sur le revenu** des personnes physiques ne fait aucun traitement spécifique pour les revenus liés à une activité professionnelle religieuse. Les ministres des cultes (reconnus ou non reconnus) sont soumis à l'impôt selon les mêmes règles et mêmes barèmes que les autres contribuables.

Les ministres des cultes reconnus sont soumis à l'impôt sur le revenu ou le traitement payé par l'État mais aussi sur l'indemnité de logement attribué par la commune, le casuel et les droits et produit d'autres occupations spécialement rémunérées. Le *Commentaire administratif* officiel liste explicitement les rémunérations imposables dans le chef du clergé (Comm. I.R. n°31/64). En revanche le clergé peut *s'abstenir* de déclarer les produits de dons et de libéralités et de quêtes.[21]

On ne dispose que de peu de jugements publiés pertinents.[22] Par exemple, en cas de présomption de fraude par déclaration insuffisante, l'administration fiscale a pu estimer qu'un rabbin déclarait trop peu de revenu. Elle recourt alors à une taxation

[21] Comp. Mons, 21 octobre 1994 (*F.J.F.,* 1995, p. 119) : « Les dons attribués à un pasteur évangélique par les fidèles de l'Eglise du Christ du collège à Searcy (Arkansas) en vue de lui permettre d'exercer sa mission en Belgique et d'assurer sa subsistance ainsi que celle de sa famille, constituent des avantages obtenus en raison ou à l'occasion de l'exercice de l'activité de l'intéressé, laquelle présente un caractère professionnel : ils rémunèrent de façon directe ou indirecte les services rendus ou à rendre ».

[22] Sur le fisc et la vie en communauté religieuse : Bruxelles, 29 juin 1982, (*Bull. contrib.* 1984, 3065) : « Il découle des faits que la requérante a acquis, en nom personnel, les droits d'auteurs et les royalties du chef de prestations artistiques et qu'elle en a disposé volontairement en faveur de sa congrégation religieuse; sa façon d'agir a bénéficié de l'accord exprès de sa congrégation. Les conventions formées entre ladite congrégation (ayant pris la forme d'une a.s.b.l.) et la requérante n'ont pas eu pour effet que les revenus ne puissent être considérés comme acquis par la requérante ». Députation permanente du Brabant, 25 septembre 1990 (*F.J.F.* 1991, 414 et 515) : « Pour l'application de la taxe provinciale sur l'amélioration et la protection de l'environnement, les membres d'une communauté religieuse ne peuvent être considérés comme les membres d'une famille au sens d'«une communauté de deux ou plusieurs personnes, liées ou non par des liens familiaux». Chaque membre de la communauté doit payer, par conséquent, la taxe individuellement ». En matière de droits de succession, voy. par exemple

sur *indices* qui a été contestée par ce ministre du culte : selon lui, n'étaient pas constitutifs de revenus taxables les dons spontanés des fidèles.[23]

D'autres litiges ont concerné le logement de fonction dont bénéficient certains ministres des cultes reconnus (un par communauté locale reconnue). L'obligation légale qui pèse sur les municipalités de mettre un tel logement à disposition ne signifie pas que cet avantage soit exempté fiscalement. Pour l'administration fiscale, il s'agit d'un avantage professionnel en nature, taxable. De nombreux curés catholiques qui déclaraient cet avantage pour des montants dérisoires (100 euro/mois) ont vu leur impôt rectifié à la hausse.

En ce qui concerne les **droits de succession**, aucun statut spécifique n'est réservé aux personnels religieux, que le culte soit reconnu ou non. Le droit commun est applicable. On se souviendra que l'essentiel des patrimoines religieux est détenu par des ASBL, soumises à une taxation compensatoire de mainmorte, extrêmement légère.

F) **L'impôt, les cultes et les mouvements non confessionnels en Belgique**

En vertu de la Constitution, les salaires des ministres des cultes et philosophies reconnus en Belgique sont directement à charge du budget du ministère de la Justice, dans la mesure de ce qui est nécessaire. Il s'agit d'un financement direct dont la maîtrise est fixée par le budget proposé par le gouvernement fédéral et adopté par le parlement fédéral. Les autres sources (régionale et locale) de financement sont également fixées selon les mêmes modalités, sans toutefois revêtir de caractère constitutionnellement obligatoire. Le droit belge ne dispose pas de système d'impôt d'église (comme en Allemagne) et n'a pas (encore) instauré de système d'impôts affectés sur le modèle italien.[24] Les contribuables n'ont aucune prise directe sur la répartition budgétaire de l'Etat en faveur des cultes et philosophies. On rappellera aussi que la déductibilité fiscale des libéralités à des œuvres caritatives est *exclue* pour les libéralités à des finalités spécifiquement cultuelles, religieuses ou philosophiques. Seules d'autres finalités, annexes, peuvent mériter le bénéfice de la déductibilité (culture, santé, enseignement, sport etc).

WATELET, P., "Les dots religieuses et leur statut fiscal en Belgique", *Rev. prat. not.,* 1953, p. 242 et s. ; X., "Religieux et droit de succession", *Contact*, 1993, 171-179.

[23] Anvers, 21 septembre 1993, *J.D.F.,* 1994, p. 199 : « Pour apprécier s'il y a ou non déficit indiciaire, l'administration doit, en l'espèce, tenir compte de ce que, dans le monde juif, il est un usage bien établi qu'un rabbin reçoive un soutien financier substantiel de la part des membres de sa famille ou d'amis fortunés et de ce que sa fonction implique qu'avec sa famille il doive ou désire se contenter d'un mode de vie sobre, les préoccupations spirituelles devant prévaloir sur les préoccupations matérielles ». A propos d'un Lama tibétain, voy. Bruxelles, 10 juillet 1986, *J.F.,* 1987, p . 145.

[24] Voy. sur ce point, WATTIER, S., *Le financement public des cultes et des organisations philosophiques non confessionnelles. Analyse de constitutionnalité et de conventionnalité*, préface de Louis-Léon Christians et Marc Verdussen, Bruxelles, Bruylant, 2016, sp. 712-873.

Aucun « impôt » religieux n'est pris en compte comme tel en droit fiscal belge. En particulier, les taxes religieuses liées à des pratiques spécifiques des cultes reconnus (baptême, mariage, enterrement, etc), sont considérées comme des dons (à l'identique des collectes), qui contribuent au financement de l'exercice du culte, et qui allègent d'autant l'obligation qu'ont les municipalités de compenser les éventuels déficits financiers de l'exercice local du culte reconnu. Plus les fidèles soutiennent eux-mêmes le fonctionnement du culte, moins les budgets publics sont obligés d'intervenir pour assurer leur équilibre budgétaire local, garanti par la loi.

Aucune taxe spéciale (dîme) sur certains produits (par exemple, l'alcool) n'existe comme contribution légalement obligatoire à une organisation religieuse pour le financement de son travail social (par exemple, des centres de désintoxication pour toxicomanes ou des alcooliques, etc.).

Les contribuables ne sont donc pas distingués (ni à la hausse, ni à la baisse) selon leur appartenance convictionnelle ou selon leur volonté de soutenir un culte ou une philosophie en particulier.[25]

G) **Prospectives et conclusions**

Dès lors que le **régime fiscal *des cultes et de la laïcité reconnus***, est essentiellement celui du droit commun, il existe peu de débats à ce sujet, et le contraste est surprenant quand on voit à quel point certains partis politiques mettent en cause le financement public *direct* des cultes par le budget général de l'Etat et souhaiteraient l'instauration d'un système d'impôt affectés, selon le modèle italien, et impliquant un **choix fiscal des contribuables**, à impôt constant. C'est que la contestation ne porte pas sur le principe-même d'un financement des cultes et de la laïcité organisée, mais bien sur l'équité de la *répartition* des moyens financiers entre les diverses dénominations. Sur ce point encore, le droit fiscal ne donne aucune prise chiffrée.

En 2006, le fiscaliste Vincent Selpulchre évoquait deux points prospectifs principaux en matière de financement indirect par les mesures de taxation : (a) la clarification du statut juridique des personnes actives dans les cultes et la laïcité, « sachant que nombre de traitement préférentiels, comme aujourd'hui, ne pourront être ouverts

[25] Aucune objection de conscience fiscale à l'impôt sur le revenu n'est reconnue. Voy. cependant une proposition de loi en ce sens, du 19 mars 2002, demeurée sans suite : « Proposition visant à reconnaître les objections de conscience à l'égard de l'affectation d'une partie de l'impôt à des fins militaires et créant un Fonds fiscal pour la paix », *Doc. parl.,* Chambre des Représentants, 50 – 1704/001. Voy. aussi l'arrêt de la Cour de cassation du 16 février 1984 (*Pas*. 1984, I, 680 ; *J.D.F.* 1984, 278, note E. Bours) qui estime que la règle du cumul fiscal des revenus de deux contribuables mariés (en vigueur à l'époque) ne peut pas être considérée comme portant atteinte au droit et à la possibilité pour chacun de se marier et de fonder une famille ni à la liberté de pensée, de conscience ou de religion. Voy. plus globalement, TORFS, R., "L'objection de conscience en Belgique", in *Conscientious objection in the EC Countries*, European Consortium for Church-State Research, Milan, Giuffrè, 1992, pp. 211-250.

que pour les établissements publics ou pour les ASBL et fondation *(et non aux associations de fait)* » ; et (b) l'harmonisation de ces traitements préférentiels, « que ce soit par exemple sur le plan de la déductibilité des dons à l'impôt des personnes physiques (où les associations et institutions cultuelles ne donnent pas droit à cette déductibilité), ou sur le plan de l'impôt des personnes morales (où le établissements publics laïques sont traités de manière moins favorable que les établissements publiques cultuels) ».[26]

En 2020, ces questions sont toujours d'actualité, mais on observe une tendance législative qui favorise une égalité par le bas plutôt que par le haut, et qui restreint ces avantages fiscaux en les soumettant davantage au régime de reconnaissance des cultes et de l'assistance morale laïque. Il ne s'agit pas simplement d'y voir une économie budgétaire, mais bien plutôt un instrument renforcé de politique religieuse. En associant le levier fiscal au régime de reconnaissance, les avantages fiscaux renforcent des incitants de transparence et de loyauté démocratique. Il en va notamment ainsi envers des mosquées qualifiées par certains de « clandestines » ou de « culte fictif ».

L'argument qui est sous-jacent à tout ces débats est qu'un système d'incitants fiscaux, en ne visant que les cultes et philosophie *qui souhaitent y adhérer « spontanément* », et en s'abstenant de les faire basculer dans un régime obligatoire de prévention administrative, respecte en définitive les principes de base des garanties européennes de liberté de religion et d'autonomie.

Le droit fiscal, qui a peu retenu l'attention de la littérature, tend à devenir un des instruments nouveaux de vigilance publique en droit des cultes. Il a toujours été un des lieux où la jurisprudence s'est aventurée le plus loin dans la définition de la religion en général, en dehors de tout acte politique de reconnaissance : une religion large entendue dès le XIXe siècle comme « religion sérieuse et 'digne de nous' ». Il restera, demain, à vérifier si une politique d'incitants financiers suffira à maîtriser les ressorts puissants que constituent les idéaux portés par les religions et les philosophies, et à juguler réellement leurs dérives éventuelles. Enfin, on a pu observer que le retrait — ou l'abrogation — d'avantages fiscaux jusque-là acquis n'était pas non plus sans risque pour les pouvoirs publics. C'est ce qu'a montré la Cour européenne des droits de l'homme en condamnant la Belgique dans son arrêt du 5 avril 2022.

[26] voy. SEPULCHRE, V., « Le financement des cultes et de la laïcité : aspects fiscaux », in HUSSON, J.F. (dir.), Le financement des cultes et de la laïcité. Comparaison internationale et perspectives, Editions namuroises, 2006, pp. 215-245, sp. p. 240.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN CYPRUS

Achilles C. Emilianides[1]

I. Income Tax

Income tax is levied on the income of any person, natural or legal, accruing in, derived from, or received in Cyprus in one fiscal year.[2] Religious institutions enjoy exemption from the income tax, according to Section 8 §13 of Income Tax Law 118(1)/2002, which provides that 'the income of a religious, charitable, or educational institution of public character' is exempted from the provisions of the Income Tax Law. There is no interpretation of the term 'religious institution' in Law 118(1)/02, and as a result it is suggested that the institutions of any known religion which fulfils the criteria of Article 18 §2 of the Constitution should enjoy exemption from income tax. Article 18 §2 provides that any religions whose doctrines or rites are not secret are free; thus, religious institutions need not be officially recognised by State organs in order to enjoy exemption from the Income Tax Law; they only need to be 'known' in the sense that their doctrines and rites should not be secret. So far applications by religious organisations to register as non-profit companies have been accepted promptly by the authorities of the Republic without any particular problems and thus there has been no legislative or judicial attempt to define 'religion'.

A question might arise whether Section 8 §13 of Law 118(1)/02 should be interpreted as including only religious institutions 'of public character'. If such an interpretation was to be adopted, it could be further argued that only the income of the five constitutionally recognised religions (Orthodox, Islamic, Maronite, Armenian, Roman Catholic) could be exempted from the provisions of the Income Tax Law. Such an interpretation, however, does not seem convincing. To begin with, there are

[1] Professor, Dean, School of Law, University of Nicosia. This paper draws heavily on A. Emilianides, *Law and Religion in Cyprus*, 3rd Ed, The Hague: Kluwer, 2019.

[2] See in general A. Neocleous et al., 'Taxation', in Andreas Neocleous & Co LLC, *Introduction to Cyprus Law*, 3rd Ed., Limassol, 2010: 541 ff.

no official or established religions in the Republic of Cyprus.[3] While the Constitution provides explicit privileges granted to the five major religions of the Republic, it also stipulates that all religions are equal before the law and no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion (Art. 18 § 3 of the Constitution). There should, in principle, be no discrimination between newly established religions, or religions which represent religious minorities.[4] Accordingly, the House of Representatives cannot enact a law according to which some religions enjoy exemption from income tax, while other religions do not enjoy such an exemption, since such law would be contrary to the constitutional mandate of equality of religions.

It is therefore suggested that Section 8 §13 of Law 118(1)/02 should be interpreted in accordance with the constitutional provisions and that an interpretation pursuant to which the five constitutionally recognised religions could be exempted from the provisions of Law 118(1)/02, while other religions could not be exempted, should be rejected. Furthermore, the Supreme Court of Cyprus has held that the Orthodox Church of Cyprus is not an '*organ*', or '*authority*' in the Republic in the sense of Article 139 of the Constitution.[5] Accordingly, all known religions are currently recognised as legal entities under private law; it is therefore suggested that the *public character* argument would not be very convincing when referring to the five major religions of the Republic since they do not have the status of 'public character'. Such an interpretation is, in our view, in line with the constitutional provisions and the basic principles of teleological interpretation.

As far as philosophical and non-confessional organisations are concerned, they could also be exempted from income tax, provided they prove they are charitable organisations, and be registered in the special registry kept by the Ministry of Finance. As a matter of practice, organisations which are non-profit and include specific provisions in their charter or articles of association which show their charitable nature can be exempted from income tax as charitable organisations. The underlying principle is that philosophical and non-confessional organisations can be treated equivalently to religious organisations provided their aim is also predominantly charitable in nature.

There are no special provisions regarding tax or bank secrecy with regard to either religious organisations or philosophical and non-confessional organisations. Accordingly, such organisations enjoy bank secrecy under the same rules as any other

[3] See A. Emilianides, 'State and Church in Cyprus', in G. Robbers (ed), *State and Church in the European Union*, 3rd Ed, Baden-Baden: Nomos Verlagsgesellschaft, 2019: 284–285; A. Emilianides, 'Law and Religion in Cyprus', *Kanon* 20 (2008): 7–21.

[4] *The Minister of Interior v. The Jehovah's Witnesses Congregation (Cyprus) Ltd* [1995] 3 CLR 78 (in Greek).

[5] *Autocephalous, Holy, Orthodox and Apostolic Church of Cyprus v. The House of Representatives* [1990] 3 CLR 338 (in Greek).

legal person in the Republic. There are no known important examples of tax evasion by religious authorities, or philosophical or non-confessional organisations.

The Orthodox Church takes part in important economic activities in the island and contributes an important sum to purchase ecclesiastical material, furniture, vestments and articles for religious purposes. Due to the fact that the Orthodox Church is exempt from Income Tax Law, it is more difficult for the authorities to specify in an accurate manner the income made by those who engage in financial transactions with the Orthodox Church. The same is true also for other religious organisations and philosophical and non-confessional organisations which have been declared as charitable organisations; however, their impact to economic activities is rather negligible. The Government had recently expressed the opinion that the financial transactions of the Orthodox Church should fall under the provisions of the Income Tax Law; however, the Orthodox Church disagreed with such a view and argued that the Church is a non-profit organisation and thus uses its income for charitable purposes. It further argued that that while it is true that the Orthodox Church engages in financial transactions, each metropolis is divided into a great number of parishes, and as a result, the annual income of each parish is not significant as such; only the Archdiocese and the Monastery of Kykkos actually engage in significant financial transactions.[6]

It should be pointed out, however, for the avoidance of doubt that all commercial companies, either owned or partly owned by the Orthodox Church, are not exempted from income tax. The exemption applies only to the transactions of the Orthodox Church per se as a religious and non-profit organisation. This is important since the most important economic activity of the Orthodox Church is carried out though distinct legal entities which are commercial companies and are subject to income tax.

II. Real Estate Tax

Capital gains tax is imposed on the gains accruing to any person, natural or legal, from a disposal of property which does not fall within the provisions of the Income Tax Law.[7] The Capital Gains Tax Law 52/1980 does not provide for the exemption of religious institutions in a manner similar to the Income Tax Law 118(I)/02. Thus, religious institutions, as well as philosophical and non-confessional organisations, all have a legal obligation to pay taxes according to the aforementioned laws. There is no difference in treatment between any religions or philosophical and non-confessional organisations.

[6] See *Apopsi* 8 (2008), interview of Archbishop Chrysostomos II (in Greek).

[7] See C. Demetriades, 'Republic of Cyprus: Capital Gains Tax of Immoveable Property', *European Taxation* 19 (1979): 250–256.

However, Article 23(9) of the Constitution provides that the State may not interfere with the right to acquire, own, possess, enjoy, or dispose of any movable or immovable property of any ecclesiastical corporation, except with the written consent of the ecclesiastical authority who is in control of such property.[8] The same right is accorded to all Muslim religious institutions. According to Article 23 §10 of the Constitution, no such deprivation, restriction or limitation may be imposed on the immovable or movable property of any vakf, except with the approval of the Turkish Communal Chamber and subject to the Laws and Principles of Vakfs. Such property includes the objects and subjects of the vakfs and the properties belonging to the mosques or to any other Muslim religious institutions, or any right thereon or interest therein.

It had accordingly been argued by the Orthodox Church that due to the aforementioned constitutional provision, any taxation of the property of the Church would be unconstitutional. This argument of the Orthodox Church was considered by the Supreme Court of Cyprus.[9] The facts of the case were the following: the Director of the Department of Lands had stressed that if the Archdiocese of Cyprus refused to pay the capital gains tax it owed with regard to the transfer of land, he would accordingly refuse to register and transfer the said land to the purchasers. The Archdiocese of Cyprus eventually agreed to pay the tax due, but it reserved its right to have recourse to the Supreme Court of the Republic. The Supreme Court held that the payment of the capital gains tax was not a requisite for the transfer of lands according to the provisions of the Transfer of Land Law 9/1965.[10] The Archdiocese of Cyprus argued that the Department of Lands should therefore refund the paid tax, since a different outcome would violate Article 23 §9 of the Constitution. The Supreme Court held, however, that the question of whether the Orthodox Church is obliged to pay taxes is different from the question of whether the Republic may enforce the Church to fulfil its obligation. Even if it was accepted that any obligatory measures of collecting the taxes of the Orthodox Church were prohibited in view of Article 23 §9 of the Constitution, this should not mean that the ecclesiastical authorities are not obliged to pay such taxes. A different result would seriously undermine the importance of the obligation of all persons of the Republic to pay taxes and would inevitably lead

[8] *The Holy Temple of Chryseleousis v. The Republic* [1989] 3 CLR 3074, *The Holy Monastery of Kykkos v. The Republic* [1996] 3 CLR 3362 (in Greek). See also *Holy Metropolis of Paphos v. Aristo Developers Ltd* [2011] 1 CLR 1377 (in Greek) and the criticism of A. Emilianides, 'Reviewing the Review of Constitutionality: A Commentary on Three Recent Judgments of the Supreme Court' [2013] *Yearbook of Cyprus and European Law* 50 ff (in Greek).

[9] *Attorney-General v. The Archdiocese of Cyprus*, Judgment of 22 Mar. 1999 (in Greek),

[10] *The Republic v. Kythreotis* [1992] 3 CLR 21 (in Greek).

to the unequal distribution of financial burdens.[11] Since the Archdiocese of Cyprus undoubtedly owed the tax, it would be contrary to the rules of equity to hold that the tax due should be refunded to the Archdiocese of Cyprus, simply in order to revive the obligation of the Archdiocese to pay such tax.

The House of Representatives amended Section 17 §2 of the Capital Gains Tax Law 52/1980 by Law 48/1999 in order to provide that the tax ought to be paid before any transfer of property and irrespective of any recourse or objection, unless the Director orders that the payment of such tax would be suspended. The Supreme Court, upon examining the amended legislation, held that it did not render the payment of the Capital Gains Tax as a prerequisite for the transfer of land.[12] The reasoning was that the Capital Gains Tax was not a tax, which burdens the immovable property and accordingly there was no obligation that the capital gains tax had to be paid before the property was transferred. A new amendment, this time of the Transfer of Land Law 9/1965 by Law 181(I)/2002 provided that in order to complete the process of transferring land, one should present a certificate by the Director of Inland Revenue that any tax has been paid, or that its payment has been suspended, or that no tax is due. This proved equally ineffective, since the Supreme Court held that there was nothing in the said Law to explicitly prohibit the transfer of land in those cases where the capital gains tax has not been paid, since the tax is imposed on the seller and not on the land.[13]

Having failed to force the Orthodox Church to comply and pay its capital tax obligations by successive amendments of the legislation, the State eventually attempted to reach an agreement with the Orthodox Church regarding the payment of the capital gains tax. It should be noted for the avoidance of doubt that private commercial companies, to which the Orthodox Church was a major stockholder, always paid all relevant taxes without any problems. An informal agreement was reached in 2002 between the Ministry of Finance, the House of Representatives and the Monastery of Kykkos, according to which the Monastery of Kykkos agreed to pay the capital gains tax in future, on the condition that all debts incurred before 2002 would be erased. Following intense negotiations between the State and the Orthodox Church an agreement was eventually signed in 2012, pursuant to which the Church would undertake the obligation to pay promptly all its future tax obligations arising out of the capital gains tax, as well as the special defence levy. In consideration all past debts of the Orthodox Church would be erased.

[11] See also *Rainbow v. Republic* [1984] 3 CLR 846; *Attorney-General v. Shizas* [1996] 2 CLR 175 (in Greek).

[12] *The Archdiocese of Cyprus v. The Republic of Cyprus*, Judgment of 5 Jul. 2002 (in Greek).

[13] *The Archdiocese of Cyprus v. The Republic of Cyprus*, Judgment of 1 Mar. 2005 (in Greek).

The agreement was a positive development and since then the Church has pay all its tax obligations promptly. From 2012–2017, it was estimated that the Orthodox Church paid to the Department of Taxation of the Republic, in accordance with the terms of the agreement, the amount of approximately 18 million euros, which referred to approximately 16 million euros for capital gains tax and approximately 2 million for immovable property tax. However, an amount of approximately 3 million euros was returned to the Church as Value-Added Tax return, since term 13 of the Agreement provided that the Orthodox Church would be relieved from the obligation to pay Value-Added Tax for the construction and maintenance of temples and immovable property situated around the temple, which are used for the Church's religious functions. The relief has taken the form of State aid provided in lieu of the paid Value-Added Tax.[14]

III. Taxation of Monastic Communities/Orders

There are no special provisions about monastic communities and orders. Accordingly, the general provisions referred to in the previous two paragraphs about religious organisations apply equally to the taxation of monastic communities/orders.

IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations

Religious social institutions, similar to philosophical and non-confessional organisations, may be exempted from the payment of income tax if they prove that they are charitable organisations pursuant to Section 8 §13 of the Income Tax Law 118(1)/2002. Furthermore, Section 9 §1 (f) of Law 118/02 provides that donations or contributions made for charitable purposes to any charitable organisation approved by the Council of Ministers shall be excluded from the taxable income of the donor. This is a tax incentive, which applies to persons wishing to donate to charitable organisations. As already indicated, as a matter of practice, non-profit organisations may be approved for tax purposes, provided they include specific provisions in their charter or articles of association, which prove their charitable nature and they are actually charitable organisations. This applies equally to religious social institutions and to philosophical and non-confessional organisations.

[14] See K. Savva, 'What Has the Tax Agreement between Church and State Brought?' *Politis*, 27 Nov. 2017 (in Greek), available in http://politis.com.cy/article/175-ekat-o-ovolos-ekklisias

V. Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

Religious ministers and leaders of philosophical and non-confessional organisations enjoy no preferential treatment and are required to pay income tax similar to any other person. Religious ministers are properly considered under Cypriot law as employees, irrespective of their spiritual functions, and accordingly the general provisions of employment law are applicable with respect to their status as employees.[15] Accordingly, when they receive income from their work, this is taxable similar to any other income.

There is no special status regarding the inheritance of either religious ministers, or leaders of philosophical or non-confessional organisations. However, the inheritance of monks has proved to be a more complicated issue. In the case of the *Monastery of Mahairas*, the deceased had been a monk of the Monastery of Mahairas from 1949 until 2000 when he passed away. According to the Charter of the Orthodox Church of Cyprus and the internal regulation of the Monastery, the property of all monks belongs to the monastery and not to them personally. The relatives of the deceased monk argued that such property should belong to them and not to the monastery and that all contrary Articles of the Charter of the Orthodox Church violated Article 23 of the Constitution safeguarding the right of property.

The Supreme Court acknowledged that according to Article 110 §1 of the Constitution, the Autocephalous Greek Orthodox Church of Cyprus shall continue to have the exclusive right of regulating and administering its own internal affairs and property in accordance with the Holy Canons and its Charter in force for the time being. However, it did not accept that the exclusive right of the Orthodox Church to regulate and administer its property extends also to the property of its monks, or that the property of its monks could be considered to be property of the Church. In view of the above, it was held that each monk continues to have a right to his own property, as safeguarded by the Constitution and that the monastery does not have any right to such property. Thus, the relatives of the deceased monk were considered to be the heirs of the deceased monk.[16]

While it is correct that hereditary succession does not fall within the ambit of the Charter of the Orthodox Church and that the House of Representatives has competence with regard to laws relating to hereditary succession, the Court failed to examine the application of section 53 of the Succession Law, Cap. 195. Section 53 explicitly provides that the recognised rights of religious organisations should be

[15] *Sideras v. The Minister of Labour and Social Securities* [1989] 3 CLR (in Greek). See also A. Emilianides and C. Ioannou, 'Law and Religion at the Workplace in Cyprus' in *Law and Religion at the Workplace in the EU* ed. M. Rodriguez Blanco, Granada: Comares, 2016: 117–126.

[16] *Holy Monastery of Mahairas v. Papasavva* [2007] 1 CLR 436 (in Greek).

safeguarded. The notion of a religious organisation undoubtedly includes the Orthodox Church of Cyprus. Furthermore, the right of the Orthodox Church to acquire the property of a monk was safeguarded by the Charter of 1914, as well as by the Charter of 1980 and was therefore an established and well recognised right of a religious organisation at the time of entry into force of the Succession Law, Cap. 195.[17] The property of a monk might not become the subject of hereditary succession within the meaning of Cap. 195, precisely due to the fact that a monk does not own any property which could legally become the subject of hereditary succession and this is the reason for including the specific exception of section 53 of Cap. 195. There was therefore no incompatibility between Cap. 195 and the Charter of the Orthodox Church that needed to be resolved, since section 53 of Cap. 195 explicitly safeguarded all recognized rights of religious organisations which were based on their canon law.[18]

Section 55 of Cap. 195 further provides that the provisions of Cap. 195 do not apply to vakf. The Vakf had a specific meaning at the time of the coming into operation of the Constitution. It denoted the tying up of a property and the imposition of an interdiction on its transfer, in such a manner that its benefit is given to men, on the condition that the property is to be regarded as the property of God. A Vakf was thus the equivalent of a 'dedication'. A Vakf further denotes the object of the dedication and not only the act.[19] This is consistent with Article 110 of the Constitution which provides that all matters relating to or in any way affecting the institution or foundation of Vakf, or the vakfs, or any vakf properties, including properties belonging to mosques and any other Muslim religious institution shall be governed solely by, and under the Laws and Principles of Vakfs (ahkamul evkaf) and the Laws and Regulations enacted or made by the Turkish Communal Chamber.[20]

VI. Church and Philosophical and Non-Confessional Organisations Tax

There is no religious tax in Cyprus. Accordingly, there is no special tax imposed to the tax prayers for the benefit of the church, or to members of philosophical or non-confessional organisations for the benefit of such organisations. There is no special tax over any products for contribution to a religious organisation. It should further be noted that if a religious group requests from its members to pay any amount

[17] See C. Tornaritis, 'The Property of Monks and whether it is subject to Estate Duty Tax', *Cyprus Law Review* 1 (1983): 177 (in Greek).

[18] See A. Emilianides, 'The Constitutional Position of the Charter of the Orthodox Church of Cyprus', *Nomokanonika* 1 (2005): 41–54 (in Greek), Idem, 'Hereditary Succession of Monks in Cyprus: New Developments', *Cyprus and European Law Review* 5 (2007): 368–378 (in Greek).

[19] O. Effendi, *The Laws of Evqaf*, 2nd edn (Nicosia: 1922); K. Dizdar, 'The Origin and Administration of the Cyprus Evkaf', in *Proceedings of the First International Cyprological Conference*, vol. II, Nicosia: Society for Cypriot Studies, 1973), 63–78.

[20] See A. Emilianides, *Annotated Legal Documents on Islam in Cyprus*, Leiden: Brill, 2014.

for the benefit of such religious group, this would not amount to a tax, since taxation is imposed by the State. Accordingly, any such amount would not amount to a tax and would not be considered as a debt, if not paid, since the person would have no obligation to pay it and no execution members could take place. If any amount is to be paid, this would amount to a donation and not to a 'tax'.

VII. VAT and Customs

Value-Added Tax is payable whenever there is: (a) a supply of goods, or services in Cyprus by a Value-Added Tax registered person, natural or legal, within the activities, or the promotion of activities of his/her business; the definition of supply of goods or services includes all types of supply, but does not include anything that is not done with a consideration; (b) an import of goods in Cyprus from third countries; (c) a notional provision, in Cyprus, of services received from abroad. Supplies of goods or services are further divided into taxable supplies and exempt supplies. Religious institutions, as well as philosophical and non-confessional organisations, may be registered for Value-Added Tax purposes, according to the Value-Added Tax Law 95(I)/2000, so long as the conditions of the aforementioned Law are fulfilled. According to the Value-Added Tax Law 95(I)/00, all legal persons who engage in financial transactions may register, and thus become taxable persons.

A further exemption from duty purposes with regard to religious authorities is provided for in Section 3, Class P of Annex I of the Customs and Excise Duties Regulations (Exemptions from Import and Excise Duties) of 2004, 380/04. It is provided that all constructional material, fittings and furniture for churches, or mosques and all vestments and other articles which are imported for religious purposes by ecclesiastical and religious authorities are eligible for relief from duty. The aforementioned exemption concerns all religious authorities.

In addition to the above, and according to the provisions of Council Regulation 1186/2009,[21] there is an exemption from import duties for materials of little value, such as paints, used in the building, fitting-out and decoration of temporary stands occupied by representatives of third countries at an event held mainly for religious reasons or reasons of worship and which are destroyed by being used, as well as unframed photographs, printed matter, prospectuses, posters, and calendars supplied free of charge in order to advertise goods manufactured outside the customs territory of the EU and displayed at an event held mainly for religious reasons or reasons of worship. Documentation intended to be distributed free of charge and with the principle purpose to encourage the public to visit foreign countries in order to attend religious meetings or events is also excluded from import duties, provided that it

[21] Of 16 Nov. 2009 setting up a Community System of Reliefs from Customs Duty.

contains no more than 25% of private commercial advertising matter. Furthermore, religious institutions which have been registered as non-profit organisations may admit free of import duties a number of cultural or educational materials which are imported for non-commercial purposes.

VIII. Overview

The current system of taxation of religions aims to achieve a system of equal promotionist neutralism, in the sense that it aims to promote equally several diverse religious beliefs.[22] The system provides for general income tax exemption not only of religious organisations, but also of charitable organisations and accordingly philosophical and non-confessional organisations might be exempted from income tax provided they prove their charitable status. Other than income tax, other tax laws do not provide for the exemption of religious organisations. No religious tax is imposed, nor do religious ministers enjoy any preferential treatment.

[22] See A. Emilianides, 'Financing of Religions in Cyprus'. S. Berlingo (ed), In *The Financing of Religious Communities in the European Union*, Peeters: Leuven, 2009: 111–117; Idem, 'Equal Promotionist Neutralism and the Case of Cyprus'. In M. Moravcicova (ed), *Financing of Churches and Religious Societies in the 21st Century*, Bratislava: Institute for State-Church Relations, 2010: 135–144; idem, 'Il Finanziamento delle cinque Religioni: Il Caso Cipriota', *Quaderni di Diritto e Politica Ecclesiastica* 1 (2006): 123 ff.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN THE CZECH REPUBLIC

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I. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

The Czech Republic is a State that "may not be bound either to an exclusive ideology or to a particular religious faith".[1] This formulation in the Czech constitutional law is a reaction to the experience of the totalitarian Communist State. It ruled Czechoslovakia for 41 years (1948–1989) and all this time the atheism of Marxist-Leninist provenance played the role of the State religion.

This system was forced under the influence of Russian Bolshevism, which pushed Czechoslovakia into the position of a Soviet colony after the coup d'état on 25th February 1948, supported by Soviet Army troops along the borders of the whole of Czechoslovakia, including the territories of Soviet zones in East Germany and North Austria. It strengthened this position by invading Soviet troops on the territory of Czechoslovakia on 21st August 1968 and occupation of this country till 1990.

Since 1990, respectively since the constitutional and legal amendments in 1991, the system of relations between religion and State in Czechoslovakia has been characterised as a non-confessional (secular) State of the cooperative type. The State cooperates with religious communities on matters of common interest, especially in the fields of education, health care, prisons and the armed forces.

It is estimated that members of religious communities make up about 25% (Roman Catholic Church 20%, Protestant and other Christian Churches 4% and non-Christian religions 1%) of the population of the Czech Republic. Only 0.1% of the population profess Islam and slightly less Judaism. According to the sociological agencies, 36% of respondents describe themselves as believers, and 39% answer that

[1] Constitution of the Czech Republic (Act No. 1/1993), respectively its "second part", The Charter of Fundamental Rights and Freedoms (Act No. 2/1993), Article 2(1).

they believe in God. 8% of inhabitants take part in religious services at least once a month. At Christmas, 38% of inhabitants visit a Christian church.[2]

There is no dominant religion in the Czech Republic. Everyone has the right to freely manifest any religion alone or together with others. If a religious community of at least 300 adult citizens or residents in the Czech Republic applies for registration in administrative procedure at the Ministry of Culture of the Czech Republic and this is granted, their religious community will gain legal personality.

These registered religious communities have a slightly different regime from other societies in the Czech Republic, to a lesser extent also in financial matters. They are adapted to effectively reflect the peculiarities of religion. Currently, 44 religious communities are registered in the Czech Republic (2022). The number of these communities grows every year. Over the last twenty years, they have grown at a rate one per year.

Unregistered religious communities are free to perform religious acts arising from the constitutionally guaranteed freedom of religion. Their existence is accepted. They can even be said to be of particular interest to both religionists and sociologists. In practice, unregistered religious communities take the form of an association registered by the local court. Then, they are subject to the same laws as all other non-religious associations.

The activities of an individual religious community, registered or non-registered, may be prohibited only by a law issued by the Parliament of the Czech Republic in order to preserve the rights of other citizens and moral requirements, according to the customs in the international community. Since the establishment of the Czech Republic (1993), there have not been any cases of this.

Philosophical and non-confessional organisations are not considered to be religious communities in the Czech legal order. Their legal status is identical to that of other non-profit associations. According to our estimate, the number of these organisations ranges from ten to twenty and usually does not exceed a few dozen members.

With bitter irony we can say that the only large atheist organisation is the Communist Party of Bohemia and Moravia, which directly follows the Communist Party of Czechoslovakia ruling the totalitarian regime in Czechoslovakia in 1948–1989. It constantly takes a sharply anti-religious stance. It has not changed its attitudes since its totalitarian rule before 1989.

This party was represented in the Chamber of Deputies of the Parliament of the Czech Republic continuosly from 1993 till 2021. In the previous elections in

[2] Víra v Boha a vztah k církvi v České republice [Belief in God and Relation to the Church in the Czech Republic], Česká biskupská konference [Czech Bishop's Conference], 2018, at https://www.cirkev.cz/cirkev-v-datech.

2017, it won 7.76 percent of the vote, but it did not receive a majority in any of the constituencies for election to the Senate of the Parliament of the Czech Republic.

In the parliamentary elections in autumn 2021, the number of votes for the Communist Party fell to 3.60 percent, thus it did not exceed the five percent clause needed to gain representation in the lower house of Parliament. There is no Communist representative in either of the two chambers of the Parliament of the Czech Republic today.

Registered religious communities are called churches and religious societies. They are legal entities and, like other legal entities, have the right to property.

They have the right to form subordinate juridical persons (dioceses, parishes, monasteries, charities, in Protestant churches presbyteries, congregations, diaconias etc.) registered in a non-constitutive way in another registry at the Ministry of Culture. Their existence is decided not by the State but by the religious community itself. Each of them has a separate right to own property; there are about ten thousand subjects.

Religious communities may associate into unions of churches and religious societies whose legal personality is decided by the Ministry of Culture in the registration procedure. There are currently two unions: the Ecumenical Council of Churches in the Czech Republic with 12 ordinary members and four extraordinary members and the Military Spiritual Service with five members. They have a separate right to own property, but they cannot create subordinate juridical persons.

The peculiarities of status of religious communities are laid down in a code of religion law of the Czech Republic called the Act on Churches and Religious Societies No. 3/2002.

In the tax system of the Czech Republic, religious communities are grouped together with so-called non-profit organisations. Only in cases when religious communities and their subordinated subjects have economical activities must they pay the same taxes as profit entities. It can be several billion Czech crowns a year.

Registered religious communities may, in addition to the ordinary rights relating to freedom of religion and other civil liberties, also be entitled, under the conditions laid down in Act No. 3/2002, to exercise the following special rights:

1. To teach religion in public schools,
2. To authorise chaplains and their helpers to provide pastoral service in the armed forces of the Czech Republic, in places where custody, imprisonment, detention, protective treatment and protective education are performed,
3. To hold ceremonies in which marriages with public validity are concluded,
4. To establish church schools,
5. To observe the duty of secrecy by ministers in connection with the exercise of confessional secrets or with the exercise of a right similar to confessional secrecy.

So far, nine to 21 religious communities have fulfilled the conditions for obtaining individual special rights, which were registered by the Ministry of Culture after their original registration.

Until 1st January 2013, the special rights of 17 religious communities included the right to be partially financed from the State budget. However, this was abolished on that date as the effective date of the Law on Property Settlement with Churches and Religious Societies No. 428/2012. No religious community has the right to be financed from the State budget anymore.

There are no registered religious communities in the Czech Republic that enjoy a preferential tax treatment in comparison to other cults.

Religious communities, together with other non-profit organisations, have the following tax advantages:

1. Gifts (including tithes) shall be exempt from *income tax* in case they are given for their principal activity, i. e. for religious purposes. This also applies to church collections and gifts that the faithful provide to the religious community in connection with church acts (weddings, funerals, etc.).
2. Donors (both natural and legal persons) may, to some extent, request the State Revenue Office to *reduce the tax base* of their income tax, provided they submit a certificate of payment issued by an authority of a registered religious community.

The secondary activity of religious communities and their entities, i.e. economic activity, is subject to the same taxation as business entities.

Religious institutions are subject to the same legal regime with regard to tax and /or bank secrecy as other entities. GDPR also applies to them.

Tax treatment of transactions between religious institutions within religious communities shall be exempt from taxes in respect of the principal (religious) activity. All other transactions are taxable as non-religious entities.

If religious communities or their parts commit any *tax evasion*, they will be punished in the same way as non-religious entities. This applies both to financial penalties (fines) and to the liability of individuals and organisations under Czech criminal law.

II. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Real estate used by religious communities for the main (religious activity) is exempt from *real estate tax*. These are mainly churches, chapels, parish houses and monastery buildings.

III. Taxation of Monastic Communities/Orders

Taxation of monastic communities /orders is not different from taxing other parts of religious communities. Religious and nuns who are not employees and are persons

without taxable income are obliged to secure payment of statutory public health insurance for themselves. Like all secondary school students in the Czech Republic, *novices* are expressly insured by law.

IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)

Religious social institutions (charities, diaconias) are also non-profit organisations and are subject to the same tax rules as other parts of religious communities (see above).

Public schools set up by religious communities or parts thereof are subject to the same tax regime as public schools set up by local civic communities or the State. This also applies to higher theological schools and seminaries.

There are five theological faculties in the Czech Republic. All of them are parts of public universities and not parts of religious communities. Three of them are faculties of Catholic theology (Prague, Olomouc, České Budějovice), one is a faculty of Protestant theology (Prague) and the last one is a faculty of Hussite theology (Prague). They have no legal personality, as the other faculties of universities. Universities have legal personality and are public law corporations.

V. Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

The salaries of ministers working in the pastoral administration of religious communities (including supreme ecclesiastical leaders) are subject to all statutory levies (income tax, social insurance, health insurance, etc.), despite being appointed to religious affiliations under the internal law of religious communities (canon law).

Religious and nuns do not receive any salaries for their membership in the religious community and for their work in this community. Those who are in service to a higher unit of a religious community (e.g. parish priests) or in employment with other institutions (for example, nurses in hospitals) receive salaries and have the same tax obligations as other taxpayers. It is by no means decisive that after proper taxation they pay their entire salary to the common treasury of the religious community.

If they have taxable income from employment outside the religious community or from their own property, they pay taxes on it like any other taxpayer.

The inheritance of religious ministers and religious or nuns is subject to the same legal regime as all other persons.

VI. Church and Philosophical and Non-Confessional Organisations Tax

There is no special tax imposed to the taxpayers for the benefit of the religious communities (such as Kirchensteuer) in the Czech Republic. If some churches collect

tithes or other contributions from their members, it is understood as a donation to a religious community or other non-profit organisation and is exempt from tax. There is no special tax over several products (for example, alcohol) as a contribution to a religious organisation for funding its social work.

The state provides some tax benefits to the 'outsiders' (faithful, NGOs, private companies, etc.) when they fund religious institutions.

Donors (natural persons and legal entities) may, to a certain extent, apply to the State Revenue Office to reduce the tax base of their income tax, provided they submit a certificate issued by an authority of a registered religious community.

VII. Other Research Questions

Until now, religious communities in the Czech Republic have paid little attention to the issue of tax burdens.

As regards value added tax (VAT), the main (religious) activity of religious communities is exempt. As for the secondary (economic) activities of religious communities and their constituents, they are subject to VAT, like all other entities in the State.

SUPPORTING CHURCH, EXEMPTING RELIGION. TAX LAW ON CHURCH, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN DENMARK

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I. Brief Introduction

The legal framework of religion in Denmark may arguably be seen as hierarchical in three tiers, following the hierarchy legal sources that regulate the relation to the State. At the top of the hierarchy and with the closest relation to the state, we find the Church of Denmark, which is promised establishment in the Danish Constitutional Act of 1849, revised in 1953.[1] Although Parliamentary legislation does regulate the Church, a 'constitution' or act of establishment was never agreed upon.

However, as per Article 4 of the constitution – "The Evangelical Lutheran Church shall be the Established Church of Denmark, and as such shall be supported by the State" – the State is committed to supporting the Church.[2] Furthermore, its clergy are public servants and the State collects church taxes. Not just in constitutional provisions, but also in a lot of subsequent legislation, Parliament regulates the general, public law for the Church as well as the specific regulations for church finances, building, employment, organisation and so on.

Second in the hierarchy of State and religion relations are the bulk of the recognised religious communities, which includes Islamic communities. These are now regulated under the *Act on the Religious Communities outside the Church of Denmark* (2018), which also has a number of clear provision for regulation of the finances of the religious communities. This is partially part of a new regime of recognition for religious communities outside the Church of Denmark, but also part of recent efforts to limit foreign influx of funds and increase transparency.

[1] For a fuller discussion of the three hierarchical levels in Danish regulation of religion, see Vejrup Nielsen, 2012.

[2] Please note that as a shorthand, I use Church of Denmark interchangeably with Evangelical Lutheran Church of Denmark, which I consider the correct name.

Many religious communities do not actively seek recognition and are therefore not included in the second category and thus relegated to a third category of those communities who either do not live up to the standards of recognition or exercise their freedom not to apply for recognition. This category "includes all religious activity that does not enter into formalised relations to the State and is regulated only by general laws…" (Vejrup Nielsen, 2012, p. 45).

I. Workshop I: Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations[3]

1. Church of Denmark

As regards income tax of religious organisations in Denmark, and following the three-tier structure, the legal frame for supporting the Church of Denmark is drawn from Article 4 of the constitution. Subsequent legislation and ministerial administrative practice further elaborate on the question of taxes for the Church of Denmark.[4]

The drafting and preparatory works for the constitution from the years before 1849 sheds some light on the matter. The key idea of a church of the people, accentuating the literal name for the Evangelical-Lutheran Church of Denmark, presumes that the majority of the people are members of the church and confess the Evangelical-Lutheran faith. This was of course the case in 1849, with almost 100% membership, but in 2019, the number is less than 75% (Vinding, 2019). There are a number of reasons for this, in particular, a rising number of individuals of no religion, but also other religious groups make up the difference. In this instance, also the approximate 260,000 Muslims in Denmark, which is just over 4.5 percent of the population (Jacobsen and Vinding, 2020). Scholars and legal experts have speculated that if – or when – such a majority of the population are not members of the church, it would cease to exist as the Danish People's Church as per this majority assumption. This would mean that the State is no longer obligated to support it; neither financially nor otherwise, effectively ending any prospect of proper establishment (Gammeltoft Hansen, 2006, in Zahle, 2006, p. 137).

Until such demographics change – or the political support for the Church of Denmark disappears – the Danish State is obliged to support the Church of Denmark, and it does so in two ways: (i) it supports the Church of Denmark financially directly, and

[3] Parts of this overall workshop section are drawn from Vinding, N. V. (2020). Annotated Legal Documents on Islam in Europe: Denmark. Leiden: Brill., from https://brill.com/view/title/24750.

[4] For a thorough discussion and empirical research, cf. Vinding, N.V, & Christoffersen, L., (2012), Danish Regulation of Religion, State of Affairs, and Qualitative Reflections, Publications from the Faculty of Theology, No. 36, University of Copenhagen, especially chapter 6 on *State Support to Religions in Denmark*.

(ii) it collects the church taxes on the national tax forms as a unique service provided to no other religious community.

(i) *State Support to the Church of Denmark*

In the constitutional law regarding Article 4 of the constitution, there is not entire certainty as to the origins of the State support for the church. The predominant interpretation is that it is reparations for the seizure of the church estates after the Danish Reformation in 1536. Lands and estates were seized by the new Lutheran King, Christian III who quickly realised that he would need to support the living of the clergy and the upkeep and maintenance of the institutions and buildings of the church. Another interpretation, which explains why such practice of support is still the law of the land, argues that State support is remuneration for services rendered. Priests of the Church of Denmark are charged with naming and registrations of birth, as well as maintaining cemeteries and church estates. In fulfilling such services, the priests are public officials and paid for their services.

Five bodies are in charge of the finances of the Church of Denmark; Parliament, the Minister of Ecclesiastical Affairs, the Dioceses, the Deaneries and the Parishes. The size of State support is decided by Parliament in consultation with the Ministry and is regulated every year in Article 22 on the *National Budget Act*.

In recent information material (2019), the Ministry of Ecclesiastical Affairs presented the finances of the Church of Denmark, and of a budget of 8.5 bn DKK (=1.14 bn EUR), the funding from the National State Budget is 800 mn DKK (=107 mn EUR), or less than 10% of the income of the Church of Denmark.

The largest portion of State support is used to cover 40 percent of wages for clergy as well as the full cost of pensions for retired clergy. At the same time, the number of clerical positions in the Church of Denmark is determined by the *National Budget Act*, where the finances are shared between the State and so-called *Fællesfonden*, the Common Fund of the Church of Denmark.

(ii) *Collection of Taxes for the Church of Denmark*

The collection of church taxes is done on the public tax returns; the Minister of Ecclesiastical Affairs does this, as regulated by the *Act on the Finances of the Church of Denmark*. Here, the tax rate is set by the minister in consultation and after input from the church and varies from parish to parish.

According to Article 15, section 2 of the *Act on the Finances of the Church of Denmark*, "It is the Minister for Ecclesiastical Affairs who gives the budget for the Common Fund" and in Article 15, section 3, "The size of the National Church Tax is affixed by the Minister for Ecclesiastical Affairs." Thus, explicitly the Minister for Ecclesiastical Affairs has the power to decide how to use the common fund, except for where the National Budget decides the pay for clergy. There is no ecclesiastical

authority or body which by law has the power to decide on or legal right to influence the budget of the common fund. Through executive order, the Minister has decided that there must be one budget advisory group which advises the minister on the budget of the common fund and the national church tax (Nepper-Christensen).

Most of the funding from the Church tax goes to the local parish churches and is used for all sorts of regular maintenance and pay for non-clergy staff, and so forth, totaling 77 percent of the funding of the church. A significant amount of funding – 14 percent – goes to the Common Fund, and here funds the administration of the dioceses, additional pastoral training and education, IT services, equalisation between poorer and richer parishes, and other minor expenses.

2. **Other Religious Communities**

Regarding other religious communities, the legal State of affairs is a little simpler, although the courts have needed to decide on questions of equality, the unconstitutionality of State support and freedom of religion.[5] Again, here it is worth noting that while this is highly and specifically relevant to Islamic communities and Muslims in Denmark, they are, however, never explicitly highlighted in the legislation.

Religious communities who wish to be recognised by the ministry to perform marriages with civil legal validity must apply and adhere to standards and criteria, which is the material basis of the recognition. *Act on Religious Communities outside the Church of Denmark*, which came into force on January 1, 2018, states that

> "Article 7. A religious community may be registered as a recognised religious community
>
> ...
>
> Section 7. [Include] latest financial statements, which must be audited and give a true and fair view of the financial situation of the faith community. "

Furthermore, the law states that;

> Article 21. Every year a recognised religious community must prepare and submit the latest annual accounts to the Ministry of the Ecclesiastical Affairs for publication on the website of the Faith Society.
>
> Subsection 2. The Minister of Ecclesiastical Affairs shall lay down detailed rules on the preparation, auditing, submission, publication, etc., including on the use of the digital solution provided by the Ministry of Ecclesiastical Affairs (digital self-service), and deadlines for this.

[5] Case in point is U2008.342 H, where an independent group of Romans Catholics argued unconstitutionality and violation of international human rights in the current system of State support for the Church of Denmark. Discussed in Vinding & Christoffersen, p. 99.

> Article 22. If a recognised religious community no longer fulfils the conditions for recognition, or if the religious community fails to fulfil the obligations laid down in this Act, the Minister of Ecclesiastical Affairs may revoke the recognition.
>
> Subsection 2. If the religious community has shown fraud in the failure to fulfil the stipulated obligations, the Minister of the Church shall revoke the recognition of the religious community.
>
> Subsection 3. In cases other than those referred to in paragraph 1. 2, the religious community shall have a maximum period of six months to remedy the failure to fulfil the obligations of the religious community, if such remedy is possible. "

Beyond the *Act on Religious Communities outside the Church of Denmark* (2018), it is interesting that the institutions of the Church of Denmark as well as religious communities are exempt from the *Foundations Act*, which means that rules and regulations regarding articles of association, leadership, accounting and accountability do not apply.

> The Foundations Act[6]
>
> (LBK nr 938 af 20/09/2012)
>
> Chapter 1
>
> Scope of the Act
>
> *§ 1. Chapter 1*–12 of the Act applies to foundations, grants, endowments and other self-governing institutions (foundations).
>
> Subsection 2. The law does not include:
>
> 1) foundations established by or under law or by international agreement between Denmark and another State and which are supervised by one of the States
>
> 2) foundations with which a municipality or region has entered into an agreement to fulfil the obligations of the municipality or region under the Social Services Act, if the fund does not perform other tasks
>
> 3) the self-governing institutions of the Church of Denmark, religious communities and approved educational institutions, if the fund does not carry out other tasks besides its main purpose.

Also, in the *Act on Corporation Tax*, corresponding to the provisions above, religious communities are exempt from paying taxes. Of significant importance here is, however, the wording that only recognised religious communities are exempt from taxes – not all religious communities.

[6] https://www.retsinformation.dk/Forms/R0710.aspx?id=138731.

Act on Corporation Tax[7]

(LBK nr 1164 af 06/09/2016)

Obligation to pay taxes

Article 3. Exempt from taxes are:

1) the State and its institutions, cf. § 1, stk. 1, nr. 2 d, 2 g, 2 i og 2 j

2) the Regions and Municipalities and regional and municipal business and institutions, cf. stk. 7 og § 1, stk. 1, nr. 2 f og 2 h.

3) recognised religious communities and church institutions, established in association with such communities or with the Church of Denmark.

However, with the provisions of the *Act on the Religious Communities outside the Church of Denmark* from 2018, some related issues are addressed, in particular regarding articles of associations and audited accounts of recognised religious communities. As has already been discussed, many religious communities are not recognised and have no intention of seeking recognition but may still be considered exempt for the Foundations Act.

Following this, members of religious communities may be allowed to deduct on their tax returns the value of gifts, alms and charities donated. This applies only if the communities are found to be actual religious communities – in either Denmark or other EU countries – and only if the religious community files the donations with the tax authorities.

Tax Assessment Act[8]

(LBK nr 1162 af 01/09/2016)

§ 8 A. When calculating the taxable income, gifts may be deducted as shown by the donor to associations, foundations, institutions, etc. whose funds are used for charitable or otherwise charitable purposes for the benefit of a larger circle of persons. The deduction cannot amount to more than a basic amount of DKK 14,500 (2010 level), which is regulated in accordance with section 20. of the Personal Tax Act. has reported the payment to the Customs and Tax Administration in accordance with the rules laid down by the Minister of Taxation pursuant to the Tax Control Act § 8 Æ, stk. 3.

Stk. 2. The right to deduct according to par. 1 is conditional upon the association or religious community, etc. is approved here in the country or in another EU /EEA country of residence for the calendar year in which the donation is given, cf. 3. It shall by statutes, foundations etc. show that the purpose is universal charity, i.e. that the funds can only be used to support a wider circle of people who are in financial need or in difficult economic circum-

7 https://www.retsinformation.dk/Forms/R0710.aspx?id=183480.
8 https://www.retsinformation.dk/Forms/R0710.aspx?id=183458.

> stances, or for a purpose which, from a general view of the population, can be characterised as useful, and which comes to a certain extent circle for good or that it is a religious community.

The easiest way to establish that the religious communities are in fact religious communities is if the community is recognised under the *Act on the Religious Communities outside the Church of Denmark*. If the tax authorities accept this, then this provision in the *Tax Assessment Act* is the single most significant indirect support for religious communities. Exemptions from paying taxes might be of considerable value, too, but this right to deduct donations to charities opens up sources of revenue, which are subsequently exempt. One issue here, however, is that it takes a bit of administration and proper management of funds and donations to file the deductions to the authorities, which might add somewhat of a burden to very small religious communities.

A more curious aspect regarding indirect State support to religious communities concerns public debt.

> Act on Public Debt Recovery[9]
>
> (LBK nr 29 af 12/01/2015)
>
> Claims that can be recovered by payroll deduction, cf. section 10, and claims that can be recovered by pledge, cf. section 11:
>
> 1) State and municipal taxes, as well as taxes and benefits due by law to state, municipality, churches, recognised faiths, public foundations or offices and orders, including tax amounts that a taxpayer has been required to withhold or collect, as well as parafiscal expenses.
>
> 2) Any tax on real estate, still recurring or dependent upon a particular event, which passes without ownership from owner to owner and belongs to the state, municipality, churches, recognised faiths, public foundations or offices and offices when the tax due size is determined according to fixed rules.

According to the *Act on Public Debt Recovery* any legal debt that is owed to religious communities may be collected by withholding salaries. This is, however, a bit hypothetical as it is unclear what part of debts owed to religious communities might be considered enforceable through the tax return.

One case of what might be considered direct support to religious communities concerns the executive order on distribution of subsidies for certain periodicals and magazines.

> Executive Order on Distribution Grants for Certain Periodicals and Journals[10]
>
> (BEK nr 1181 af 02/11/2017)

[9] https://www.retsinformation.dk/forms/r0710.aspx?id=167374.

[10] Executive Order on Distribution Grants for Certain Periodicals and Journals, https://www.retsinformation.dk/Forms/R0710.aspx?id=194405.

> Chapter 1
>
> *Criteria for Subsidies*
>
> Article 1. Grants are distributed for distribution in Denmark as well as from Denmark to the Faroe Islands and Greenland to a publisher of a periodical magazine and journal, provided that the publication is published with at least two issues per calendar year and preferably consists of information on:
>
> 1) public or non-profit topics, preferably general information about society and the outside world, social conditions, health and illness
>
> 2) the activities of humanitarian organisations
>
> 3) teaching and school conditions, including individual subjects
>
> 4) sports, preferably information about sports and associations
>
> 5) arts and culture, preferably information about visual arts, literature, music, film and theatre, as well as cultural dissemination and preservation
>
> 6) environment island, preferably information about nature conservation and improvement, alternative energy, environmental protection and environmental restoration
>
> 7) religious subjects, viz. magazines published by faith communities, associations of faith communities or organisations created by one or more faith communities or a circle of members of the faith community; a religious community means an organisation or association that is recognised or approved as a religious community by the Church Ministry.

According to Article 1, "subsidies may be awarded for distribution in Denmark as well as from Denmark to the Faroe Islands and Greenland to a publisher of a periodic magazine and journal, provided that the publication is published with at least two numbers per calendar year." This is then specified to apply to a number of topics, including number 7, "religious topics, i.e. magazines published by religious communities, associations of religious communities or organisations set up by one or more religious communities or a group of religious community members. A religious community is understood to be an organisation or association that is recognised or approved as a religious community by the Church Ministry."

In 2018, amongst the religious communities supported in publishing magazines, the Jewish Society in Denmark received almost 12.000 DKK for their *Jødisk Orientering* (Jewish Orientation) and the Catholic Church in Denmark received more than 200.000 DKK for their *Katolsk Orientering* (Catholic Orientation).[11] However, no Islamic or Muslim community received – or even, perhaps, applied for – funding to publish; this despite that fact that the inspiration for something like 'Muslim Orientation' is not far away.

[11] List of magazines supported by 'Bladpuljen,' in 2018. https://slks.dk/fileadmin/user_upload/0_SLKS/Dokumenter/Medier/Mediestoette/Bladpuljen_2018/Bladpuljen_2018.pdf.

A final example of viable State support regards the support for signing and interpretation for persons with hearing impairment, in this, the executive order on *Activities with indefinite interpretation for people with hearing impairments*.

> Executive Order on Activities with Unlimited Interpretation for Persons with Hearing Disabilities[12]
>
> (BEK nr 945 af 27/07/2010)
>
> Pursuant to section 10 of Act No. 1503 of 27 December 2009 on interpretation for persons with hearing disabilities, it is stipulated:
>
> § 1. Unlimited interpretation is given to the activities mentioned in Appendix 1.

The *ratio legis* is that hearing impaired peopleshould be able to participate in activities in community life on an equal footing with other citizens. Article 1 specifies that there is indefinite interpretation for people with hearing impairments as regards the activities mentioned in the appendix to the executive order. In the appendix,[13] one finds mentioned explicitly,

> Approved and recognised religious communities
>
> Community directed religious activities, such as baptism, confirmation, wedding, funeral, worship, confirmation preparation and other similar religious acts
>
> Other religious acts, such as the installation of a minister or other religious personnel
>
> Work associated with parish council meetings, such as participation in council meetings, in job interviews and other committee meetings

From this overlooked executive order, it may be assumed that Muslims with hearing impairments may get State support for signing or interpretation when participating in religious activities, mosques' organisational work or even other committee meetings as part of the work associated with running the Islamic religious community.

III. Workshop II: Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

In Denmark, churches and religious communities are exempt from property taxes. This applies not only to the churches of the Church of Denmark, but also to recognised churches and religious communities.

[12] https://www.retsinformation.dk/Forms/R0710.aspx?id=133003.
[13] https://www.retsinformation.dk/Forms/R0710.aspx?id=133003.

Buildings

In the most thorough textbook on *Ecclesiastical Law*, from 1976 by August Roesen, estate taxation exemption is mentioned in one single sentence.[14] Most likely, but not clearly discussed in the literature, the exemption of tax on church estates goes back to the taxation code reform from 1903. This, however, only mentions the Church of Denmark estates, which before the constitution of 1849 had been part of the royal domain, and therefore not taxed. At some point during the 20th century, other religious communities were included by some analogous consideration, but unclear when was explicity argued.

In addition, the built land, courtyard and garden for non-commercial assembly houses used for religious-type meetings to which there is public access are exempt from municipal land tax. Furthermore, areas approved by the authorities for the design of a burial ground are included.

Cemeteries

Burials must take place in cemeteries belonging to the Church of Denmark or approved by a Danish church minister. Religious preachers and ministers from religious communities outside of the Church of Denmark are allowed to bury deceased members in cemeteries belonging to the Church of Denmark.

Religious communities may also be allowed to establish their own cemeteries. The Minister for Ecclesiastical Affairs can allow religious communities to establish cemeteries. To obtain such a permit, the communities have to provide, among other things, assurance that the cemetery will be maintained. Rules and articles of association on supervision, usage and other conditions are to be set out in the statutes of the cemetery, that are to be affirmed by the Minister for Ecclesiastical Affairs. A religious community has to buy the land that it wants to use for burials. The religious community also has to operate and establish the cemetery.

It may also be a requirement that the municipality prepares a local development plan, and the location should be appropriate for burial. This means that the health authorities also have to review the application.

Exemption from VAT

According to specifications from the Danish Taxation Authorities,[15] many services of churches, religious communities and cemeteries are exempt from VAT. They highlight that services provided: acquisition of right of use for burial sites, rental of

[14] Roesen, 1976, p 263.

[15] https://skat.dk/skat.aspx?oid=1800035

chapels, bell ringing and organ music and other music and singing in chapels, carriage rides, burning, digging and throwing of graves, removal of urns, removal of coffins and urns, and arrangement of papers and assistance in connection with funerals.

IV. Workshop III: Taxation of Monastic Communities/Orders

Monastic orders are included in the definition of religious communities in Denmark. According to the Danish Taxation Authorities,[16] religious communities are understood much wider than the regular definition of the *Act on Religious Communities outside the Church of Denmark*. The Danish Taxation Authorities include in their definition, regardless of recognition status:

- Religious communities recognised
- Public and Free Church organisations
- Missionary societies
- Free church organisations
- Free churches
- Private and independent church institutions
- Monastic orders.

The website associated with the Ministry of Ecclesiastical Affairs, which lists all the religious communities that are recognised according to Article 7 of the *Act on Religious Communities outside the Church of Denmark*, has explicitly listed the Catholic Church in Denmark Monastic Communities and Orders, including 14 orders and three monasteries, but also explicitly mention that all annual accounts of these are included in the overall submission of the Catholic Church of Denmark.[17]

V. Workshop IV: Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)

Individuals may qualify for tax deductions for gifts, donations and donations to charities, associations, foundations, institutions and religious communities approved by the tax authorities.[18]

For most cases, religious social institutions are regulated as religious communities as regards the Act on Corporation Tax and the Tax Assessment Act, as listed above.

[16] https://skat.dk/skat.aspx?oid=1977047

[17] https://www.km.dk/andre-trossamfund/trossamfundsregistret/liste-over-anerkendte-trossamfund-og-tilknyttede-menigheder

[18] https://skat.dk/skat.aspx?oid=2234772

VI. Workshop V: Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

For the priests of the Church of Denmark, they are either seen as civil servants or contractual employees, depending on when and how they are called to their parish. This difference was seen clearly in 2018 during the major Danish general negotiations on wage agreement, where the Minister of Public Innovation who was chief negotiator for employers, including parish councils, announced a lockout of 120,000 employees in the State. The lockout warning also covered the Church of Denmark.

The vast majority of the clergy in the Church of Denmark are employed as civil servants and thus not affected by the lockout warning, but for many younger priests and other staff of the churches the lock out would take effect. Deans, church musicians, church servants, parish helpers, gardeners and others were covered by the notice, and would be sent home with large parts of the state's other employees unless the employee organisations and the employers concluded a settlement agreement. The lockout warning was cancelled as an accord was reached in late spring 2018.

All ministers and priests employed in Denmark are liable to income tax at source, but may receive certain benefits, the value of which is also taxable. This includes the value of the rectory or other living facilities made available, but also the value of newspapers, car services or phone services are taxed.

Very few religious preachers, who are temporarily in Denmark and who are employed and paid from outside Denmark, are not tax liable in Denmark on their salary. This includes, for example, imams from the Turkish Ministry of Religious Affairs (Diyanet).

VII. Workshop VI: Church and Philosophical and Non-Confessional Organisations Tax

As part of the ministerial regulations that followed from Article 21, subsection, of the *Act on Religious Communities outside the Church of Denmark*, religious communities must State the name and amount of any donation given which exceeds 20.000 DKK (= 2675 EUR). This is the reach of impositions from the state, but is not a tax.

Through a request for freedom of information under the *Public Access to Information Act*, given in 2020, researchers were given insight into the value of the gifts that may be deducted if given to associations, foundations, institutions, etc., whose funds are used for charitable purposes, according to Article 8A (or Article 12 on deductible continuous expenses) of the *Tax Assessment Act*. In 2018, which was the most recent year, a total of 333 churches, religious and similar organisations received 546.835.019 DKR in all.[19]

[19] *Skattestyrelsen, afgørelse om aktindsigt, 20-0779760, 17 July 2020.*

An interesting problem is developing, however, in extension of Article 68 of the constitution, which reads, "No one shall be liable to make personal contributions to any denomination other than the one to which he adheres." Currently, there are a number of relatively small, but vocal, organisations in Denmark who claim that buying halal-certified food is such a contribution to denominations other than one's own (cf. Bergeaud-Blackler, Fischer, & Lever 2015). The organisations advancing such arguments are not responsive to counterpoints arguing that buying food on the free market is not a contribution, but rather a deliberate marketing strategy by the producers, nor that they are not forced in any way to buy the halal products. Nevertheless, it is seen as support for Muslim communities and, much worse, as support for terror.

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CONSTITUTIONAL ASPECTS OF TAX LAW AND RELIGION IN ESTONIA

Merilin Kiviorg[1]

I. Introduction

One of the main principles underlying financial arrangements with religious communities is captured in Article 40 of the Estonian Constitution: "There is no State Church". This stipulation has been interpreted as a stipulation of the principle of neutrality. The principle of neutrality in the Estonian Constitution is a reflection of the neutrality and impartiality principle adopted by the European Court of Human Rights, which should be understood as an obligation of the State to be a neutral and impartial organiser of various beliefs. As one of the former Estonian judges at the European Court of Human Rights has observed: "under the Estonian Constitution the State needs to be careful when giving preference to one religious community over another – it has to have objective and reasonable justification, especially when financial subsidies or public services are in question".[2] In this regard he also makes a special reference to the equality principle.

However, the principle "there is no State church" is not interpreted similarly to disestablishment in the United States or the principle of *laïcité* in France. The above-mentioned constitutional framework has not been interpreted in practice as a rigorous policy of non-identification or separation with religion. The cooperation between the State and religious associations in areas of common interest is an established practice today. In Estonia the cooperation manifests itself most notably in the form of State financing of religious organisations and projects where religious communities and the State have mutual interests (education, social care, preservation of culturally important objects, chaplaincy, etc.). As in most European states this financing is based on

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[2] R. Maruste, *Konstitutsionalism ning põhiõiguste ja –vabaduste kaitse* [Constitutionalism and Protection of Fundamental Rights and Freedoms] (Tallinn: Juura, 2004), 522. See also M. Kiviorg, *'Religion and Secular State in Estonia' in Religion and the Secular State: National Reports* (Madrid: Servicio de Publicaciones de la Facultad de Derecho de la Universidad Complutense, 2015).

the implicit understanding that it facilitates the citizens' exercise of religious freedom and helps to strengthen the positive role that religion plays in society.

Since the beginning of the 1990s the State has also been giving regular support to the Estonian Council of Churches. The Estonian Council of Churches consists of ten Christian Churches, including the two biggest Churches of Estonia – the Evangelical Lutheran Church and Estonian Apostolic Orthodox Church. In addition, there are examples of more specific financial support, for example, given towards publications of the newspaper of the Estonian Evangelical Lutheran Church and to one of the radio stations, which broadcasts programmes on Christianity and culture. The constitutionality of these allocations and preferential treatment of the Estonian Council of Churches and the Lutheran Church have been questioned by nonChristian and secular religious communities. However, some smaller allocations have also been made to the non-Christian community. For example, in 2009, budget allocations were made to the community representing the Estonian indigenous religion.

The reasoning behind these financial subsidises seems to be partly connected to the preservation of Estonian cultural heritage and recognition of the importance of religious communities for individual believers but also their contribution to public life.[3]

Religious associations in Estonia also have some privileges and exemptions under tax law. However, in recent years there have been some small changes that have put religious associations on a more equal footing with all other non-profit organisations, especially regarding exemptions from income tax. The changes in taxation of religious communities will be explored later. This trend has not influenced recognition of specificity of religious organisations. The 2002 Churches and Congregations Act (CCA) expressly states that the NonProfit Organisations Act[4] and the 2002 CCA are related as general and special legislation (2002 CCA, Article 5(1)). The CCA gives room for religious associations to organise and manage themselves according to their own understanding.

For the purposes of understanding taxation of religious organisations in Estonia it is important to note that the Churches and Congregations Act distinguishes between five different types of religious organisations: (1) churches; (2) congregations; (3) associations of congregations; (4) monasteries; and (5) religious societies.[5] Quite uniquely in Europe, the 2002 CCA gives legal definitions of all five categories of religious organisations. The 2002 CCA regulates the activities of only the first four.

[3] 'Progrmm 'Pühakodade säilitamine ja areng' 2013-2018', kinnitatud kultuuriministri käskirjaga nr. 371, 28.11.2013 (Tallinn: Kultuuriministeerium, 2013).

[4] RT I 1996, 42, 811.

[5] A church (*kirik*) is an association of at least three voluntarily joined congregations which has an Episcopal structure and is doctrinally related to three ecumenical creeds or is divided into at least three congregations and which operates on the basis of its statutes, is managed by an elected or appointed management board and is entered in the register (§2(2)).

The first four are called 'religious associations'. The activities of religious societies are not regulated by the CCA (as special law), but by the Non-profit Organisations Act (*as lex generalis*). The tax privileges or exemptions are different for religious associations and for religious societies. Religious societies do not enjoy all the tax benefits given to religious associations. They are taxed as ordinary non-profit organisations.

Religious associations can also, for example, create foundations according to the Foundations Act.[6] The tax exemptions applicable to religious associations themselves are not automatically 'transferrable' to these foundations as different legal persons; they are taxed or exempted as all other foundations. The same applies, for example, to private schools established by these associations in accordance with the Private Schools Act.[7]

One also needs to note that although the CCA differentiates between four types of religious associations there are no major differences in taxation of these organisations. The law also does not prohibit the activities of religious organisations which are not registered. They still enjoy their constitutionally protected collective freedom of religion as a religious group. However, the main disadvantage for these unregistered entities is that they cannot present themselves as legal persons, and therefore cannot exercise their rights or seek the protections and tax benefits accorded to a registered religious legal entity.

II. Income Tax of Religious Organisations

As noted above, there have been changes to the tax exemptions. There is no longer complete automatic exemption of religious associations from income tax, as was the case before 2011. Before 2011, religious associations registered in Estonia

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A congregation (*kogudus*) is a voluntary association of natural persons who profess the same faith, which operates on the basis of its statutes, is managed by an elected or appointed management board and is entered in the register (§2(3)).

An association of congregations (*koguduste liit*) is an association of at least three voluntarily joined congregations which profess the same faith and which operates on the basis of its statutes, is managed by an elected or appointed management board and is entered in the register (§2(4)).

A monastery (*klooster*) is a voluntary communal association of natural persons who profess the same faith, which operates on the basis of the statutes of the corresponding church or independent statutes, is managed by an elected or appointed superior of the monastery and is entered in the register (§2(5)).

A religious society (*usuühing*) is a voluntary association of natural or legal persons the main activities of which include confessional or ecumenical activities relating to morals, ethics, education, culture and confessional or ecumenical diaconal and social rehabilitation activities outside the traditional forms of religious rites of a church or congregation and which need not be connected with a specific church, association of congregations or congregation (§4(1)).

6 RT I 1995, 92, 1604.

7 RT I 1998, 57, 859.

were automatically included in the list of non-taxable organisations; ordinary non-profit organisations (including religious societies[8]) had to apply for it. When the law was changed a sort of compromise was made. Namely, all religious associations, which already were in the list of non-taxable organisations by 31 December 2010, were automatically included in the list from 1 January 2011. As of January 2011, newly established religious associations have to apply for the inclusion in the list of non-taxable organisations, as do other non-profit organisations.[9] This also means that this status can also be refused on certain grounds listed in the law. There have been no reports of abuse of this provision oppressing activities of newly established religious communities. However, in 2013, there were two cases where two foundations that are running Christian schools (Tallinna Toomkooli Sihtasutus and Püha Johannese Kooli Sihtasutus) had to establish through the court that they had a right to be included in the list of non-profit organisations. According to the Estonian Tax and Customs Board these two organisations were making profit. As a result of the court case in the Tallinn Administrative Court, both foundations were included in the list in 2013.[10]

Article 11 of the Income Tax Act sets forth that the list of non-profit associations, foundations and religious associations benefiting from income tax incentives is approved by a resolution of the Tax and Customs Board. The law sets forth criteria when the association needs to be included in the list and also makes some exemptions for some religious associations.[11] Since 1st January 2015, there are a few additional

[8] One should keep in mind the legal distinction between religious associations and religious societies in Estonian law.

[9] Income Tax Act (*Tulumaksuseadus*), RT I 1999, 101, 903. Translation of the texts of selected Estonian legal acts can be found at < https://www.riigiteataja.ee/en/>. This is an official webpage of the State Gazette (*Riigi Teataja*) where all the laws and other legislative acts of Estonia are electronically published.

[10] RT III, 21.12.2013, 13.

[11] Article 11 (2): **A non-profit association, foundation or religious association (hereinafter *association*) which meets the following requirements shall be entered in the list**:[RT I, 18.11.2010, 1 - entry into force 01.01.2011] 1) the association operates in the public interest; 2) the association operates for charitable purposes, offering goods, services or other benefits primarily free of charge or in another non-revenue seeking or publicly accessible manner;[RT I, 11.07.2014, 5 - entry into force 01.01.2015] 3) the association does not distribute its assets or income, grant monetarily appraisable benefits to its founders, members, members of the management or controlling body (§ 9), persons who have made a donation to the association during the last twelve months or to the members of the management or controlling body of such person or to the persons associated with such persons and listed in clause 8 (1) 1);[RT I, 11.07.2014, 5 - entry into force 01.01.2015] 4) upon dissolution of the association, the assets remaining after satisfaction of the claims of the creditors shall be transferred to an association entered in the list or specified in subsection (10) or to a legal person in public law;[RT I, 18.11.2010, 1 - entry into force 01.01.2011] 5) the administrative expenses of the association correspond to the character of its activity and the objectives set out in its articles of association; 6) the remuneration paid to the employees and members of the management or control body of the association (§ 9) does not exceed the amount of remuneration normally paid for similar work in the business sector.

requirements but also exemptions for certain religious communities. Article 11 (4) 1[1] among the other requirements states that an association shall not be entered in the list if it has not operated by the time of submission of the application for entry in the list for at least six months and submitted an annual report for this period. This requirement does not apply to a congregation, monastery or institution of a church operating on the basis of an international agreement which belongs to a church or association of congregations already entered in the list.

All religious associations equally to ordinary non-profit organisations and foundations can be excluded from the list when they do not comply with the law. Amongst the reasons for exclusion according to the Income Tax Act is a failure to submit at least for three consecutive times, by the term or pursuant to the procedure prescribed by legislation, a report or tax return. Several religious associations previously in the list have had problems with complying with the law.

There have been no reported criminal cases against religious associations or religious societies involving, for example, tax evasions. Legal persons cannot be held liable for every offence listed in the Penal Code, such as murder, manslaughter, theft and assault. But it can be held liable for crimes like fraud, tax evasion, bribes, and also war propaganda and acts of terrorism, etc. Only registered legal persons with legal capacity and rights can be held liable. The state, local governments and legal persons in public law cannot be held criminally liable. Religious associations registered under the CCA are legal persons in private law. Thus, in principle, a religious community can be held responsible in certain circumstances. In some cases a religious community may even be subjected to compulsory dissolution.

III. Real Estate Tax of Religious Organisations

Religious associations continue to be exempt from land (property) tax. Land tax is not imposed on land under the places of worship of churches and congregations (*Maamaksuseadus,* Land Tax Act, §4(1)(5)).[12] This exemption does not apply to the properties of secular non-profit-making organisations. Thus, regarding land tax there is a distinction in the treatment of religious associations and other non-profit making organisations, including religious societies. In addition, there have been debates over tax on land under natural sacral objects. The religious association called House of

(3) The requirement specified in clause (2) 3) does not apply to an association engaged in social welfare, to a religious association or to a case where a person specified in clause (2) 3) belongs to the target group of the association and does not receive additional benefits as compared with other persons belonging to the target group. The requirement specified in clause (2) 4) does not apply to religious associations established in Estonia and religious associations established in another Contracting State of the EEA Agreement which comply with § 27 of the Churches and Congregations Act.

[12] RT I 1993, 24, 428.

Taara and Native Religions has been trying to achieve changes in law to extend the exemption from land tax to the land under these objects. The debate is ongoing and has not yet been solved. What makes the debate complex is the fact that some of these objects are on land of private (physical) persons.

IV. Taxation of Monastic Communities/Orders

There is no significant difference in tax law between monastic orders and other religious associations.

V. Taxation of Religious Social Institutions (charity; educational, etc.)

If the institution is registered as a religious society or an ordinary non-profit organisation in accordance with the Non-profit Organisation Act or the foundation in accordance with the Foundations Act then it does not enjoy additional tax exemptions as a religious association.

VI. VAT

There is no diverse VAT policy between the religious institutions and the philosophical or non-confessional organisations. There were certain privileges concerning value added tax until 2007. These usually figured as discounts against the ordinary tax rate. For example, until 1 July 2007, religious organisations could buy electricity attracting a rate of 5% VAT (instead of the 18% at the time).[13] The same did not apply to most non-profit-making organisations, including religious societies. This privilege does not exist anymore. However, as with all other non-profit /charitable organisations, certain articles are taxed less – 9 % instead of 20%. For example, according to Article 15(2) of the Value-Added Tax Act rate of value added tax on the following goods and services is 9 percent of the taxable value: books and workbooks used as learning materials, periodic publications (with some exceptions). According to Article 16, value added tax is not imposed on services provided by a non-profit association to its members free of charge or for a membership fee.

VII. The Taxation of Religious Ministers

There is no difference in treatment of religious ministers and other professionals regarding income tax or inheritance. The salaries of priests and other people working for the Church or other religious communities are paid by the organisations themselves. Army, prison and police chaplains are civil servants and are paid in full by the State budget.

[13] RT I 2001, 64, 368.

VIII. Church Tax

There is no church or special tax imposed to the taxpayers for the benefit of the church.

IX. Critique and Conclusion

There has been no major public debate or discussion on taxation of religious communities. The heated debates have cantered around direct financial allocations to some religious communities (Council of Estonian Churches, EELC) and have not focused on taxes or tax exemptions. Some religious communities have expressed dissatisfaction with the complexity of writing annual financial reports and with bureaucracy related to complying with tax obligations. Religious organisations, like other entities, have to submit an annual fiscal report to the Estonian Tax and Customs Board. Failure to provide it can be a sole ground for exclusion from the list of non-taxable organisations. In 2012, there was a case where this failure eventually resulted in dissolution proceedings against a congregation.[14] One could argue that this dissatisfaction is mainly related to incapacity of smaller congregations (also within bigger churches) to deal with financial issues. The problem could be solved inside religious communities. There is no oppression of religious organisations by the State in financial matters. The above-mentioned dissatisfaction is also partly related to a more general criticism from some religious organisations not satisfied with laws, as they see it, allegedly treating religious organisations as ordinary non-profit making organisations.[15] The latter criticism does not have a solid legal ground.

[14] See correspondence between Ministry of Internal Affairs and Harju County Court (Harju Maakohus) June 2012 (Siseministeeriumi arhiiv).

[15] See for example, '"Kirikute ja koguduste seaduse" muutmise kohta saabunud ettepanekud. Saadetud kuni 31.03.2012' (Siseministeeriumi arhiiv). See also M. Kiviorg, *Religiooni puudutavate õigusaktide analüüs* (Analysis of the Laws Regulating Religion) (Tallinn: Siseministeerium, 2012).

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. FINLAND

Mika Nissinen[1]

I. Income Tax of Religious Organisations

1. Dominant Religions and other Religious Communities[2]

There are two dominant religions in Finland: the Evangelical Lutheran Church and the Orthodox Church. The largest religious community is the Finnish Evangelical Lutheran Church, which comprises about 73% of the population. The Finnish Orthodox Church is the second largest religious community. Approximately 1% of the population belongs to the Orthodox Church. About 1.6% of Finns belong to registered religious communities, the largest of which are the Jehovah's Witnesses, the Evangelical Free Church of Finland and the Catholic Church in Finland.[3] Tens of thousands of Muslims live in Finland, however, only some of them belong to Islamic communities. There are also two thousand Jews living in Finland; there is a synagogue in Helsinki and in Turku. Other religious communities in Finland include the Pentecostal Church, the Finnish Free Church, the Adventist Church of Finland and the Mormon Church.[4] One quarter of the population does not belong to any religious

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[2] For detailed information on the church in Finland, see Matti Kotiranta: State and Church in Finland, in State and Church in the European Union, Ed. by Gerhard Robbers, Third Edition, Baden-Baden. 2019 (Kotiranta 2019), pp. 613–639.

[3] See for example, the Ministry of Education and Culture, https://minedu.fi/en/religious-communities (8.1.2020).

[4] See https://www.infofinland.fi/fi/tietoa-suomesta/perustietoa-suomesta/kulttuurit-ja-uskonnot-suomessa (8.1.2020). More detailed information, see Statistical Yearbook of Finland 2018, section 24.62 Population by religious affiliation, 1980–2017.

community registered in Finland. In 2017, the proportion of non-religious men was 30 percent and that of women 23 percent.[5]

The Finnish Constitution guarantees religious freedom.[6] Under section 2 of the Freedom of Religion Act,[7] religious communities are the Evangelical Lutheran Church of Finland, the Orthodox Church of Finland, and religious communities registered by law. The Freedom of Religion Act provides a legal framework for the establishment and operation of registered religious communities. A registered religious community is an independent special legal subject, such as a registered association or corporation. The register of religious communities is maintained by the National Board of Patents and Registration.[8] Religion can also be practised in an ideological association (usually as a non-profit organisation) or without any arrangements under public law.[9]

The special public status of the Evangelical Lutheran Church is based on the Finnish Constitution.[10] No other church or religious community is mentioned at the constitutional level. However, the Orthodox Church also has a special public status in Finland based on the law of the Orthodox Church[11] and this special status has been mentioned in a government proposal concerning the law mentioned above.[12,13]

Other religious communities, with the exception of the Evangelical Lutheran Church or the Orthodox Church, are required to register under the Act on Freedom of Religion.[14]

[5] See http://www.stat.fi/til/vaerak/2017/01/vaerak_2017_01_2018-10-01_tie_001_fi.html (8.1.2020).

[6] *Suomen perustuslaki* 731/1999 Section 11 as follows (Freedom of religion and conscience):

Everyone has the freedom of religion and conscience.

Freedom of religion and conscience entails the right to profess and practise a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.

[7] *Uskonnonvapauslaki* 6.6.2003/453.

[8] There was 129 registered religious communities in Finland in 2017, See http://www.ateistit.fi/uutiset/uuti170406.html (8.1.2020).

[9] See for example, the Ministry of Education and Culture, https://minedu.fi/en/religious-communities (8.1.2020).

[10] Section 76 as follows:

The Church Act Provisions on the organisation and administration of the Evangelic Lutheran Church are laid down in the Church Act.

The legislative procedure for enactment of the Church Act and the right to submit legislative proposals relating to the Church Act are governed by the specific provisions in that Code.

[11] *Laki ortodoksisesta kirkosta* 985/2006.

[12] The Government proposal HE 59/2006 to Parliament for the law on Orthodox Church, page 1.

[13] More detailed background of the legislation, see Kotiranta 2019 p. 618–620.

[14] More about the Act on Freedom of Religion, see Kotiranta 2019 chapter V. Legal Status of Religious Bodies.

All organisations are covered by the same tax and banking secrecy. Possible exemption of taxes or special status does not affect this. All taxpayers have the same obligations to provide the necessary information to the Finnish Tax Administration irrespective of the possible tax-exemption status. The Finnish Tax Administration may provide information subject to tax secrecy only in situations provided by the law (for example, to other authorities for monitoring purposes etc.). Public information includes an annual summary of income tax information, possible tax debts and registry information.[15]

2. Income Taxation of Churches and other Religious Communities

Religious communities and associations are considered separate taxable entities.[16] All existing churches and religious communities are taxed according to the same rules and principles. All religious communities are partially exempted from income tax. Income tax does not recognise differences between dominant religions (the Evangelical Lutheran Church and the Orthodox Church) and other religious communities.[17]

The Evangelical Lutheran Church, the Orthodox Church, and other religious communities only pay tax to the municipality on business profits and income from real property used for other than public or non-profit purposes.[18] The tax rate is 6.26%.[19]

What is business activity?

Performing the tasks assigned to the church by the Church Act is not a business activity. Taxable business activities include the sale of ordinary goods or services, such as flowers and tombstones.

[15] More information about secrecy and confidentiality, see for example, Taxation in Finland 2009 (the Ministry of Finance), chapter 9.4 Confidentiality.

[16] See the Income Tax Act (*tuloverolaki* 1535/1992) section 3.

[17] The Evangelical Lutheran Church and the Orthodox Church may have a special public body status in taxation (See the Finnish Tax Administration's publication Taxation of work abroad 4/18/2019 chapter 4.1 General). On the other hand, The Finnish Tax Administration may have interpreted this even more broadly that any religious community may have a public body status (see the Finnish Tax Administration's publication (in Finnish) *Yleishyödyllisten yhteisöjen ja julkisyhteisöjen vapaaehtoistoiminnan ennakkoperintäkysymykset* (VH/2545/00.01.00/2019) chapter 1.3 *Julkisyhteisö* (public body)). However, this is of minor importance, since all religious communities are partially exempt from income tax. However, this may have an impact on the application of income tax treaties; for example, the withholding tax right may be more extensive if the payer is a public body.

[18] See the Income Tax Act section 21 para 2 and 4.

[19] Tax year from 2019 onwards. Before 2019, tax was 6.27% (2018) and 6.07% (2017).

What is the income from real property used for other than public or non-profit making purposes?

Income from a real property is, for example, rental income. Income from forestry (for example, the sale of wood or forest insurance payments) is also the income generated by real property. Income from real estate sales is tax-free, unless the property is primarily used for business purposes. A housing cooperative (apartments, classified as shares)[20] is not considered to be real property and is not income from real property.[21]

There are three types to use a real property:

— general or non-profit use (tax-free real property income)
— non-general or other than non-profit use (taxable real property income)
— wholly or mainly during the course of business (income from business activities).

For example, a real property is in general use when used as a public school, library or church. Real property is in public use when the real property is rented to a non-profit organisation for non-profit activity.

For example, renting a real property for private use, housing purposes, recreational use or the use of someone else's business activity is other than non-profit use. Forest is generally considered to be other than general or non-profit use.

If more than half of the property is used for its own business activity, the income from the property is business income. The distribution of the use of a real property for general or non-profit use and other uses is usually calculated on the basis of the area or time of use.

3. Income Taxation of Philosophical and Non-Confessional Organisations

In addition to religious communities, any ideological association may be exempt from income tax. An organisation is non-profit if:

1. it acts exclusively and immediately for the common good of material, spiritual, moral or social purposes
2. its activities are not restricted to limited personal circles, and
3. it does not provide to participants with an economic advantage in the form of a dividend, a profit share or a higher than reasonable salary or any other compensation.[22]

[20] A housing cooperative is a common form of home ownership in Finland. Shares give you the right to apartment in a housing company. These shares are not considered as real estate.

[21] See the Finnish Tax Administration Guidance (in Finnish): Tuloverotus – julkisyhteisöt, https://www.vero.fi/yritykset-ja-yhteisot/tietoa-yritysverotuksesta/tuloverotus/julkisyhteisot/ (8.1.2020)

[22] See Income Tax Act section 22.

The non-profit organisation only pays tax to the municipality on business profits and income from real property used for other than general or non-profit purposes.[23] Therefore, philosophical or non-confessional organisations may be a non-profit organisation taxed in the same way as religious communities.

4. Special Relief of Income Tax on Business Profits and Real Property Income

Non-profit organisations may apply for special income tax relief on business profits and real property income upon application.[24] Tax relief may be granted for up to five tax years at a time. The relief does not apply to VAT or property tax.

Only a non-profit organisation, within the meaning of Article 22 of the Income Tax Act, which carries out socially significant activities may benefit from this tax relief. This relief may, by law, apply to non-profit organisations whose real purpose is to influence the affairs of the State as a registered party, or to carry out activities which serve social or other socially important needs. In addition, the operation must be nationwide or otherwise extensive, well established and permanent. Tax relief can only be granted if it is justified by the interests of society. It is also important how the revenues and resources are used for activities in the public interest. Business income tax relief must not cause more than a slight disadvantage to others engaged in the same type of business. The real property income tax relief is conditional on the property being used primarily for general or non-profit purposes.[25]

Exemption is granted by the special Tax Relief Board with its chairman and ten other members independent of the Finnish Tax Administration.[26]

5. Inheritance Tax

Religious communities and all non-profit organisations are exempted from inheritance tax when they receive an inheritance or a bequest. Tax is not paid on inheritance or property that has been transferred to another under the rules of the association after the activity has ceased. In addition, tax is not paid out of assets given to the State or its institution, province, municipality, municipal federation, parish, or other religious community, or to a charity or educational institution. The same applies to a non-profit association or other community, institution or foundation which has a public interest purpose.[27]

[23] See Income Tax Act section 23.

[24] Act on Tax Relief for certain non-profit organisations (*Laki eräiden yleishyödyllisten yhteisöjen veronhuojennuksista* 680/1976).

[25] See sections 1–3 of the Act.

[26] See section 5 of the Act.

[27] See the Inheritance and Gift Act section 2 (*perintö- ja lahjaverolaki 378/1940)*.

6. Taxing of Revenues[28]

A. *Revenues of Evangelical Lutheran Church and the Orthodox Church: The Church tax*

The main source of income for the Evangelical Lutheran Church and Orthodox Church is the church tax levied on the taxable income of the municipal tax. Persons who are not members of these churches do not pay church tax. As these revenues are neither business nor real estate income, they are exempted from income tax.

B. *Revenues of the Evangelical Lutheran Church: Government Funding of certain Social Tasks*

The Evangelical Lutheran Church has certain government funded social functions. The Ministry of Education and Culture annually grants funding to the Evangelical Lutheran Church for the statutory duties related to certain funeral functions,[29] a certain civil registry, and the maintenance of culturally valuable buildings and movables.[30] The amount of funding in 2016 was EUR 114 million and the amount of funding is increased annually in accordance with the change in the statutory consumer price index. However, as part of the balancing of government finance, this index increase was frozen for the years 2017–2019.[31]

This law came into force at the beginning of 2016. At the same time, the right of Evangelical Lutheran Church and Orthodox Church to corporate tax revenue was removed. Originally, the right to corporate tax revenue was not related to the social functions of churches. However, this revenue right was later justified by these social functions. The level of State funding is defined so that it should cover a fair share of the costs of the statutory social functions. The amount of public funding was estimated to cover about 80% of the costs. From the government's point of view, the reform was cost neutral, with State funding on average corresponding to the amount of corporate income tax revenue in churches. The part of funeral expenses is covered

[28] General presentation of financing, see for example, Matti Kotiranta in: G. Robbers & W.C. Durham, eds., Encyclopedia of Law and Religion, Leiden, 2016, pp. 108–119, Matti Kotiranta: The Financing of Churches and Religious Associations in Finland. – Kirkkohistorian alueilla. Juhlakirja professori Hannu Mustakallion täyttäessä 60 vuotta. Suomen kirkkohistoriallisen seuran toimituksia 217/Karjalan teologisen seuran julkaisuja Nr. 2. Helsinki 2011, pp. 411–429 (Kotiranta 2011) and Kotiranta 2019.

[29] An obligation to maintain public cemeteries from where also a non-church deceased person is entitled to get a burial place (*hautaustoimilaki* 457/2003, Chapter 2, section 3).

[30] *Laki valtion rahoituksesta evankelis-luterilaiselle kirkolle eräisiin yhteiskunnallisiin tehtäviin* 430/2015, Section 1.

[31] *Laki valtion rahoituksesta evankelis-luterilaiselle kirkolle eräisiin yhteiskunnallisiin tehtäviin*, Section 2.

by the charges for the funeral services. The funeral payments are intended to cover the part of the funeral costs not covered by public funding, also taking into account other statutory social tasks.[32]

State funding for funerals is justified by the fact that the maintenance of cemeteries and care of the dead are essential social functions from a health perspective. This responsibility is clearly part of society's responsibilities. When such an essential social function is entrusted to the Evangelical Lutheran Church, it is justified that the State will also carry out the financial conditions for the fulfillment of the function.[33]

Because this revenue is neither a business nor real estate income, it is exempted from income tax.

C. *Revenues of Registered Religious Communities: Financial Aid from the Government*

Since the beginning of 2008, registered religious communities have received financial support from the government to support their activities. The Ministry of Education and Culture grants State subsidies to registered religious communities calculated on the basis of their membership. This aid is based on the State Aid Act.[34] The purpose of the aid is to support religious freedom by improving opportunities for the recognition and practice of religion. In 2019, a total of EUR 524 000 was spent on aid and 30 religious communities received this aid.[35] This aid cannot be received by religious communities acting in the form of an association (non-profit organisation), nor by local communities of registered religious communities.

The operating expenses of the central administration and dioceses of the Orthodox Church of Finland are also partially covered with government grants disbursed by the Ministry.[36]

As all these revenues are neither business nor real estate income, they are exempt from income tax.

[32] See the Government proposal HE 247/2016 to Parliament for the Government funding for the Evangelical Lutheran Church for some social tasks, pp. 2–3.

[33] See the Government proposal HE 247/2016, pp. 2.

[34] *Valtionavustuslaki 688/2001.*

[35] See https://minedu.fi/documents/1410845/4935909/2019+uskonnolliset+yhdyskunnat/2ec67db4-d499-05ae-1765-444e9fe42f2e/2019+uskonnolliset+yhdyskunnat.pdf (8.1.2020). Previous years see https://minedu.fi/avustukset/avustus/-/asset_publisher/rekisteroityjen-uskonnollisten-yhdyskuntien-toiminta (8.1.2020).

[36] See the law of the Orthodox Church, Section 119. See also https://minedu.fi/kirkollisasiat/rahoitus (8.1.2020).

D. *Other Revenues of Churches, other Religious Communities, Philosophical and Non-Confessional Organisations*

Religious communities other than the Evangelical Lutheran Church and the Orthodox Church have no right to tax. Registered religious communities and other organisations fund their activities mainly through donations, membership fees and their own fundraising activities. As these revenues are neither business nor real estate income, they are exempt from income tax.

II. Real Estate Tax of Religious Organisations

1. Real Estate Tax: Exemption

Deserted church, castle, fortress and monastery buildings are freed from real estate tax.[37] Churches which are not part of the regular church work are considered to be deserted churches.[38] In addition, real estate tax is not paid on the real estate area used as a public cemetery, but not as a private burial. A chapel or church building in a cemetery area is subject to real estate tax, unless it is a tax-free deserted church.

2. Real Estate Tax: General Real Estate Tax

The municipal real estate tax rate must be at least 0.93% in 2019 and may not exceed 2.00 percent of the property's taxable value.[39] For example, churches are subject to general real estate tax rate.

3. Real Estate Tax: Special Real Estate Tax for Non-Profit Organisations

The municipality can set a separate real estate tax rate for a building owned by a non-profit organisation. For this rate to apply, the building on the property is intended for general or non-profit use. Tax rate can be from 0.00 percent up to 2.00 percent (2019).[40]

The general use of a building means that the building must be used for social purposes, for example, as a school, church, library or government office. Non-profit use is the use of a non-profit organisation's own general interest or the renting of property for the purpose of non-profit activity.

[37] See the Real Estate Tax Act section 3 (*Kiinteistöverolaki 654/1992)*.

[38] The Finnish Tax Administration has published a list of deserted churches, castles and fortresses that are exempted of real estate tax (in Finnish), see https://www.vero.fi/contentassets/f088729a-51f84602a3991c98e2976dbe/verosta-vapaat-autiokirkot-linnat-ja-linnoitukset-yms.pdf (8.1.2020).

[39] See the Real Estate Tax Act Section 11 (3).

[40] See the Real Estate Tax Act Section 13 a.

4. Tax on Transfers of Real Property

The transfer tax is not payable if the transferee is the Province of Åland, a municipality, a joint municipal authority, a parish or a registered religious community.[41] This exemption applies only to real estate and it does not apply to housing cooperatives (apartments, classified as shares). This exemption does not apply to non-profit organisations.

III. Taxation of Monastic Communities/Orders

There are some monasteries in Finland.[42] For example, there is one Lutheran Monastic Community in Enonkoski[43] and two official orthodox monasteries: Valamo Monastery and Lintula Monastery located in Heinävesi.[44]

There is no specific provision for the income taxation of monasteries. If a monastery has a separate legal personality, it may be entitled to income tax exemption in the same way as any non-profit organisation; the same provisions apply. In addition, the same provisions and principles apply, inter alia, to business. For example, if the primary purpose of such a monastery is to conduct business, the risk may be that the monastery cannot be considered a non-profit and tax exempted organisation.

Similarly, other provisions are in principle compatible with associations. However, as previously mentioned, a deserted church, castle, fortress or *monastery building* is exempted from real estate tax.

IV. Taxation of Religious Social Institutions, run by Churches, Religious Communities, or Philosophical and Non-Confessional Organisations

There is no difference whether the social institution is organised by a religious community or any other non-confessional or non-profit organisation. A social institution can be a non-profit organisation with the same tax treatment as any other non-profit organisation. Thus, there is no different tax policy.

There is no diverse tax policy between the church social institutions and the common ('secular') legal persons under public or private law. For example, Finland has a common legislation for both private (state-supported) and public (city- or state-owned) schools. A private school is a school owned by a private community

41 See the Transfer Tax Act section 10 (*varainsiirtoverolaki 931/1996*).

42 The number of monasteries depends on how the monastery is defined, see for example, https://en.wikipedia.org/wiki/Category:Christian_monasteries_in_Finland (8.1.2020).

43 See http://www.luostariyhteiso.fi/english/ (8.1.2020).

44 In addition, there is currently one monastery-like community in Kirkkonummi's Jarvas, Pokrova community, which does not have an official monastic status, see the internet-pages of the Orthodox Church https://www.ort.fi/seurakunnat-hiippakunnat-ja-luostarit/luostarit (8.1.2020).

independent of public bodies. It may be a religious community or any other non-profit organisation, association or foundation in Finland. The Finnish association of independent schools has 54 members:[45] primary, secondary and upper-secondary schools, General education schools, Christian schools, language schools, special pedagogic schools and upper secondary schools for adults. 20,000 students attend these schools, which is 3% of Finnish students.[46] The Government authorises a registered organisation or foundation to provide basic or secondary education.

Education activities may be non-business activities (income tax exemption for non-profit organisations) and may also be exempt from VAT on education, vocational training, higher education or art education, whether organised by law or supported by statutory State resources.

V. VAT and Alcohol Tax

1. VAT

The VAT treatment of religious communities is similar to that of non-profit organisations.[47] Religious communities are not required to pay VAT on activities that non-profit organisations are not required to pay. Religious communities are therefore liable to VAT only on income from business activities under the Income Tax Act.

The meaning of business income is not exhaustively defined. However, tax-free activities include, for example, fundraising lotteries, small-scale sales during events and other similar activities. The community can also sell membership papers, cards, addresses, etc. without having to pay VAT on these revenues. Sales must only serve and immediately support community action.

Religious communities may also apply for VAT status on non-business income (in order to be entitled to deduct VAT).

2. Alcohol Tax

Before 1st March 2018, communion wine was exempted from the alcohol tax. As of 1st March 2018, it will no longer be tax-free. According to the government's proposal, the tax exemption for communion wine was not based on the directive on the

[45] In year 2017.

[46] See www.yksityiskoulut.fi/in-english/ (8.1.2020). See also Kotiranta 2019 chapter VII. Churches and Culture.

[47] This is based on the VAT Act, see section 4 and 5.

harmonisation of the structures of excise duties on alcohol and alcoholic beverages[48] and had to be abolished from the law.[49]

In preparation for the amendment, the Church Council estimated that the total consumption of communion wine in the Evangelical Lutheran Church is about 46,000 litres per year, and the amendment would cost churches a total of € 160,000 per year. According to tax information available to the Ministry of Finance, this consumption of wine and intermediate products would have been 17,000 litres, implying a deferred tax subsidy of about € 73,000 a year before amending the tax law.[50]

VI. Taxation of Religious Ministers

There is no special tax treatment for religious ministers or the leaders of philosophical and non-confessional organisations.

VII. Church Tax and Tax Deduction on Donations

1. Church Tax[51]

The main source of income for the Evangelical Lutheran and Orthodox Church is the church tax levied on the taxable income of the municipal tax. The legal framework for the Evangelical Lutheran church tax is based on Chapter 15 section 2 of the (Evangelical Lutheran) Church Act.[52] The legal framework for the Orthodox Church tax is based on Chapter 7 section 77 of the Orthodox Church Act.[53] Other religions do not have a direct taxing right, and any membership fees must be based on a membership fee or equivalent.

Under the Finnish Constitution, the State (central government), the municipalities (communes) and the Evangelical Lutheran Church and Orthodox Church have the right to tax. Church tax is levied only on members of the two dominant churches – the Evangelical Lutheran Church of Finland and the Finnish Orthodox Church – as well as members of two Lutheran parishes covering the whole country – the German parish in Finland and Olaus Petri parish for Swedes living in Finland.

[48] Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages.

[49] See the government proposal HE 100/2017 of the new alcohol Tax Act p. 123.

[50] See HE 100/2017 p. 54.

[51] The history of the church tax in Finland, see for example, Kotiranta 2019 pp. 615–618 and Kotiranta 2011 pp. 412– and Ensio Erä-Esko: Beskattningsrätt och skattskyldighet för kyrkan i Finland. Publications of the Hanken School of Economics Nr 195/2009 (Erä-Esko 2009), Chapter 2 Kyrkans historiska rätt till skatt.

[52] *Kirkkolaki 1054/1993.*

[53] *Laki ortodoksisesta kirkosta* 985/2006.

Local parishioners of these churches levy the church tax on the earned income of individuals and estates of deceased persons. Church tax is levied on the same taxable income as determined by municipal taxation. The Finnish Tax Administration distributes the revenue monthly to the parishes. The church tax is paid as part of income taxation.[54]

The tax rates range from 1–2% of earned income. Persons who are not members of these churches are exempt from paying church tax. A member of the Church with an average income pays roughly 329 euros in church tax per year (year 2017). If all Church members are included, the average church tax is 226 euros per year (year 2018).[55]

The church tax income of the Evangelical Lutheran Church and the Orthodox Church is as follows:[56]

2018
- Evangelical Lutheran Church 870,411,627 €
- Orthodox Church 15,395,716 €

2017
- Evangelical Lutheran Church 863,381,657 €
- Orthodox Church 15,395,716 €

2016
- Evangelical Lutheran Church 891,645,392 €
- Orthodox Church 15,862,841 €

2015
- Evangelical Lutheran Church 895,919,063 €
- Orthodox Church 15,282,088 €

The Lutheran Church reimburses the State for the expenses accrued from collecting tax. According to Article 30 (1) of the Tax Administration Act,[57] the tax costs are the operating expenses of the Tax Administration in accordance with the State budget and revised on the basis of the financial statements for the previous year. According to paragraph 2 of the same article, the State charges 29.1% from the municipalities, 3.2% from the Evangelical Lutheran Church and 5.6% from the Social Insurance Institution. The Orthodox Church does not need to pay any compensation to the State for tax collection.

54 See Tax Assessment Procedure Act (*laki verotusmenettelystä* 1558/1995), Section 1.
55 See https://evl.fi/tietoa-kirkosta/talous/kirkollisvero#35a7eac6 (8.1.2020).
56 Statics information, see https://veronsaajat.vero.fi/ (8.1.2020).
57 *Laki Verohallinnosta* 2010/503.

In 2018, the Evangelical Lutheran Church's compensation was 12.7 million euros and in 2017 it was 14.3 million euros.[58] The costs were about 1.5 % of the Evangelical Lutheran Church's tax income in 2018 and 1.6 % in 2017.

Prior to 2016, *corporate income tax* revenue was shared between the State, municipalities and the Evangelical Lutheran Church and the Orthodox Church. From 2016, the Evangelical Lutheran Church and the Orthodox Church lost their right to corporate income tax revenue.[59] Separate support was established for certain social functions related to the Evangelical Lutheran Church. For the Orthodox Church, the loss of corporate tax was compensated by a corresponding increase in State aid.

2. Special Donation Deduction and General Deduction Related to Business

An entity[60] may deduct its income as follows:

(1) a donation of not less than EUR 850 and not more than EUR 250 000 – made for the purpose of promoting science, art or the preservation of Finnish cultural heritage – to a State in the European Economic Area or to a university or vocational university and their fund in the European Economic Area which receive public funding

(2) a donation of at least EUR 850 and up to EUR 50 000 – made for the purpose of promoting science, art, or the preservation of Finnish cultural heritage – to an organisation, foundation or fund affiliated to the European Economic Area, designated by the Tax Administration, whose primary purpose is to support science or art or to preserve Finnish cultural heritage.[61]

Also a natural person and estate may deduct from their net earned income a donation of at least EUR 850 and up to EUR 500 000 made to a university or vocational university and their fund in the European Economic Area which receive public funding, for the purpose of promoting science or art.[62]

However, there is no direct deduction for donations to religious institutions.

Obviously, companies also have the opportunity to deduct costs that are generally their business-related expenses, including certain types of sponsorship costs. Deductibility requires reciprocity in appearing in sponsorship, for example, as placement. In the absence of reciprocity in sponsorship, such as visibility, the costs cannot be deducted for tax purposes.

[58] See www.kirkontilastot.fi, and also https://evl.fi/our-work/our-finances/church-tax (8.1.2020).

[59] See acts 654-656/2015 and Government proposal HE 302/2014.

[60] The right to deduct donations is limited to entities (for example, limited companies), i.e. limited partnerships are not eligible for deduction.

[61] See the Income Tax Act section 57.

[62] See the Income Tax Act section 98 a.

VIII. Critique and Conclusion

1. General Remarks

There are many political views on church and church taxation in Finland. However, parties have not recently announced the Church's tax policy. In addition, no religious community has recently issued a formal statement on its fiscal/tax status. The perspectives normally emphasize the role of the community itself. For example, the Evangelical Lutheran Church emphasizes that churches do their basic work on church tax revenue and that many people benefit from many church services. For example:

- The basic work of churches is Sunday worship and fairs.
- Parish workers work alongside municipal workers in child, youth and family work.
- Church deacon workers help those who have difficulties in life. The Church cooperates with the municipal social service.
- Parishes are involved in organising family gatherings.[63]

When assessing the current State of taxation of religious communities, it is justified to assess the present situation on the basis of a good tax system.[64] The following examines the current State of taxation of religious communities.

2. Neutrality as a Starting Point

The starting point for economic efficiency is fiscal neutrality. In general, all religious institutions and philosophical or non-confessional organisations have the opportunity to meet the criteria for (partial) income tax exemption. However, since income tax exemption is based on different parts of the law, the requirements for exemption vary. It is sufficient for religious communities to be classified as religious. In contrast, a non-profit organisation must carry out non-profit activities. Also, inheritance taxation is similar to any religious communities and other nonprofit organisations including non-confessional organisations.

3. Equality of Tax Status

One of the principles of fair taxation is the equality of taxation. There must be an acceptable tax justification for deviation. Generally, religious communities are

[63] See https\\:www.evl.fi/tietoa-kirkosta/talous/kirkollisvero (8.1.2020).

[64] A good tax system is fiscal, effective and fair. The effectiveness consists of economic and administrative effectiveness. The fairness consists of general fairness and fair taxation. The foregoing main criteria of a good tax system contain several principles. For more details on this systematisation, see Mika Nissinen's dissertation (in Finnish): The national income taxing right engaging in business activity in Finland – The perspectives of the law in force and a good tax system, chapters 2–3. http://epublications.uef.fi/pub/urn_isbn_978-952-61-3031-6/urn_isbn_978-952-61-3031-6.pdf (8.1.2020).

separate from government institutions in taxation.[65] However, there appear to be exceptions to this. For the purposes of applying section 10 of the Transfer Tax Act, all religious communities are treated as public bodies because of the title of the provision (Government acquisitions). Although this exemption applies only to real estate (not housing cooperatives), the Transfer Tax Act provides a tax advantage that is not granted to religious or non-religious non-profit organisations, for example. Similarly, Tax Administration may have given the public status to all religious communities or only to dominant churches. This may have an effect at least on the application of tax treaties with Finland and another State.

If the public status does not provide any special tax benefits to religious communities, the status can be considered as largely a formal and perhaps historical remnant. However, if the public status provides some tax benefits, the status can be problematic. There should be a special justification for the special tax benefits, as the exceptions impede neutrality. If there are no valid reasons for the special tax advantage, they may be contrary to the principle of tax equality.

If there is no longer any acceptable basis for the public status of religious communities or dominant churches in taxation, tax legislation should be clarified to reflect the current situation, where religious communities are distinct from the State in taxation, including the public status.

Similarly, the different tax status of religious communities causes other problems. Section 13 a of the Real Estate Tax Act applies only to non-profit organisations, where the municipality can set a separate real estate tax rate for a building owned by a non-profit organisation. This provision cannot be applied to a registered religious community.[66] On the other hand, only non-profit organisations may apply for special income tax relief on business profits and real property income upon application. And religious communities are directly exempt from the public broadcasting tax, while a non-profit organisation must pay the tax if it receives taxable income.[67]

In these situations, different religious communities and different non-religious communities may be treated differently simply because they are registered to religious communities or non-profit organisations. In Finland, there is a need for comprehensive research on the tax status of religious communities. The tax status should be uniform, unless, for good and acceptable reasons, certain religious communities should give a different tax status. If religious communities should not be giving any special

[65] However, when viewed more generally and not just from a tax perspective, two dominant churches in Finland have a special public status. See for example, https://minedu.fi/evankelis-luterilainen-kirkko (8.1.2020) and Erä-Esko 2009 pp. 2–3.

[66] See Finnish Supreme Administrative Court's decision 16.4.2004/826.

[67] See the Public Broadcasting Tax Act (*Laki yleisradioverosta* 31.8.2012/484). This would only raise the issue of neutrality if the religious community would carry out taxable activities without, however, having to pay the public broadcasting tax.

tax status at all, for example, in relation to non-religious communities, it would be justified to treat religious communities as non-profit organisations for tax purposes.

4. The Fairness of Taxation Right (Church Tax)

Finland does not have a tax system in place that would directly allocate some part of the taxes collected by the State to religious communities, whether or not a taxable person is a member of a religious community. In this respect, the fairness of taxation is fulfilled, because only believers pay church tax. However, the fairness of taxation can be jeopardised when only some religious communities have taxing rights.

Only two dominant churches in Finland have the right to tax and the tax is collected by the State authority on behalf of the churches. When membership fees are collected in the form of taxes, their non-payment is directly enforceable, unlike membership fees collected by religious communities themselves.[68] The tax authority can take advantage of the tax information available, and the membership fee in the form of taxes is automatically collected directly from the payment, for example, from salary.

It may not have been accurately estimated whether the service fee paid by the dominant churches to the State covers all or only a certain part of the costs incurred by the tax authorities in collecting the church tax.[69] The starting point should be that the compensation should cover the costs involved, and this should be properly assessed and monitored.

Other religious communities do not have the opportunity to decide whether it would still be more profitable to collect the membership fee itself if the amount of the automatic collection compensation to the State were equal to that of the dominant churches. Although no direct conclusions can be drawn, it must be borne in mind that the collection of church taxes would be basically uniform, irrespective of which religious community would be the recipient of the church tax. Thus, it is largely a matter of earmarking the collected church tax revenue and passing it to religious communities.

We should reconsider whether there are still reasons why only dominant churches should have the right to tax, or whether the same right should be given to other

[68] Before the entry into force of the Freedom of Religion Act in 2003, membership fees of religious communities were directly enforceable as taxes, see Government proposal of the new Freedom of Religion Act HE 170/2002, p. 43.

[69] The State charges 3.2% from the Evangelical Lutheran Church. The costs were about 1.5% of the Evangelical Lutheran Church's tax income in 2018 and 1.6 % in 2017. The Orthodox Church does not need to pay any compensation. The share of the cost has been estimated, at least in the Working Group on the Tax Costs (The Ministry of Finance Working Notes 21/96), where the proportion estimated to be between 2.3% and 20.6%. See also Erä-Esko 2009, p. 165.

religious communities as well. We should take into account whether the size of the members of the religious community would impact and how religious communities would pay compensation if the membership fees would be collected in the form of taxes.

It is possible that the taxation right of the dominant churches may be justified on the grounds that they are more involved in the activities of the society and provide, among other things, services of a social nature. However, it should be noted that it is possible to separate the costs associated with these services from the actual membership fee of the church. In addition, the dominant churches already receive a separate compensation for certain services they provide on behalf of the society. Therefore, specific church taxation right, which differs from other religious communities, cannot be accepted solely on the basis of those arguments.

A separate question is about how funding should and could be organised, and in particular, what is the role of the State in funding. State funding can be organised in many different ways, such as direct funding, directly selected tax revenues, tax deductions or a combination of these.[70]

5. **Equality of Business Taxation**

In Finland, the general corporate tax rate for corporations, such as limited companies, is 20%. However, the Evangelical Lutheran Church, the Orthodox Church and other religious communities are exempt from State income tax and pay tax only to the municipality. In 2018, the tax rate was 6.27 percent and in 2019 it was 6.26 percent. Thus, it is clear that the current situation is not tax neutral and gives a tax competitive advantage.

While it is not known that religious communities would have been largely engaged in business, the legislation should not have such an advantage unless there is a valid reason for it. Since the purpose of religious activities is not the business itself, it may be difficult to find a valid basis for the aforementioned business tax advantage.

It is also necessary to take into account Article 107(1) TFEU[71] on State aid, which states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.[72] This advantage should be separately assessed in the light of State aid, taking into account, inter alia, Articles 108 and 109 TFEU.

[70] For different alternatives, see Erä-Esko 2009, especially chapter 10.
[71] Treaty on the Functioning of the European Union.
[72] See also for example, CJEU case C-74/16.

FISCALITÉ, RELIGIONS ET ORGANISATIONS PHILOSOPHIQUES NON CONFESSIONNELLES EN FRANCE

Pierre-Henri Prélot (†)

I. Le régime fiscal des organisations religieuses et des organisations philosophiques ou non confessionnelles

Dans le cas de la France, où depuis la loi de 1905, dite de séparation des Églises et de l'État, « la *république ne reconnaît, ne salarie ni ne subventionne aucun culte* », les notions de religion « dominante », « reconnue » ou « non reconnue » sont dépourvues de pertinence juridique. D'un point de vue de droit fiscal, l'État appréhende donc les religions selon le régime juridique dont elles se sont dotées. Ce régime juridique peut être réservé aux seules communautés religieuses, c'est le cas des *associations cultuelles* qui doivent « *avoir exclusivement pour objet l'exercice d'un culte* ». C'est le cas également des *congrégations religieuses* dont le régime est défini par la loi du 1er juillet 1901. Il existe donc pour les religions organisées dans l'une de ces formes un régime fiscal spécifique. Mais les religions peuvent également emprunter des formes juridiques qui n'ont pas été conçues à leur intention. À titre d'exemple, les communautés musulmanes sont généralement organisées sous la forme d'associations de droit commun. Autrement dit, les religions sont soumises au régime fiscal des structures dont elles empruntent la forme.

La qualité d'association cultuelle ou de congrégation religieuse reconnue fait l'objet d'un contrôle de l'administration, afin de vérifier que les avantages liés à cette qualité ne sont pas revendiqués de façon indue. En ce qui concerne les associations cultuelles de la loi de 1905, l'administration vérifie qu'elles n'ont pas d'autre objet que l'exercice du culte, ainsi que le prescrit la loi de 1905, et qu'elles n'ont pas d'activité contraire à l'ordre public. Cette référence à l'ordre public vise en particulier les mouvements dits sectaires, au sens où les définit la loi du 12 juin 2001 *tendant à renforcer la prévention et la répression des mouvements sectaires portant atteinte aux droits de l'homme et aux libertés fondamentales*, c'est-à-dire de manière basique ceux dont les activités sont en tout ou en partie contraires à l'ordre public ou à la loi pénale. Concrètement, il existait depuis 1905 une procédure d'autorisation préalable,

qualifiée de « *tutelle administrative* », en application de laquelle le préfet devait autoriser toute donation. Mais cette procédure avait été supprimée et remplacée en 1997 par un régime plus souple d'opposition. Aux termes de l'article 69 de la loi du 21 aout 2021, le représentant de l'État exerce son contrôle à l'occasion de la création d'un association cultuelle. Désormais « Toute association constituée conformément aux articles 18 et 19 de la présente loi doit déclarer sa qualité cultuelle au représentant de l'État dans le département. » Le représentant de l'État peut s'opposer à ce que l'association bénéficie des avantages propres aux associations cultuelles s'il constate qu'elle ne remplit pas les conditions fixées par la loi.

On notera ici que le régime ancien de la reconnaissance subsiste en Alsace-Moselle, où le catholicisme, les protestantismes luthérien et réformé, ainsi que le judaïsme ont la qualité de « *cultes reconnus* » maintenant appelés cultes statutaires. Le régime fiscal de ces cultes reconnus est similaire à celui des associations cultuelles de la loi de 1905. Les différences qui peuvent exister tiennent à la spécificité du régime de la reconnaissance. En particulier, les presbytères mis à disposition des ministres du culte par les communes ou établissements publics du culte ne sont pas imposés à la taxe foncière sur la propriété bâtie. Les associations inscrites de droit local qui sont les supports juridiques des cultes non statutaires et dont le but est exclusivement cultuel bénéficient des mêmes avantages fiscaux que les associations cultuelles de droit général.

Les organisations philosophiques et non-confessionnelles ne se voient reconnaître aucun statut spécifique en droit français. Elles n'ont pas accès aux statuts d'association cultuelle ou de congrégation religieuse, « réservés » par définition aux structures religieuses. En revanche elles sont libres de se structurer sous les formes prévues par le droit commun, comme associations simples ou reconnues d'utilité publique, ou comme fondations… Elles seront alors assujetties au régime fiscal applicable aux formes qu'elles se sont données.

Mais malgré ces distinctions, le régime fiscal des religions et celui des organisations philosophiques et non confessionnelles ne sont pas fondamentalement différents l'un de l'autre, dans la mesure où ce que l'État a en vue dans l'un et l'autre cas est le caractère globalement désintéressé de ces activités (leur « absence de caractère lucratif ») et le cas échéant leur contribution à l'intérêt général.

Il n'existe pas en France de « religion *dominante »* à laquelle le droit réserverait un statut privilégié. Mais comme on vient de le dire les activités religieuses sont –sauf exceptions- des activités dépourvues de caractère lucratif, ce qui est également le cas des organisations philosophiques ou non confessionnelles, ou encore des partis politiques. C'est pourquoi leur régime fiscal tend à se rapprocher.

Le fait que les activités religieuses ou les structures religieuses puissent bénéficier du régime fiscal favorable applicable aux activités d'intérêt général a pu être dénoncé dans les années 1980 comme une atteinte à l'exigence de « laïcité *fiscale* » (Olivier Schramek et Xavier Delcros, AJDA 1988, *La fin de la laïcité fiscale*, pp. 267-269).

Mais en réalité la prise en considération, d'un point de vue fiscal, de la contribution des religions à l'intérêt général est inscrite dans la logique même de la loi de 1905, qui leur impose un statut associatif qui est par définition celui des activités désintéressées orientées dans l'intérêt social.

On ne saurait parler à propos des institutions religieuses et des organisations philosophiques ou non confessionnelles de « politique fiscale » proprement dite. Il n'existe pratiquement pas de spécificité propre aux institutions religieuses, dont ne bénéficieraient pas les organisations philosophiques ou non confessionnelles. La seule véritable différence concerne la taxe foncière sur la propriété bâtie, dont le montant annuel qui varie selon le lieu peut être important. Cette spécificité se justifie par le fait que les lieux de culte appartenant à l'État sont eux-mêmes dispensés de taxe foncière sur la propriété bâtie, en sorte qu'imposer ceux appartenant aux associations cultuelles reviendrait à introduire une discrimination au détriment des cultes protestants et juifs qui sont propriétaires de leurs lieux de culte, à la différence des catholiques dont les églises sont pour la plupart propriété publique.

Outre ce cas très particulier, il n'existe pas d'exonérations ou d'incitations fiscales qui seraient applicables aux seules institutions religieuses. Lorsque les institutions religieuses bénéficient d'avantages fiscaux, elles ne sont jamais seules à en bénéficier.

Ici encore l'expression de politique fiscale est inappropriée en France. Ce qui peut être souligné d'une manière générale, c'est que les « personnes *morales communes* », telles que par exemple les associations, sont soumises à un régime fiscal de droit commun qui ne devient avantageux que pour autant qu'elles contribuent à l'intérêt général. Par exemple, une association de la loi de 1901 reconnue d'utilité publique. En ce sens, le régime fiscal des institutions religieuses bénéficie d'une sorte de « présomption » de contribution à l'intérêt général qui les dispense d'avoir à justifier de leurs activités.

Il n'existe aucune disposition spécifique concernant le secret fiscal ou bancaire des institutions religieuses et des organisations philosophiques et non confessionnelles.

Les transactions entre institutions religieuses ou organisations philosophiques et non confessionnelles sont libres, sous réserve qu'elles respectent les règles applicables à aux structures concernées. Par exemple, une association cultuelle ne peut utiliser ses fonds que pour l'objet social que lui assigne la loi de 1905, c'est-à-dire le culte. Ainsi, elle ne peut procéder à des versements au profit d'une association simple sauf à justifier qu'ils ont pour objet direct le financement du culte. De même, une association simple bénéficiaire de subventions publiques ne peut reverser les subventions reçues au bénéfice d'une association cultuelle.

Les institutions religieuses et les organisations philosophiques/non confessionnelles sont soumises au contrôle de l'administration fiscale qui peut procéder à des redressements. Ces redressements pourront être contestés devant le juge (judiciaire s'agissant de la fiscalité indirecte, administratif s'agissant de la fiscalité directe).

En France, l'instrument fiscal est une arme privilégiée de la lutte contre les mouvements qui se prévalent de la qualité religieuse et que les pouvoirs publics qualifient de « mouvements *sectaires* ». Plus généralement, la requalification de certaines activités en prestations commerciales permet d'imposer des structures qui voudraient se prévaloir de la qualité religieuse pour éluder les impôts et taxes sur leurs activités.

Quant aux libéralités consenties aux structures habilitées à les recevoir en franchise d'imposition (congrégations, associations cultuelles, associations reconnues d'utilité publique, fondations, établissements publics du culte et associations inscrites ayant un but exclusivement cultuel d'Alsace-Moselle), elles sont l'objet d'une attention particulière de la part de l'autorité publique, qui dispose d'instruments de contrôle (exigence d'une reconnaissance d'utilité publique, procédure d'opposition). On notera que depuis une vingtaine d'années, le bénéfice des avantages financiers liés à la qualité d'association cultuelle n'est plus réservé, comme auparavant, aux seules religions traditionnelles que sont le catholicisme, les protestantismes luthérien et réformé, le judaïsme et par extension l'islam, mais qu'il a été étendu aux mouvements catholiques traditionnalistes ou encore aux témoins de Jéhovah ainsi qu'au bouddhisme.

Le traitement des institutions religieuses est plus favorable sur certains points que celui des organisations philosophiques, non confessionnelles ou laïques, dans la mesure où elles peuvent accéder à certaines formes juridiques qui leur sont spécifiques (associations cultuelles, congrégations religieuses), et qui présentent certains avantages. Ces formes juridiques offrent même certains avantages que ne procure pas la reconnaissance d'utilité publique (exonération de taxe foncière sur le bâti pour les édifices du culte par exemple). Mais inversement elles présentent également un certain nombre d'inconvénients propres. Par exemple, le caractère exclusivement religieux des activités des associations cultuelles, ou encore l'interdiction pour elles de recevoir des subventions publiques.

II. Le régime fiscal foncier des organisations religieuses et des organisations philosophiques et non confessionnelles

On examinera ici successivement les différentes impositions existantes :

S'agissant de la taxe foncière (taxe locale) sur les propriétés bâties, les édifices cultuels appartenant aux associations cultuelles ainsi que ceux qui appartiennent à des personnes publiques et qui sont affectés au culte en application de la loi de 1905 en sont exonérés. Il en va de même en Alsace Moselle pour les édifices du culte appartenant à des établissements publics du culte et à des associations inscrites à but exclusivement cultuel. En revanche, les autres immeubles appartenant aux religions sont imposés à la taxe foncière sur les propriétés bâties dans les conditions du droit commun. On notera que l'exonération relative aux lieux de culte ne concerne pas en revanche les édifices cultuels appartenant à d'autres personnes morales (associations

reconnues d'utilité publique par exemple), ni les biens immobiliers des organisations philosophiques et non confessionnelles.

En ce qui concerne la taxe foncière sur les propriétés non bâties, il existe une exonération ponctuelle, propre à l'Alsace-Moselle, qui concerne les jardins des presbytères des cultes reconnus.

Les édifices cultuels affectés à un culte public (accessible à tous sans distinction)[1] sont également exonérés de la taxe d'habitation. Il en va de même pour ceux des locaux des organisations philosophiques et non confessionnelles qui sont ouverts au public. En revanche les locaux appartenant à des communautés religieuses à usage privatif ou qui seraient réservés à un culte « privé » (accueillant des participants déterminés) ne sont pas exonérés.

Il convient également de noter qu'une taxe locale d'aménagement est perçue par les communes lors de la construction d'un bien immobilier. Mais les constructions édifiées par des associations cultuelles ou par des établissements publics du culte en Alsace-Moselle, ainsi que les constructions édifiées par d'autres groupements et destinées à être exclusivement affectées à l'exercice public d'un culte, en sont exonérées. On notera que cette exonération bénéficie également aux constructions destinées à recevoir une affectation d'assistance ou de bienfaisance.

Enfin, on notera qu'en cas de cession, tous les biens immobiliers sont soumis aux droits de mutation dans les conditions du droit commun. Ils ne bénéficient d'aucune exonération. Il en va de même s'agissant des biens des organisations philosophiques et non confessionnelles.

Le droit français ne fait pas de distinction entre les différentes religions. Les avantages fiscaux sont liés au statut juridique qu'elles se donnent.

Les différences lorsqu'elles existent ne procèdent pas d'une politique fiscale déterminée. La principale différence tient dans l'exonération de taxe foncière sur la propriété bâtie pour les édifices cultuels.

Les personnes morales laïques constituent juridiquement les formes que se donnent les organisations philosophiques et non confessionnelles.

Il n'existe pas d'avantage fiscal dont bénéficieraient les seules institutions religieuses, s'agissant de leur patrimoine immobilier.

III. Le régime fiscal des communautés religieuses et des ordres monastiques

De façon tout à fait paradoxale, le droit français laïc soumet, depuis la loi du 1er juillet 1901, les congrégations religieuses à un régime d'autorisation par voie de décret en Conseil d'État. Le Code général des impôts mentionne à deux reprises les congrégations religieuses autorisées, concernant leurs activités non lucratives (article 206), et l'exonération de droits de mutations sur les dons et legs à titre gratuit (article 795).

Mais un certain nombre de congrégations religieuses ne sollicitent pas cette autorisation, et constituent ce qu'on appelle des congrégations de fait, En ce cas, elles sont régies par le droit commun et ne bénéficient pas des avantages susmentionnés.

On notera par ailleurs qu'un certain nombre de communautés sont regroupées dans une

Fondation des monastères qui est une fondation d'utilité publique créée en 1974 dans le but

> « d'apporter *son concours charitable aux membres des collectivités religieuses de toutes confessions chrétiennes se trouvant en difficulté financière ou autre, en vue de les aider notamment à se couvrir contre les risques sociaux et de contribuer à la conservation du patrimoine culturel ou artistique des monastères »*. La Fondation regroupe des communautés catholiques, orthodoxes et protestantes, reconnues ou non.

Le patrimoine des communautés religieuses est un patrimoine privé, il est généralement la propriété des congrégations. En tant que tel, il est soumis aux dispositions du droit commun. On notera qu'une partie de ce patrimoine est classé monument historique, et peut à ce titre bénéficier de financements publics pour les travaux de réparation.

Les avantages dont bénéficient les ordres monastiques sont limités. Les congrégations religieuses autorisées par décret en Conseil d'État peuvent recevoir des dons et legs à titre gratuit. En revanche les congrégations non autorisées dites congrégations de fait ne bénéficient pas de cet avantage. À ce niveau, le régime applicable aux congrégations autorisées se rapproche de celui des associations cultuelles de la loi de 1905. Par ailleurs leurs activités ne sont pas imposables au titre des activités commerciales, pour autant qu'elles restent dépourvues de caractère lucratif.

IV. Le système fiscal des institutions sociales religieuses (charité, éducation, etc.)

Le régime fiscal qui s'applique aux institutions sociales gérées par les communautés religieuses est celui qui s'applique aux institutions sociales de droit commun.

Le régime fiscal qui s'applique à l'imposition des biens immobiliers (propriétés foncières, bâtiments, etc.) des institutions sociales gérées par un culte ou un mouvement philosophique non confessionnel dans le pays est le régime fiscal de droit commun.

V. Le régime fiscal des ministres du culte et des responsables de mouvements philosophiques et non confessionnels

Il n'y a pas fondamentalement de différence pour ces personnels avec ceux des autres catégories professionnelles. La seule spécificité concerne les prêtres catholiques et orthodoxes, dont l'activité pastorale ne s'inscrit pas dans le lien de subordination qui définit le salariat, ce qui justifie un régime d'imposition spécifique. En revanche

les ministres des autres cultes, et en particulier les pasteurs protestants et les rabbins, sont traités fiscalement comme des salariées de leur institution.

Les ministres du culte sont pour la plupart traités fiscalement comme des salariés de leur institution, et ils sont imposés au titre de l'IRPP (impôt sur le revenu des personnes physiques). Il existe une exception concernant les ministres du culte catholique et orthodoxe, qui ne sont pas « salariés » mais traités comme exerçant une profession libérale percevant des « honoraires », et imposés de ce fait au titre des bénéfices non commerciaux. Il est précisé que les honoraires de messe, calculés en général pour permettre à leurs bénéficiaires de faire face aux frais du culte et à l'entretien des édifices cultuels, ne sont pas considérés par l'administration fiscale comme présentant le caractère de revenu et qu'il y a lieu, dès lors, d'en faire purement et simplement abstraction. Quant aux religieuses et religieux des différents ordres, ils ne sont pas rémunérés par leur congrégation pour leur activité mais simplement entretenus par elle.

Les membres du clergé ayant conclu un contrat avec l'État (aumôniers militaires, chercheurs, enseignants des établissements privés d'enseignement sous contrat) ou rémunérés par l'État (ministres des cultes statutaires en Alsace Moselle), sont imposés comme des salariés. Il en va de même lorsqu'ils ont été autorisés par l'autorité religieuse dont ils dépendent à s'engager auprès d'une institution qui les rémunère. En revanche, ils ne sont pas imposés lorsqu'ils ne reçoivent aucune rémunération personnelle pour l'activité professionnelle qu'ils dispensent (infirmières congréganistes par exemple).

Il n'existe aucune disposition spécifique en droit des successions, si ce n'est qu'un ministre du culte ne peut hériter d'une personne qu'elle a assistée spirituellement. Quant aux laïcs et aux responsables des mouvements philosophiques et non-confessionnels, c'est également le droit commun des successions qui s'applique.

VI. L'impôt, les cultes et les mouvements non confessionnels

Il n'existe aucune prise en considération directe par l'État des versements des fidèles à leurs communautés. On notera toutefois que les dons et legs aux associations cultuelles ainsi qu'aux congrégations religieuses, de même que le produit des quêtes dans les lieux de culte, ne sont pas assujettis à l'impôt.

L'État accorde-t-il des avantages fiscaux aux fidèles, aux ONG, aux entreprises privées (etc.) lorsqu'ils financent des institutions religieuses ? Non, sinon à titre indirect, lorsqu'ils financent des activités d'intérêt général ou effectuent des dons en faveur d'associations cultuelles ou de congrégations reconnues.

VII. Autres questions de recherche

Les religions sont attachées aux avantages dont elles bénéficient, et qu'elles justifient par l'utilité sociale de leurs activités. La suppression en 2017 de l'impôt sur la fortune a entrainé une diminution importante de ce que l'on appelle par commodité les

« *dons aux œuvres* », et les religions ont perdu là une source significative de revenus, mettant notamment en difficulté un certain nombre de diocèses. Pour autant, les religions ne proposent guère de modifications de fond à leur fiscalité, compte tenu du cadre contraint qu'impose le principe de laïcité, et qui interdit toute réforme de fond.

Les avantages fiscaux dont bénéficient les religions sont parfois contestés au nom de la laïcité fiscale. Mais cette remise en cause reste marginale d'une manière générale. À la différence des pays dans lesquels elle est un instrument de financement des religions, la fiscalité religieuse est un sujet tout à fait marginal en France.

En France, les associations de la loi de 1901 et plus généralement les organismes réputés être sans but lucratif (fondations, congrégations religieuses…) ne sont pas en principe soumis à la TVA, à moins qu'ils n'exercent des activités lucratives. Pour établir le caractère non lucratif des activités en cause, l'administration fiscale applique un certain nombre de critères, à savoir la gestion désintéressée de l'organisme (gestion bénévole, non distribution des ressources…), la concurrence avec le secteur commercial, et les modalités de gestion.

Il s'agit ici de garantir une concurrence libre et égale, et de protéger les acteurs économiques contre une concurrence déloyale du secteur associatif.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. GERMANY

Gerhard Robbers

I. Preliminary Remarks

The German taxation law is extremely diverse. There are a multitude of different taxes. The exact status of religious communities as well as of philosophical and non-confessional organisations in this legal field is specified in the various tax laws.

In addition, religious communities are in many cases exempt from certain fees, such as court fees; many of these rules are provided in the laws of the various *Länder,* and they thus are extremely diverse.

The existing exemptions from taxes and fees are thus extremely detailed and spread among manifold laws. There are no statistical data on to how much those benefits would amount to.

Philosophical and non-confessional organisations enjoy the very same status as do churches and other religious communities. This follows from Art. 140 of the Basic Law in conjunction with Art. 137 Section 7 of the 1919 Constitution of the German Empire which reads: "Associations whose purpose is to foster a philosophical creed shall have the same status as religious societies."

There are no 'dominant' religions, 'known' religions, 'recognised' or 'non-recognised' religions as legal categories in Germany. Religious communities and philosophical and non-confessional organisations are free to function. Germany has a two-tier system of religious communities: Pursuant to Art. 140 of the Basic Law in conjunction with Art. 137 Section 4 and 5 of the 1919 Constitution of the German Empire, religious societies acquire legal capacity according to the general provisions of civil law. They are thus mostly organised as civil law associations. A number of religious communities have the status of corporations under public law. As such, these communities enjoy a number of special rights and duties, including the right to levy the so-called church tax. According to the Basic Law, religious communities remain corporations under public law insofar as they have enjoyed that status before the 1919 constitution entered into force. Other religious communities are granted the same rights upon application, if their constitution and the number of their members give assurance of their permanency. Roman-Catholic, Protestant, Christian-Orthodox, Jewish, Jehovah's Witnesses, The Church of Jesus Christ of Latter-day Saints, some

Muslim organisations as well as a multitude of other religious communities and their sub-divisions, such as religious orders or congregations, have this status as corporations under public law. There are also philosophical and non-confessional communities which have this public law status.

In taxation law and the laws on fees the religious corporations under public law enjoy in substance the same status as secular corporations under public law. Religious communities organised as civil law associations enjoy very similar treatment insofar as they perform religious, or equivalent, or charitable activities.

There are no reports on any major or significant tax fraud issues concerning religious organisations or philosophical and non-confessional organisations.

II. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Religious communities are exempt from corporate income tax as far as they perform religious and charitable functions, § 5 section 1 number 9 Corporate Income Tax Act (*Körperschaftsteuergesetz* – KStG).

This also applies to the inheritance and gift tax, § 13 section number 16, 17 Inheritance and Gift Tax Act (*Erbschaftsteuergesetz* – ErbStG).

It furthermore applies to the local business tax, § 3 number 6 Local Business Tax Act (*Gewerbesteuergesetz* – GewStG).

Insofar as these entities perform an economic gainful activity of some considerable extent, this activity is taxable. Economic gainful activity is for example, organising a Christmas bazaar on which goods are sold. Considerable extent is assumed from an income from the activity of over 30,678 euros.

III. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Religious communities are exempt from the tax on real property, § 3 section 1 number 4, 5 Real Property Tax Act (*Grundsteuergesetz* – GrStG).

IV. Taxation of Monastic Communities/Orders

There is no special status for monastic communities and orders as such. They qualify as part of their greater religious community and enjoy the respective tax and fee exemptions.

V. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)

Religious and charitable acts performed by religious communities are not subject to value added tax, § 4 number 18 litera a Turnover Tax Act (*Umsatzsteuergesetz* –

UStG). This follows the same tax regime as do charitable activities by other, secular entities.

Activities of private schools and other private educational entities, such as private academies or private universities, which directly serve educational purposes are exempt from turnover tax; this also applies to religious communities regardless of whether they are civil law associations or public law corporations.

VI. Taxation of Religious Ministers and for Leaders of Philosophical and Non-Confessional Organisations

There are no special rules on the taxation of religious ministers or for leaders of philosophical and non-confessional organisations. They are taxed in the very same manner as are any ordinary people.

VII. Church and Philosophical and Non-Confessional Organisations Tax

Approximately 80% of the entire church budget of the Roman Catholic and the Protestant Churches in Germany is covered by the church tax, guaranteed by Article 137 section 6 WRV in conjunction with Article 140 GG. On the basis of the civil tax lists, in accordance with the law of the *Länder*, the religious communities that are public law corporations are allowed to levy taxes. The large churches have made ample use of this opportunity, but smaller religious communities with the status of public corporation, such as the Jewish communities, have also done so. The church tax is a tax levied by the religious communities; it is not a State tax. The church tax was instituted at the beginning of the nineteenth century in order to relieve the national budget of its obligations to the churches, which were in turn based on the secularisation of church property.

Only members of the particular religious community authorised to levy the church tax are obliged to pay. No religious community may levy taxes on persons other than their own members. Any member who does not want to pay the church tax must be able to leave the religious community.

There is no church tax on legal persons; only natural persons are taxable. This follows from the fact that only members of religious communities can be taxed and legal persons cannot be members of religious communities.

Those desiring to be free of the tax may achieve that result by leaving the religious community. Withdrawal from the religious community is effected by de-registering with the proper State officials and simply means that one has, according to the State classification, officially ended one's membership of the particular religious community in question.

The rate of the church tax is usually between 8% and 9% of the individual's wage and income tax liability. Other tax standards may also be used. The percentage

is calculated taking the wage and income tax liability as the basis and is then paid in addition to the amount of the wage or income tax.

In some churches, but not all, amounts of church tax owed that exceed a certain maximum level are cut and the exceeding part does not have to be paid (*Kappungsgrenze*). This is a response to the situation of tax law options in which taxpayers have to pay a very high income tax and the 8% to 9% church tax may amount to exceedingly high church tax dues.

Because of the links with State taxes, tax exemptions also affect the churches' own church tax. It is estimated that about one-third of all church members pay no church tax because they are not liable to income tax. In some cases, the churches attempt to make up for it by demanding an alternative contribution to the church, which is independent of income tax. This is usually called church due (*Kirchgeld*). It applies often in cases of married couples who are liable to joint assessment of husband and wife for income or wage tax and in which one of the spouses earns the money, but is not a member of a church and therefore is not liable to church tax, and the other spouse is a member of a church, but has no or little income and therefore pays no or very little church tax. The latter spouse is then liable to pay the church due, because in fact he or she does have enough means to support his or her church.

Upon application of qualified religious communities, the church tax may be collected by the State taxation authorities on behalf of the religious community along with the normal State wage and income tax. In doing so, the State offers a service to the religious community; the church tax remains a tax of the religious community only and does not become a State tax. The State hands over the income of the church tax to the relevant religious community. For this service, the religious community has to remunerate the State. This emolument varies from Land to Land; it amounts to between 3% and 4% of the church tax income. In Rhineland-Palatinate, it amounts to 4% of the church tax income; in Baden-Wuerttemberg it is 3%.

In 2017, the total income of the Roman Catholic Church from the church tax was 6.43 billion euros, the total income for the Protestant Churches (Evangelical Church in Germany – *Evangelische Kirche in Deutschland* – EKD) amounted to 6.67 billion euros.

Religious Communities that Levy Church Tax

Church tax is levied by the following religious communities who have transferred the administration of this tax to the Fiscal Authority of the respective Land:

In Baden-Württemberg: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church, Israelite Religious Community Württemberg, Israelite Religious Community Baden, Free-Religious Community Baden

In Bavaria: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church, Israelite Cult Communities

In Berlin: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church

In Brandenburg: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church

In Bremen: Evangelical Church, Evangelical-Lutheran Church; Evangelic-Reformed Church, Roman Catholic Church

In Hamburg: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Jewish Community

In Hesse: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church, Jewish Communities in Frankfurt, Gießen, Kassel, Darmstadt and Bad Nauheim, Free-Religious Communities Mainz and Offenbach (a member of International Humanist and Ethical Union – IHEU and of the International Association for Religious Freedom – IARF)

In Mecklenburg-Western Pomerania: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church

In Lower-Saxony: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman-Catholic Church, Old-Catholic Church Hannover-Lower-Saxony, Jewish Community Hannover

In North Rhine-Westphalia: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church, Jewish Land boards of the Cult Communities of the Cult-Communities North-Rhine, Westphalia-Lippe and the Synagogue Community Cologne

In Rhineland-Palatinate: Evangelical Church, Evangelical-Lutheran Church, Evangelical Reformed Church, Roman Catholic Church, Old-Catholic Church, Jewish Cult Community Koblenz, Free-Religious Community Mainz, Free-Religious Land Community Palatinate, Free-Religious Community Alzey

In Saarland: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church, Old-Catholic Church, Jewish Synagogue Community Saar

In Saxony: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church

In Saxony-Anhalt: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church

In Schleswig-Holstein: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church

In Thuringia: Evangelical Church, Evangelical-Lutheran Church, Evangelical-Reformed Church, Roman Catholic Church.

VIII. Other research questions

1) The church tax and charitable donations to the religious communities may be deducted from income tax, § 10 section 1 number 4, § 10b section 1 Income Tax Code (*Einkommensteuergesetz* – EStG); this applies equally to donations to non-profit organisations. From the taxable income, donations to religious communities of up to 20% of the total income can be deducted.

2) Religious communities that are public law corporations are exempt in very specific and various ways from certain court fees according to varying provisions of various Länder, for example, § 7 section 1 number 1 Legal Expenses Act Baden-Württemberg (*Landesjustizkostengesetz Baden-Württemberg* LJKG BW). The same applies to a number of administrative fees.

Equivalent exemptions apply to associations and foundations which serve charitable aims as defined in tax law insofar as the matter does not constitute a taxable economic business activity (cf. § 7 section 2 Legal Expenses Act Baden-Württemberg).

3) Most religious communities seem to be satisfied with the existing system. There are no significant proposals for amending it from the side of socially relevant religious communities.

Support of tax exemptions is not based on freedom of religion, it is argued on the basis of State support of charitable and cultural activities.

There are a number of actors, such as some parts of political parties, especially the Liberals, but also social-democrats, the left, and the right wing as well as a number of theologians within churches arguing in favour of abolishing the church tax. Currently, there seems to be a general public feeling favouring abolishing the church tax – a recent survey indicates that 56% of the total population supports this idea. Most people, however, are seemingly not aware of the nature of the church tax; it is often perceived as being a tax levied by the State, while in fact it is levied by the qualified religious communities constituting hardly any more than a membership fee.

4) Religious and charitable acts performed by religious communities are not subject to value added tax, § 4 number 18 litera a Turnover Tax Act. This follows the same tax regime as do charitable activities by other, secular entities. The kind and purposes of the transaction have to be indicated in the tax declaration. There is no diverse VAT policy between the religious institutions and the philosophical or non-confessional organisations, because both of them have the very same status.

Exemption from value added tax applies pursuant to Section 4 Turnover Tax Act are:

No. 9 a): supply of immovable property

No. 12: letting of immovable property

No. 16: supply of services closely connected with the operation of old people's and nursing homes etc.

No. 18: supply of benefits from non-state welfare organisations

No. 20: turnover of theatres, orchestras, museums, libraries as well as monuments of the art of building and gardening
No. 21a: services of recognised schools
No. 22: lectures and courses of public law corporations
No. 23/25: services of youth welfare
No. 26: voluntary activities for church corporations
No. 27: provision of personnel of religious orders (deaconesses, priests, monks, etc.) for charitable and school purposes.

THE TAX LAWS APPLYING TO RELIGIOUS, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN GREECE

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I. Income Tax of Religious, Philosophical and Non-Confessional Organisations

Non-profit organisations of both public and private law in general, established in Greece and abroad,[1] including all associations and foundations, are subject to income tax, except in the case of income which is gained in pursuit of the relevant organisation's purpose. Such income is not taxable, pursuant to Article 45 (c) of Law 4172/2013 (the Greek Income Tax Code, hereinafter referred to as "GITC").

Some examples of income generated by non-profit organisations that is not subject to income tax are the following (on an indicative basis): income from membership fees/contributions, government grants, private or business sponsorships, lotteries advertised in magazines which are issued and distributed free of charge only to the organisation's members, third-party donations, and also the proceeds from the distribution of leaflets[2] and other intellectual property content of the Holy Monasteries (Ref. POL.1044 /2015; circular issued by the Secretary General of Public Revenue, otherwise known as the Administrator of the Independent Public Revenues Authority and hereinafter referred to as "Director of the IPRA").

[1] Non-profit-making legal entities governed by public or private law which are incorporated abroad are regarded as taxable persons in Greece when they have their tax domicile in the country, in accordance with the provisions of paragraphs 3 and 4 of Article 4 of Law 4172/2013, or when they have a permanent establishment in our country, in accordance with the provisions of Article 6 of Law 4172/2013 or the SAADF. (Double Taxation Avoidance Contracts), or when they acquire income from real estate, dividends, interest and rights in Greece.

[2] See also Opinion No. 389/2000 of the Greek Legal Council of State.

In any case, exactly what constitutes the pursuit of a non-profit purpose and the revenue generated in pursuit of that objective is a matter that is subject to the consideration and evaluation of the competent tax authority (Ref. DEAF B 1071868 EX 2015 /26.5.2015; document issued by the Head of the General Directorate of Tax Administration).

Revenue earned by non-profit organisations from an activity which does not constitute a non-profit-making activity is taxable, even if it is used to fulfil the organisation's non-profit-making purpose.[3] Examples of such revenue are the following: income from capital (interest, dividends, royalties, income from real estate) and capital gains, subscriptions from non-members, income from the issuance and sale of magazines, books, publications, etc. to third parties /non-members of non-profit organisations as well as the advertisements that are posted on them, the revenue from advertising on sports jerseys, the revenue from tuition in private schools and laboratories, and the revenue from the sale of images, the operation of hostels and radio stations by the Holy Monasteries (circular POL. 1044/2015).

According to the aforementioned circular, religious organisations in Greece are subject to income tax on business income. The applicable income tax rate is currently 28%.[4] Moreover, religious organisations are also subject to the pre-payment of tax for the next fiscal year.[5]

In determining the income of such legal persons and the expenditure incurred by them, a distinction is made between whether the income and expenditure relate to the relevant legal person's business or to the pursuit of their purpose. Part of the expenses relating to business is deducted when determining that income, pursuant to Articles 22 and 23 of Law 4172/2013 ("GITC").

On the other hand, expenditure relating to non-taxable revenue incurred in pursuit of the organisation's purpose is not tax deductible. Furthermore, if there are expenses that are common (i.e. they can contribute to the creation of both taxable and non-taxable income), then they are allocated proportionately to the corresponding revenue.

Finally, it is clearly stated that the expenditure incurred by a legal person in pursuit of its non-profit-making purpose should in no case be deducted from all its business income, regardless of whether its revenue is earned in pursuit of its business or its purpose (see document DEAVB 1087089 EX 2015 /25.6.2015 and POL. No.1113 /2015, a circular issued by the Director of the IPRA).

[3] See Opinion No. 383/1973 of the Greek Legal Council of State.

[4] According to Article 58 of the GITC, the applicable tax rate is 29% for 2018, 28% for 2019, 27% for 2020, 26% for 2021 and 25% for 2022 and subsequent years, pursuant to Article 23 of Law 4579/2018. Pursuant to the new tax measures recently announced, the applicable tax rate for legal persons and entities will be further reduced from 28% to 24% for 2019 and to 20% for 2020 onwards.

[5] See the provisions of Articles 44, 45 (c), 47 par. 2, 58, 71 par. 1 of L. 4172/2013 (GITC).

GITC provides for a tax of 10% on dividend,[6] according to the provisions of Article 65 of Law 4603/2019[7] (Government Gazette A' 49), which modified Article 64 par. 1 (a) of L. 4172/2013 (GITC).

For the dividends received by non-profit-making legal entities of public or private law, the provisions of Article 68 (3) of Law 4172/2013 do not apply, since the legal entities in question do not fall within the meaning of 'corporation' and, therefore, such income is taxed as income from business, subject to the provisions of Article 47 (2) of Law 4172/2013, subject only to withholding tax, in accordance with Article 64 (4) of the same law (see circular POL.1069 /2018).

Real estate income obtained by non-profit-making legal entities derives from the leasing /subleasing (in cash or in kind) or the use or free use of land and real estate, after deduction of all costs relating to real estate (i.e. repair, maintenance, renovation, fixed and operating costs), at a rate of 75% and, in the case of Mount Athos, at a rate of 100%, in accordance with paragraphs 1, 2 and 3 of Article 39 of Law 4172/2013, as well as the total imputed owner-occupation cost.

It should be noted that the notion of fixed and operating expenses, deducted from gross real estate income acquired by non-profit legal entities, includes the depreciation of property, calculated on the basis of the provisions of Article 24 of Law 4172/2013 (referring to the circulars POL. 1069/2015 of the General Secretariat of Public Revenues and 1069/2018 of the Director of the IPRA).

Finally, it should be clarified that when determining the real estate income of non-profit legal persons, the deductible expenses only include those for which the lessor or concessionaire is responsible and not any expenses borne by the lessee or the concessionaire, respectively (for example, expenditure on electricity or water, etc.) (see circular POL 1069/2018).

The concept of expenditure, deducted from the gross real estate income of non-profit legal entities, includes the Single Property Tax (ENFIA), in so far as it is an expense relating to property and subject to a 75% or 100% restriction in its deduction from real estate income, in accordance with the provisions of sub-paragraphs (b) and (c) of par. 3 of Article 39 of Law 4172/2013 (see document no. ΔΕΑΦΒ 1087089 ΕΞ 2015/25.6.2015).

The expenses such legal persons and entities have incurred on non-income real estate (for example, when this estate is vacant) are deducted from the gross real estate income of non-profit legal entities, since all the income they earn is considered, pursuant to Article 47 (2) of Law 4172/2013 as business income and therefore the

[6] Pursuant to the new tax measures recently announced, the dividend tax rate will be reduced from 10% to 5% in 2020.

[7] See also Decisions E.2047/2019 and E.2092/2019 of the Independent Authority for Public Revenues (IPRA).

expenses they have incurred on their property are deducted from the zero income from real estate, subject to the terms and conditions of par. 3 of section 39 of the same law. The above also applies to expenditure on privately owned properties (see circular POL.1069 /2018).

As regards rental income, the Supreme Administrative Court, through its decision nos. 1731-1733 /2018, has held that the tax exemption for rental income provided for in 1952 by Legislative Decree 2185/1952 for legal persons was abolished in 1971 by Legislative Decree 1077/1971.

More specifically in this regard, the Church of Greece requested that the submitted income tax returns for the years 2011–2013 (fiscal years 2010–2012) which obliged her to pay a total tax of approximately EUR 18 million, should be partially recalled. However, the Supreme Administrative Court held that the rental income of the Church of Greece arising from urban real estate was subject to tax and that, consequently, the Church of Greece had lawfully paid 2.9 million euros during the period 2011–2013.

Therefore, the Church of Greece, as a non-profit-making legal entity of public law, is subject to income tax for rental income arising from urban real estate that it owns following the concession granted under the 1952 contract (a total of 164 urban properties), pursuant to Articles 99, 101 and 109 of Law 2238/1994 (prior to the GITC). It should be noted that, according to the abovementioned court rulings, subsequent legal provisions enacted in 2010 concerning the abolition of the tax exemptions for profit-making or non-profit making legal persons have no bearing on the existing tax obligations relating to the specific real estate property of the Church of Greece.

It should also be noted that the tax year for non-profit legal entities is the same as the calendar year. However, should the entities concerned keep duplicate books, the tax year may expire on June 30 (see circular POL.1223 /2015).

II. Real Estate Tax of Religious, Philosophical and Non-Confessional Organisations

It should be noted that Article 3 of L. 4223/2013 on the new Uniform Tax on the Ownership of Real Estate Property (EN.F.I.A., otherwise known as the ‘Single Property Tax’) grants exemptions for property rights belonging to, among others: a) legal persons governed by public law which do not constitute a General Government body and exclusively serve educational, cultural, sports, religious, charitable or public benefit purposes or whose services are granted free of charge to the State, and b) legal persons governed by private law which do not constitute a General Government body, are of a non-profit-making character and whose services are used exclusively for educational, cultural, sports, religious, charitable and public benefit purposes or are provided free of charge to the State.

Therefore, all other real estate properties owned by such legal persons and entities that are not used for religious or charitable work are subject to EN.F.I.A., while the method of calculating the EN.F.I.A. is provided for by the provisions of Article 4 of L. 4223/22013.

1. Calculation of EN.F.I.A.

EN.F.I.A. is a composite tax and consists of a main tax and a supplementary tax. The main tax is calculated as follows:

> EN.F.I.A. on Buildings: The principal tax on property rights on buildings is determined as follows: Tax = Building Surface (sq. m.) x Principal Tax (P.T.) x Building Age Rate (B.A.R.) x Floor Rate (F.R.) or Detached House Rate (D.H.R.) x Façade Rate (F.R.) x Auxiliary Spaces Rate (A.S.R., where applicable) x Incomplete Building Rate (I.B.R., where applicable).

The individual tax rates imposed are specified by the provisions of Art. 4. of L. 4223/2013.

2. EN.F.I.A. on Plots (plots within urban plan zones)

The principal tax on property rights on plots is determined as follows: Tax = Surface of the plot (sq. m.) x Tax Rate (T.R.)

The individual tax rates imposed are specified by the provisions of Art. 4. of L. 4223/2013.

3. EN.F.I.A. on Agricultural Plots (plots outside urban plan zones)

The principal tax on property rights on agricultural plots is determined as follows:

> Tax = Surface of the plot (sq. m.) x Principal Tax Rate (P.T.R.) x Rate of Location (R.L.) x Rate of Use (R.U.) x Rate of Irrigation (R.I.) x Rate of Expropriation (R.E., where applicable) x Residence Rate (R.R., where applicable).

The individual tax rates imposed are specified by the respective provisions of Art. 4. of L. 4223/2013.

4. Supplementary Tax

The supplementary tax of EN.F.I.A. is imposed on the total value of the real estate property and is calculated according to different tax rates (progressive tax rates or proportionate tax rate), depending on the status of the taxpayer who is subject to tax (individual or legal/other entity).[8]

[8] PwC, Tax Bulletin, The New Uniform Tax on the Ownership of Real Estate Property (EN.F.I.A.), February 2014, p. 9.

The supplementary tax on legal or other entities is imposed at a tax rate of 5‰ on the total value of the property rights that are subject to EN.F.I.A., not taking into account the value of rights on properties that are exempt and the value of property rights on buildings and plots that are used by owner-occupiers for the production or the exercise of any business activity, irrespective of the nature of the business.[9]

For the calculation of this supplementary tax, especially in the cases of non-profit-making legal persons governed either by public or private law, the supplementary tax rate is reduced and corresponds to 2.5‰ of the total value of the property rights subject to EN.F.I.A. for real estate property that is not used by the owner-occupier.

III. Taxation of Monastic Communities/Orders

According to the Legislative Decree of 10/16 Sept. 1926 regarding the ratification of the "Charter of Mount Athos" (Article 2),[10] Mount Athos has been granted specific tax and customs advantages, as follows:

a. The customs advantages consist of the importation into Mount Athos, through both the monasteries and other establishments (sketes, cells, etc.), of any kind of good up to the value of a thousand metallic drachmas. The control of this exemption is determined by a special agreement between the Ministry of Finance and the Holy Community.[11]

b. The tax advantages of Mount Athos are as follows: (1) any products produced are exempt from any tax on net income or any other such income; 2) the transfer and the income of any property located on Mount Athos is exempt from tax. Craftsmen are also granted this tax advantage, though not traders operating on Mount Athos; 3) the monks resident on Mount Athos are exempt from consumption taxes on products produced and consumed on Mount Athos, except for consumption taxes on tobacco, gunpowder and other explosives and monopoly products. The amount of tax-free consumption of the above-mentioned products is determined by means of a special agreement between the Ministry of Finance and the Holy Community; 4) all contracts effected on Mount Athos which concern the concession of rights on immovable property located in the monastic republic and which are drafted by the competent monastery authorities or the Holy Community are exempt from stamp duty.[12]

[9] Loc. cit.

[10] See also Supreme Administrative Court (StE) decision no. 611/1988.

[11] For the customs duties and advantages of Mount Athos see also Legislative Decree 2725/1940.

[12] Pursuant to Article 2 (1) and (57) of Law 1642/1986 (Government Gazette A 125), in the Mount Athos region no value added tax should be levied, whereas all the laws which were abolished by Art. 57 of L. 1642/86 were also abolished in the Mount Athos region.

Pursuant to Article 44 of the above-mentioned legislative decree, the Charter of Mount Athos[13] was published together with the decree in the same issue of the Official Government Gazette, thus gaining the force of law. Furthermore, Article 69 of the National Customs Code (L. 2960/2011) stipulates that the provisions of the Code have no bearing on the special regime of Mount Athos as far as the imposition of the special consumption tax is concerned.

Moreover, according to Article 3 of L. 4223/2013 on the new Uniform Tax on the Ownership of Real Estate Property (EN.F.I.A.), exemption from EN.F.I.A. is granted for property rights belonging to, among others: a) legal persons and legal entities of known religions and dogmas under paragraph 2 of Article 13 of the Constitution and whose properties are used for the execution of their religious and charitable work, and b) the Holy Monasteries of Mount Athos that enjoy special constitutional status, regardless of whether they are located within or outside the boundaries of Athos.

Therefore, all other real estate properties owned by such legal persons and entities that are not used for religious and charitable work are subject to EN.F.I.A. and the method of calculating the tax is specified by the provisions of Article 4 of L. 4223/2013.

1. **Calculation of EN.F.I.A. on the Real Estate of Monastic Communities/Orders**

See Section II.I above, the details of which also apply here.

As regards excise duties on energy products and ethyl alcohol, in its Opinion No. 188/2018, the State Legal Council (1st Plenary Session) answered a number of questions on the excise duty on energy products and ethyl alcohol and the exemption of the Holy Monasteries of Mount Athos. According to the State Legal Council:

a. The customs advantages of Mount Athos, as provided for by the applicable provisions and in particular Article 2 (a) of Regulation 10 /16.9.1926, do not include exemption from excise duty on energy products (mineral oils) or ethyl alcohol.
b. By combining the provisions of Article 130 of Regulation (EC) 1186/2009, Art. 5 (6) of Directive 2008/118 /EC, Art. 69 of the Customs Code and Art. 105 (5) of the Greek Constitution (which stipulates that the customs and tax privileges of Mount Athos shall be determined by law), the conclusion may be drawn that Community law and the current Constitution allow the exemption of the products in question by law (unanimously).

[13] See also the following articles of the Charter of Mount Athos: Art. 2 (a general article regarding the advantages of Mount Athos), Art. 167 (regarding tax-free imports), Art. 168 (regarding tax-free exports), Art. 170 (regarding tax-free fishing) and Art. 188 (regarding the origin of the Charter).

2. Further Taxation of Ecclesiastical Legal Persons

Apart from the above, ecclesiastical (church) legal persons are subject to:

a. Donation and Inheritance Tax at the rate of 0.5%, as stipulated by the law for legal entities of public law and local authorities (Articles 25 [3], 29 [5] and 43, and Chapter II, paras. 9, 14 and 16 of L. 3842/2010 and Article 25 of Law 2961/2001).
b. Value Added Tax (VAT), at the same rates, which generally apply to the supply of goods and services, which are a commercial activity (Law 2859/2000).

Last but not least, church legal entities withhold taxes and pay for the provision of employees' or independent services (Articles 61, 62 and 64 [1][d] of Law 4172/2013) and stamp duties are also paid (PD Code of 28.7.1931), along with all respective contributions (for example, contributions to the Agricultural Insurance Organisation) on the value of transactions, at tax rates that are generally applicable to all other legal entities.

IV. Taxation of Religious Social Institutions and Philosophical and Non-Confessional Organisations (charity, educational, etc.)

As regards income (tuition fees) from the operation of private schools, in cases where the operation of the private school is not the primary purpose of the non-profit legal entity but an incidental activity which it has developed, such income is subject to tax.

Two examples of cases in which the operation of a private school is not the primary purpose of the non-profit legal entity operating it are as follows: first, a charity dedicated to the care and education of children with cognitive, intellectual and developmental disabilities which also operates a kindergarten for children without the above difficulties and receives tuition fees for doing so, and second, an ecclesiastical/religious institution which is run with the primary purpose of providing practical assistance and support to children and young people and guiding them according to the principles of Greek Orthodox tradition and culture, and has established and operated a private elementary school (see the documents D12B 1129239 EX 2012 /19.9.2012 and D12B 1138140 EX 2011 /3.10.2011, issued by the Directorate of Income Taxation - D12 of the Directorate General for Taxation of the General Secretariat for Taxation and Customs Affairs of the Ministry of Finance).

On the other hand, tuition income obtained by non-profit-making legal entities governed by public or private law (including all unions and foundations), with the sole purpose of providing education, is not taxable as it is earned in pursuit of their non-profit educational purpose (see the circular POL.1123 /2015, issued by the Director of the IPRA).

As regards bequests and special accounts, the following should be noted: bequests and special accounts are not considered to be separate legal entities (see Opinion

Nos. 74/2004 and 354/2003 of the State Legal Council - NSK) and their property is considered to belong to legal persons to whom they are made or to educational institutions, where appropriate. Therefore, such bequests and special accounts do not have a separate tax liability, but their income is taxed in the name of the persons whose property is increased, on the basis of these persons' tax treatment (see circular POL .1044 /2015).

V. Taxation of Religious Ministers and Leaders of Philosophical and Non-Confessional Organisations

Religious ministers and leaders of philosophical and non-confessional organisations receive a salary which is subject to tax according to the provisions of the GITC on the taxation of individuals (Articles 10–20 of the GITC), at the applicable tax rates provided for in the respective progressive scale relating to employment income in Article 15 of the GITC. Moreover, such individuals are also subject to the Special Solidarity Contribution, according to the progressive scale in Article 43A of the GITC.

Furthermore, the Governor of Mount Athos also receives a salary as a General Secretary of the Government, and this salary is also subject to the taxation of individuals according to the progressive scale in Article 15 of the GITC. Moreover, the Governor is also subject to the Special Solidarity Contribution, according to the progressive scale in Article 43A of the GITC.

VI. Special Tax on Churches and Philosophical and Non-Confessional Organisations

N/A, since there is no special tax on churches and philosophical and non-confessional organisations in Greece. Therefore, please refer to the tax regime as presented in the sections above.

VII. Other Research Questions

1. Tax Treatment of Donations Made to Religious Organisations and Philosophical and Non-Confessional Organisations by Natural Persons or by Persons Generating Income from Business Activity

One important issue concerns the donations made to religious organisations and philosophical and non-confessional organisations. According to the new Income Tax Code (hereinafter 'the Code') effective as of 1 January 2014, donations made to certain bodies specified in a ministerial decision may be eligible for a tax reduction, in accordance with Article 19 of the Code, which regulates tax reductions for the purpose of calculating income from salaried employment and pensions. On the other hand, donations made to certain bodies may be deducted from gross revenue in

accordance with Article 22 of the Code, which regulates deductible expenses for the purpose of calculating revenue from business activity.

A) *Tax Reduction for Donations made to Religious Organisations and for Donations made to Philosophical and Non-Confessional Organisations by Natural Persons*

The tax reduction offered to donors is addressed in Article 19 of the Code, which lays down the special conditions for tax reduction. Specifically, according to the above article, the amount of tax is reduced by ten percent (10%) on the amount of donations made to the bodies stipulated in a ministerial decision issued pursuant to this provision, where donations exceed one hundred (100) euros during any given fiscal year. The total amount of donations cannot exceed five percent (5%) of taxable income. Furthermore, the above provision stipulates that tax reduction may be offered only if donations are deposited into designated accounts held with banks operating lawfully in an EU or EEA Member State.

In addition, clarifications of Article 19 of the Code have been provided in the form of decisions issued by the Ministry of Finance and interpretative circulars by the Tax Administration.

More specifically, Ministerial Decision ΠΟΛ 1010/2.1.2014 specified the bodies domiciled in Greece or in other EU or EEA Member States which are eligible for tax reduction in respect of donations granted to them. These bodies include charities and domestic legal entities of private law which have been, or are being, lawfully established and pursue charitable purposes.

With regard to domestic legal entities of private law which pursue charitable purposes, it should be noted that they should pursue such charitable purposes exclusively, i.e. not in parallel with other purposes (Council of State 3391/1976). Specifically, a charitable purpose is any national, religious, philanthropic, educational, cultural or other purpose benefiting society in part or in whole (Article 1 of Law 4182/2013). Moreover, in addition to pursuing the purposes set out in its Statute, an entity must also carry out activities that actually promote the attainment of its charitable purpose (Council of State 3099-3100/1981, 1876/1982).

The provisions of Article 19 of Law 4172/2013 concerning tax reductions applicable to donations were communicated, inter alia, by Interpretative Circular ΠΟΛ 1052/2015. The circular also provided certain clarifications on the possibility of deducting ten percent (10%) of the donations made to specific bodies from the tax due following income tax clearance, provided that such donations exceed one hundred (100) euros during any given fiscal year. Specifically, it was clarified that if a taxpayer declares donations of up to a total of 100 euros in their tax return, then this amount will not be taken into account for tax reduction purposes. In accordance with the applicable provisions, the total amount of donations may not exceed five percent (5%)

of a donor's taxable income. Otherwise (if the above rate is exceeded), the amount of the donation that can be recognised and on which the ten percent (10%) rate shall be applied, so that the resulting tax to be paid by the donor may be reduced, is limited to five percent (5%) of the donor's taxable income.

In addition, Circular ΠΟΛ 1052/2015 clarifies that donations are tax deductible only if deposited into designated accounts, into which no other type of deposit may be made, held with banks operating lawfully in an EU or EEA Member State. The time of donation is considered to be the time when the sum is deposited and not the time it is collected by the donee.

It should be clarified that all tax-paying natural persons are eligible for a tax reduction for the donations they have made, since according to Interpretative Circular ΠΟΛ 1052/20.02.2015 of the Secretariat General for Public Revenue, the scope of Articles 17, 18 and 19 of the Code is not limited to salaried employees and pensioners, but extends to all taxpayers, irrespective of their income category, provided that they meet the requirements laid down by the legislative framework, given that the provisions of Articles 17, 18 and 19 do not refer to the tax rates of Article 15 (tax rates for salaried employees and pensioners), as is the case with Article 16 of Law 4172/2013.

Finally, the circular clarifies that donations are treated as personal expenses of the taxpayer and therefore it is not possible to reduce the tax on donations made by the taxpayer's spouse or other dependents.

B) *Deduction of Donations Made to Religious Organisations and to Philosophical and Non-Confessional Organisations by Persons Generating Income from Business Activity*

The new Code lays down rules regarding the deduction of expenses in the course of business activity. Specifically, Article 22 of the Code sets out the conditions for deducting deductible business expenses, while Article 23 specifies non-deductible expenses.

According to Article 22 of the Code, '*Subject to the provisions of Article 23 of the Code, in calculating profit from business activity, the deductible expenses are as follows:*

a. those which are incurred in the interest of an entity or in the ordinary course of its business;
b. those which represent an actual transaction whose value is not lower or higher than its market value, on the basis of data available to the Tax Administration;
c. (c) those which are registered in the transaction records for the period in which they were incurred and can be demonstrated by appropriate documentation.'

Furthermore, pursuant to Interpretative Circular ΠΟΛ 1113/2.6.2015, which communicated the provisions of Articles 22, 22A and 23 of Law 4172/2013, the new Income Tax Code establishes new rules on the deduction of business expenses from

the gross revenue of businesses, whether these be natural persons or legal persons or entities. Specifically:

Article 22 establishes a general rule for the deduction of business expenses, in the sense that, in principle, all expenses incurred in the interest of a business and meeting all other criteria set out therein, are deductible. The above article should be read in conjunction with Article 23 relating to non-deductible business expenses, and Article 48(4) relating to non-deductible business expenses associated with intra-group dividends exempt from tax. In other words, according to the newly introduced rule, any expenses which meet the criteria of Article 22 and are not included in the exhaustive list of non-deductible expenses provided in Article 23, are deductible.

Specifically, according to ΠΟΛ 1113/2.6.2015, the expenses incurred in the interest of an entity or in the ordinary course of its business include all expenses considered appropriate by the entrepreneur or the management of the entity, irrespective of whether they are incurred in the context of a legal or contractual obligation, with a view to attaining the entity's business objective, expanding its operations, improving its market position, provided that they are incurred in the context of the entity's mission or in the ordinary course of its commercial transactions, and that they can contribute to the generation of income, or the expansion of the entity's operations and revenue (Council of State 2033/2012), or to the implementation of actions in the context of corporate social responsibility.

Moreover, as confirmed by case-law and as accepted by the Greek tax administration, tax authorities may not assess the feasibility or the appropriate extent of the aforementioned expenses (Council of State 2963/2013, Council of State 1729/2013, Council of State 1604/2011, etc.), unless expressly and specifically stipulated by law (for example, intra-group transactions).

The term 'corporate social responsibility' refers to the actions taken by entities with a view to addressing environmental and social issues. Specifically, businesses are inextricably linked to the community in which they operate, influencing and being influenced by the circumstances of the period in which they operate and the field of their activity. Therefore, they must recognise the responsibility they bear towards society and the environment. They must respect the principles and values that characterise our society (respect for people, human dignity, and the provision of equal opportunities; respect for the environment bequeathed to us, and commitment to improving the standards of living and the quality of life).

Corporate social responsibility can be classified into six categories, depending on the nature of the respective initiative/programme: cause promotion; cause-related marketing; social marketing; corporate philanthropy; employee engagement; and socially responsible practices.

'Corporate Philanthropy' involves a contribution of money to a charity organisation/cause. It is the most traditional form of corporate social responsibility.

Therefore, although Article 22 provides for the deduction of expenses incurred in the interest of an entity or in the ordinary course of its business, the interpretative circular issued on this matter clarifies that deductible expenses include not only expenses considered appropriate by the entrepreneur or the entity's management to attain its business objective, expand its operations, improve its market position with a view to generating income or expanding the entity's operations and revenue, but also those expenses that are incurred in implementing corporate social responsibility actions and corporate philanthropy actions, in particular.

Moreover, according to theory,[14] the provisions of the Code read in conjunction suggest that donations to domestic legal entities of private law which pursue charitable purposes, and to other entities referred to in the previously applicable Code (Article 31[1] [a][cc] of Law 2238/1994), are also deductible as business expenses under the provisions of Law 4172/2013.

Finally, it should be noted that, contrary to the previously applicable legislative framework (Article 31[1][a][cc] of Law 2238/1994), which laid down conditions and limitations on the deduction of donations to charities and domestic legal entities of private law which pursue charitable purposes,[15] the current legislative framework (new Code) does not lay down any special conditions and limitations regarding the deduction of donations to such entities, other than those stipulated in Article 22 relating to deductible expenses in general. In particular, no maximum limit of deductible donations on the basis of total net income or profit is specified.

The above-mentioned facts are confirmed by Circular ΠΟΛ 1113/2.6.2015, which did not introduce any conditions and limitations with regard to deductible donations to the aforementioned entities.

[14] See also Tasos Kotziagiaouridis, 'Deduction of amounts paid by way of donation to the State, to charitable institutions and to domestic legal entities governed by private law, which pursue public benefit purposes, as business expenses', posted on Taxheaven, 24.11.2015.

[15] Specifically, the previously applicable legislative framework (Article 31[1][a][cc] of Law 2238/1994) provided that amounts donated, *inter alia*, to charities and domestic legal entities of private law which pursue charitable purposes are deductible from the gross revenue of businesses. The donation amounts were deductible by up to ten percent (10%) of the total net income or profits stated in balance sheets. It should be noted that the latest amendment to this provision by virtue of Law 3842/2010 established a maximum limit for deductible donations, which was linked to the total net income or profits stated in balance sheets. Therefore, pursuant to this amendment, a donation was deductible by up to ten percent (10%) of the total net income or profits, while the remaining amount of the donation was not eligible for deduction. Moreover, the donation amounts were only taken into account if deposited into an account kept by the receiving legal entity with a credit institution. Finally, the total amount of deductible donations could not exceed the net profits before the deduction of such amounts from the gross revenue for the relevant fiscal period.

2. Inheritance Tax Rules Regarding Non-Profit Legal Entities

The tax treatment of inheritance is provided for in Article 25 (Inheritance tax exemptions) and Article 29 (taxpayer classification - tax rates) of Law 2961/2001 endorsing the Code of Provisions on the Taxation of Inheritances, Donations, Parental Transfers and Gains from Games of Chance (Government Gazette, Series I, No 266/22.11.2001).

According to Article 25 of Law 2961/2001:

> "*1. No tax shall be collected on assets whose beneficiaries are:*
>
> *(a) the State, accounts created in favour of the State; and*
>
> *(b) ….*
>
> *3. Special taxation rules in accordance with Article 29(5) shall apply to assets whose beneficiaries are:*
>
> *(a) ….*
>
> *(b) Non-profit legal entities operating or established lawfully in Greece or in another EU or EEA Member State, as well as foreign entities meeting the condition of reciprocity, as well as assets referred to in Article 50 of Law 4182/2013* (Government Gazette, Series I, No 185), where they demonstrably pursue national, religious, philanthropic, educational, cultural or other purposes benefiting society in part or in whole, within the meaning of Article 1 of Law *4182/2013*".[16]

Furthermore, Article 29 of Law 2961/2001 provides for taxpayer classification and tax rates. According to the said article:

> *"1……*
>
> *5. The acquisition of money from deceased persons referred to in Article 25(3) shall be subject to special taxation at a rate of zero point five percent (0.5%). The acquisition of other assets from deceased persons shall be subject to special taxation at a rate of zero point five percent (0.5%).'*
>
> According to the above provisions, non-profit legal entities operating or established lawfully in Greece or in another EU or EEA Member State, as well as foreign entities meeting the condition of reciprocity, are subject to special taxation, provided that they demonstrably pursue national, religious, philanthropic, educational, cultural or other purposes benefiting society in part or in whole, within the meaning of Article 1 of Law 4182/2013.

[16] It should be noted that paragraph (b) was replaced by Article 15 of Law 4484/2017 (Government Gazette, Series I, No 110/1.8.2017) and came into force upon the promulgation of the Law in the Government Gazette, namely on 1 August 2017, in accordance with Article 85 of the same Law.

Furthermore, according to the code on public properties, estates without claimants and other provisions, which is included in Article 1 of Law 4182/2013 (Government Gazette, Series I, No 185/10.09.2013), a 'public benefit purpose' is defined as '*any national, religious, philanthropic, educational, cultural or other purpose benefiting society in part or in whole*'.

Therefore, a key condition for the special taxation of the above legal entities is that they pursue at least one of the purposes included in the exhaustive list specified by Law 2961/2001, including philanthropic or public benefit purposes.

Furthermore, a distinction should be made between non-profit legal entities which operate or are established lawfully in Greece or another EU or EEA Member State, and other foreign entities. While the former are subject to special taxation, provided that they meet the condition of pursuing a certain philanthropic or public benefit purpose, the latter (foreign entities) are subject to special taxation on the condition of reciprocity. Therefore, their taxation status in their home country should be taken into consideration.

3. **Donation Tax Regarding Donations Made to Non-Profit Legal Entities**

Under the current legislation, the tax treatment of donations to non-profit legal entities is provided for in Article 43B (donation tax exemptions), Article 25 (inheritance tax exemptions) and Article 29 (taxpayer classification - tax rates) of Law 2961/2001 endorsing the Code of Provisions on the Taxation of Inheritances, Donations, Parental Transfers and Gains from Games of Chance (Government Gazette, Series I, No 266/22.11.2001).

Article 43 of Law 2961/2001 provides for donation tax exemptions. According to this article:

> *"A……*
>
> B. Special cases of donations
>
> *(a) The provisions of Article 25(3)* (of Law 2961/2001) *shall apply pro rata to acquisitions as a result of donation. Monetary donations to a legal entity referred to in Article 25(3) shall be subject to the tax rate specified in Article 29(5) after deduction of the tax-exempt amount of one thousand (1,000) euros per year.*
>
> *(b) The following shall be exempt from donation tax and the obligation to file a tax return:*
>
> *(i) donations of monies or other movable assets by anonymous or other donors, where the provision of such donations is organised on a national level at the initiative of bodies demonstrably pursuing philanthropic purposes; and*
>
> *(ii) donations of all kinds of assets, made between ecclesiastical legal persons referred to in Article 25(3)(a)".*

It should be noted that, in the past, donations to non-profit legal entities were exempt from donation tax (Article 43[B], as applicable, before it was replaced by Article 25[A][16] of Law 3842/2010). Currently, in accordance with the Code of Provisions on the Taxation of Inheritances, Donations, Parental Transfers, etc., which was endorsed by Article 1 of Law 2961/2001, full exemption from donation and inheritance tax is only granted to the public sector. In fact, by express statutory

provision (Article 25[8] of Law 3842/2010), all tax exemptions that applied up until that point were repealed as of 23 April 2010.

Pursuant to the above provisions, monetary donations to non-profit legal entities lawfully existing or established in Greece or in another EU or EEA Member State, as well as foreign entities meeting the condition of reciprocity and the estates referred to in Article 50 of Law 4182/2013 (legal entities referred to in Article 25[3]), are subject to donation tax after the deduction of a tax-exempt amount of one thousand (1,000) euros per year.

The donation tax is calculated in accordance with the provisions of Article 29(5) of Law 2961/2001. Therefore, the tax on donation amounts is subject to special taxation at a rate of zero point five percent (0.5%) after the deduction of a tax-exempt amount of one thousand (1,000) euros per year.

The person liable to pay the tax is the beneficiary (donee).

Furthermore, as regards the filing of a donation tax return, Article 85(A) of Law 2961/2001 stipulates that, in the case of donations by way of notarised agreements, the persons liable to file the relevant tax return are the parties to such agreements. In the case of donations for which no notarised agreements have been signed, and in all other cases, the person liable to file the relevant tax return is the donee.

Where the donation is made by way of a notarised agreement, the tax return must be filed before the notarised agreement is drafted, whether tax is payable or not. However, if the donation is not made by way of a notarised agreement or if such agreement was made abroad but not before a Greek consular authority, the return must be filed within six (6) months of delivery of the promised asset to the donee.

The head of the tax office in the district where the donor resides is responsible for receiving the tax return and certifying the resulting donation tax. By way of exception, the head of the tax office in the district where the donee resides is responsible for receiving the tax return and certifying the resulting donation tax in respect of donations to the persons referred to in Article 25(3), including non-profit legal entities which pursue philanthropic or public benefit purposes (Article 87[1][b] of Law 2961/2001, as supplemented by Article 23[1][f] of Law 3943/2011). If the donor is a foreign resident, the person responsible is the head of the Tax Office for Foreign Residents, and if the notarised agreement was made abroad before a Greek consular authority, the tax return is filed with the consul, to whom the corresponding tax is also paid.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN HUNGARY

Balázs Schanda

The taxation of ecclesiastical entities does not belong to the hot topics of Hungarian ecclesiastical law. Subsidising religious entities would be much more debated than taxing them. With regard to public subsidies there are significant differences between different categories of ecclesiastical entities as well as between ecclesiastical entities and other organisations. With regard to taxation, these differences are less significant.

I. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Religious communities can easily acquire a legal entity status and this way they enjoy legal personality. Property rights of religious entities do not fall under restrictions. The status of incorporated, recognised and registered communities as well as that of religious associations (there are four levels of recognition/registration available for religious communities) are different but with regard to the taxation system these differences are not very significant.

Subsidies and donations to religious entities are neither subject to taxes nor enhanced by tax deductibility.

Philosophical or non-confessional organisations can function as associations or foundations. Their taxation regime would be quite like that of religious entities.

There are no special rules applicable to religious or philosophical/non-confessional organisations with regard to secrecy.

II. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Real estate taxes can be introduced by local communities. The status of incorporated, recognised and registered communities and religious associations (there are four levels of recognition/registration available for religious communities) is the same with regard to real estate taxes: they all enjoy full exemption of all real estate

taxes as well as all other local taxes.[1] Philosophical or non-confessional organisations could establish associations or foundations. These also enjoy full exemption from real estate taxes.

III. Taxation of Monastic Communities/Orders

Religious orders (monastic or not) are egarded as internal organisations of a church and in this way enjoy ecclesiastical legal personality. The general tax exemption of ecclesiastical legal persons also applies to religious orders.

Religious entities have the right to engage in business activities. A company set up and owned by a religious entity would not qualify as an ecclesiastical entity and would fall under the general tax regime.

There is an exhaustive list of activities that do not qualify as business activities of ecclesiastical entities. These are the activities closely related to religious services (for example, the production of objects of worship and liturgy). Maintaining a retreat centre,[2] the partially commercial use of a church-owned building (for example, to let a part of the building for a shop), maintaining a cemetery) would not rule out the ecclesiastical character of the ecclesiastical entity. In other words these are accepted activities for the ecclesiastical entity itself and there is no need for them to set up a separate legal entity to carry out the business. The number of such properties is limited and does not raise public concern.

As agricultural property was not restituted to religious orders after the collapse of the communist regime, the business activity of religious orders is very limited. A highly visible example is the Archabbey of Pannonhalma. Their taxation rules could be more favourable than those of other businesses as long as their profits are used exclusively for the purposes of the institution.

IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations

Religious – as well as non-religious – social institutions run by the various religious communities or by philosophical and non-confessional organisations are generally tax-exempt. As religious entities enjoy tax exemption, all their internal entities are tax exempt as well. The same applies to associations and foundations. For example, a school run by a church or a foundation would be equally tax exempt.

[1] Act C/1990. § 3 (5).

[2] A tourist lodged at a retreat centre would be subject to local tourism tax; a clergyman holding the retreat would not be.

V. Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

Ministers ('ecclesiastical persons') of incorporated, recognised and registered religious communities enjoy income tax exemption for income received from donations. The source of these donations is the net income of faithful (they do not receive tax deductions upon their donations) – a mass stipend would fall into this category.[3] Housing of clergy would not qualify as income for taxation purposes. Ministers of religious associations or leaders of leaders of philosophical and non-confessional organisations would not enjoy a similar benefit.

All other income of religious ministers would fall under the general income tax regime.

Clergy also have to take part in the general social security system. For the Catholic clergy, the Bishops' Conference provides for social security based on the minimum wage. This covers the medical care of clergymen as well as a minimum pension.

VI. Church and Philosophical and Non-Confessional Organisations Tax

Since 1998, a major form of public funding is a tax assignment system, as income taxpayers were given the right to assign 1% of their tax to a religious community of their choice or to alternative public funds. Beginning with the tax return for the year 1997 (due in March 1998), income taxpayers could direct that 1% of their income tax be paid to a church of their choice or to a public fund. Another 1% could be directed to NGOs, museums, theatres, and other public institutions. From 2012 to 2019, the 'religious' 1% could only be directed to incorporated religious communities. From 2020, this possibility should be open to supporters of all religious communities, including recognised and registered churches as well as religious associations.[4]

Philosophical or non-confessional organisations could receive tax assignments as NGOs. A significant difference between tax assignments to religious entities and to NGOs is that NGOs are required to give a public account of how they have used the funds, whereas the full autonomy of recognised churches includes that they enjoy full discretion on using the money from tax assignments.

There are no special regulations for religious institutions with regard to the VAT.

[3] Act CXVII/1995. Annex 4.8.

[4] Act CXXVI/1996.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. REPUBLIC OF IRELAND

Stephen Farrell

I. Workshop 1: Income Tax of Religious Organisations and for Philosophical and Non-Confessional organisations

In Ireland the starting point for understanding the relationship between Church and State is *Bunreacht na hÉireann*, the 1937 Constitution. The Preamble invokes the "Name of the Most Holy Trinity, from whom is all authority, and to whom, as our final end, all actions both of men and States must be referred". The Preamble also humbly acknowledges "all our obligations to our Divine Lord, Jesus Christ, who sustained our fathers through centuries of trial". The Preamble serves little purpose other than as a way of saying that the Constitution is to be the Constitution of Ireland. It has occasionally been referred to by the Courts, but only so far as it shines a light on claims about the religious nature of the State.[1] The Report of the Constitutional Review Group in 1996 recommended the amendment of the Preamble, but this has not been taken up by successive governments. The 1937 Constitution recognised freedom of religion, but also the "special position of the Holy Catholic Apostolic and Roman Church as the guardian of the Faith professed by the great majority of the citizens"[2] This 'special position' article was removed by a referendum in the Fifth Amendment to the Constitution in 1972.

Article 44 of the Constitution provides that:

> The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.
>
> 1. Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.
>
> 2. The State guarantees not to endow any religion.

[1] In *Quinn's Supermarket Ltd. v. Attorney General* [1972] IR 1, at 23, the Preamble was used as a basis for the claim that the Irish are 'a Christian people'. See also *Norris v Attorney general* [1984] IR 36.

[2] Article 44.1.2.

3. The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4. Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5. Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious and charitable purposes.

6. The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

Understanding the relationship between Church and State also requires attention to be paid to European provisions such as Article 9 of the European Convention on Human Rights, as well as to domestic legislation. Having inherited a common law system Ireland also has a large amount of judge made law and the case law is an important source, especially in the field of constitutional interpretation.

The constitutional protection given to religion seems to have been framed with Christianity in mind, but the courts have held that the protection goes further. In *Corway v Independent Newspapers (Ireland) Ltd*[3] Barrington J. held:

> The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholic, Protestants, Jews, Muslims, agnostics or atheists.

Since 1871 no Church in Ireland has been established by law.[4] All Churches in Ireland and other faith communities are voluntary and unincorporated associations. In *State (Colquhoun) v d'Arcy*[5] Sullivan P described the status of a church not established by law as

> The status of a voluntary association the members of which subscribe or assent to certain rules and regulations and bind themselves to each other to conform to certain laws and principles, the obligation to such conformity and observance resting wholly in the mutual contract of the members enforceable only as a matter of contract by the ordinary tribunal of the land.[6]

Unincorporated Associations do not possess legal personality. Their assets are held by members jointly rather than by the association itself. In theory any individual members could be held liable for all the acts of the association in his or her own

3 *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.
4 Irish Church Act 1871.
5 *The State (Colquhoun) v d'Arcy* [1936] IR 641.
6 *The State (Colquhoun) v d'Arcy* [1936] IR 641 at 650.

right. Unless they were acting in breach of trust, trustees will generally not be liable personally for the debts or acts of a trust. In some religious bodies property is held by private trusts, in others registered companies hold assets.

Irish law makes a distinction between religious bodies and non-religious bodies in terms of treatment for the purposes of taxation. The main distinction is that most religious bodies in Ireland are charities, and this charitable status brings certain benefits in terms of paying tax and recovering the tax paid by members on donations to that religious body. The Charities Act 2009 sought to consolidate and regularise a plethora of disparate pieces of legislation, pre-independence statute law and often unclear judge made law. Under the 2009 Act in order to come within the definition of a charitable organisation a body must promote a charitable purpose only, apply all its property in the furtherance of that purpose (save that it can remunerate staff and meet the costs of operation – additionally, religious organisations may use funds for the accommodation and care of its members), and not remunerate its trustees. The Act sets out four heads of charitable purpose – the relief of poverty, the advancement of education, the advancement of religion, and other purposes beneficial to the community. The community head is further divided into 12 categories including protection of the natural environment, the advancement of the arts, the promotion of health and the promotion of civic responsibility.[7] For each of the four heads a purpose must be in the public benefit in order to be a charitable purpose. However, there is a statutory presumption that a gift for the advancement of religion is of public benefit. In order to be considered a religion the Irish Charities Regulatory Authority provides a two stage test – belief in a supreme being, and the worship of that supreme being.[8] The Authority states that this has been settled by case law, though there is no Irish case on the issue. The Authority seems to draw on the language used in the English case of *Re South Place Ethical Society*, which is only of persuasive authority in the law of Ireland. The Law Reform Committee of the Law Society of Ireland has recommended that statutory clarification be given to the legal definition of religion[9] and notably the Charities Act 2009 did not attempt to clarify the position.[10] It is possible that other philosophical associations may gain charitable status under another head, though they will have the additional burden of having to meet the public benefit test.

Charities do not pay income tax on donations or rental income and may claim relief on donations from the taxed income of donors. The Charitable donation scheme allows a charity to claim a refund of tax paid by a donor on any donation over €250

[7] The Charities Act 2009 s 3(11).

[8] 'What is a Charity?' An Rialálaí Carthanas, Charities Regulator. Dublin 2018 at 7.

[9] Charity Law: The case for Reform. A Report by the Law Society's Law Reform Committee. Dublin 2002 at 75.

[10] See Property and Trust Law in Ireland. Walters Kluwer 2017 Una Woods at 281.

and under €1,000,000. The donor must agree to the charity claiming the relief and applies equally to PAYE workers and the self-employed. These schemes apply to all charities, not just religious bodies.

II. Workshop 2: Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Most charities are treated in the same way for taxation purposes touching or concerning Realty. However, religious charities are treated more favourably generally as they do not have to satisfy the public benefit test. Various gifts of moveable or real property for the advancement of religion have attracted charitable status: 'the best interests of religion'[11] , the saying of Masses,[12] upkeep of graves,[13]the conversion of Roman Catholics to the doctrines of the Church of Ireland,[14] support of clergy[15] and an ecclesiastical office (as opposed to the office holder).[16]

Charities are exempt from paying Capital Gains Tax when they sell property or Capital Acquisitions Tax when they receive gifts or testamentary gifts, and they do not pay Stamp Duty when they purchase Real Estate.

If a Charity owns residential property that will have to pay Local Property Tax on that property. Local Property Tax was introduced in 2013 to fund local public services and is an annual levy on residential properties of 0.18% of their market value on properties valued up to €1m, and 0.25% on the balance over €1m. This has impacted many religious charities that own properties such as tied housing for clergy. Often these properties will not be owned by a local church but will be owned by a diocese or by a central trustee. This means that the tax is paid centrally by the diocese/trustee as owner and recovered from the local parishes.

Religious bodies benefit from these tax exemptions in a way that private individuals or businesses cannot. As discussed above they also benefit in ways that non-confessional bodies not recognised as religions and therefore not eligible to become charities cannot. To obtain these benefits a religious body must first register as a charity with the Charities Regulatory Authority and then apply to the Revenue for recognition. Their application to Revenue must include their latest financial accounts, a statement of their charitable activities and a copy of the charity's constitution. Any charity wishing to retain these benefits must remain tax compliant, maintain its charitable status (by complying with the Charities Act 2009). It must use all income for

[11] *Re Howley's Estate* [1940] IR 109; *Re Caus* [1934] IR 388.
[12] *Kelly v Walsh* [1948] IR 388.
[13] *Maguire v AG* [1943] IR 238, *Re Keogh's Estate* [1945] IR 13.
[14] *AG v Becher* [1910] 2 IR 251.
[15] *Coe v Beale* [1943] IR 372.
[16] *Coe v Beale* [1943] IR 372.

its charitable purpose and keep audited accounts. It must also seek the approval of Revenue before accumulating funds over two years or starting a trade. The Revenue publishes a list of all bodies that have been granted charitable tax exemption.[17]

Religious bodies get an exemption from rates on any land, building or part of building used exclusively for the purpose of public religious worship, which is a significant privilege. The same exemption applies to burial grounds, hospitals, schools, care homes, community halls or premises used by 'charitable organisations' for charitable purposes.[18]

III. Workshop 3: Taxation of Monastic Communities / Orders

There are no specific rules in Ireland governing the taxation of Monastic Communities or Orders. As with most religious bodies monastic Communities will invariably be charities. As Monastic Orders become smaller in number with older members many are closing. As individual houses close assets are typically transferred to a Mother House or to the central Order, making the contracting Monastic Orders wealthy.

In *Gilmour v Coates*[19] the House of Lords held that the purposes of a contemplative order of Carmelite nuns in London were not charitable in that they failed to benefit the public. The House unanimously held that the benefit of intercessory prayer to the public was not susceptible of legal proof and the court could only act on such proof. Arguably the case set the public benefit bar too high.[20] Lord Greene MR said "the contrary of 'beneficial to the public' is not 'detrimental to the public', but 'non-beneficial to the public'.[21] This approach was rejected by the Irish Courts in the first meaningful instance of divergence in the common law on charities between the UK and Ireland. At the same time that *Gilmour v Coates* was progressing through the courts in London, *Maguire v Attorney General*[22] was heard in Dublin. The facts were similar, concerning in the Irish case a gift to allow for the building of a chapel for the perpetual adoration of the Blessed Sacrament of an Order of nuns, but not the general public. Gavan Duffy J rejected the English view:

[17] https://www.revenue.ie/en/corporate/documents/statistics/registrations/bodies-charitable-exemption.pdf Accessed 01 August 2019.

[18] Valuation Act 2001 s15 (2).

[19] *Gilmour v Coates* [1949] AC 426.

[20] See Meakin, R. '*Gilmour v Coates* Revisited: a study in the law of public benefit', (2016) Law and Justice 177.

[21] Ibid. 345.

[22] *Maguire v Attorney General* [1943] IR 238.

> The assumption that the Irish public find no edification in cloistered lives, devoted purely to spiritual ends, postulates a close assimilation of the Irish outlook to the English, not obviously warranted by the traditions and mores of Irish people.[23]

In what has euphemistically been referred to as 'reaching behind the Elizabethan statutes to the ancient common law',[24] Gavan Duffy J. was able to satisfy himself that there was ample authority for the proposition that gifts for religious purposes, which served neither to instruct nor edify the public, could nevertheless be charitable. He concluded that

> It is a shock to one's sense of propriety and a grave discredit to the law that there should, in this Catholic country, be any doubt about the validity of a trust to expend money in founding a convent for the perpetual adoration of the Blessed Sacrament.[25]

For religious orders, as for all religious bodies, unless a gift by a donor fails for technical reasons, was in breach of the criminal law or public policy, was morally subversive, devoid of all merit, made with an improper motive, or was compromised by a relationship nexus with the intended beneficiaries, then it would normally be valid. S3(7) of the Charities Act 2009 provides that:

> in determining whether a gift is of public benefit or not, account shall be taken of – (a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard for the nature and purpose of the gift.

It remains to be seen if the courts will read this provision as limiting the scope of the spirited judgements of Gavan Duffy J. in *Maguire* and *Re Howley*.

IV. Workshop 4: Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations

Social Institutions run by religious bodies such as schools and universities will be charities in their own right, claiming charitable status not for the advancement of religion, but with advancement of education as their primary charitable objective. As with religious charities this will entitle them to exemptions on income tax, capital gains tax, stamp duty and Capital Acquisitions Tax.

Unlike religious bodies, the social institutions they run often enjoy a combination of charitable status and state funding. In Ireland there is a right to free primary and secondary education. At present 95% of primary schools are operated by religious bodies, in buildings owned either by the state or by the religious body or part owned by each. These schools operate according to the religious ethos of their Patron (an

[23] *Maguire v Attorney General* [1943] IR 238. See also *Re Howley* [1940] IR 109.
[24] O'Halloran, Kevin, 'Religion, Charity and Human Rights', Cambridge 2014 at 248.
[25] *Re Howley* [1940] IR 109.

Office recognised by the Education Act 1998 and one that carries certain privileges and obligations). The Patron is usually the local bishop, and s/he appoints the chair of the school Board of Management (usually the parish priest), and the Board of Management appoints the Principal and teaching staff.[26] The teachers will have their salaries paid by the Department of Education and Skills and the school will be given a small state grant per pupil to run the school. This income is tax exempt.

New schools are increasingly being given to non-religious patrons, such as Educate Together, a body that seeks to promote non-confessional education. Such schools are treated in the same way as religious schools for the purposes of taxation and grants as their treatment is based on their charitable status.

Secondary schools may be fee-paying or free. That a school charges fees does not preclude it from state assistance nor does it undermine its charitable status. Many schools are run by specially created companies limited by guarantee, in addition to a set of school trustees and a management company.

This hybrid approach to secondary schools mean that whilst there are many fee paying schools there are no entirely private secondary schools in Ireland. There are some private primary schools (usually attached to fee paying secondary schools) and these also have charitable status.

Religious institutions do not benefit from tax or bank secrecy. Accounts must be lodged with the Charity Commissioners and will be published annually. There are no reported examples of religious bodies, religious social institutions or their non-confessional equivalents being used to evade tax. There is a politically controversial element to the charitable status of religious schools being charities whilst charging fees that can only be met by the wealthy, but this is true too of secular fee paying schools.

V. Workshop 5: Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

Ministers of Religion are subject to taxation in the same way as other private individuals, save for certain regulations concerning income tax. Most religious ministers are not employees, but are office holders.[27] Clergy in Ireland are taxed under Case II of Schedule D (the self-employed) yet office holders are taxed under Schedule E. Since 1975, following the passing of the Social Welfare Act 1974, Church of Ireland clergy, for Pay Related Social Insurance (PRSI) purposes, are levied under class E – a class which includes clergy of the Church of Ireland. Catholic priests only

[26] Education Act 1998.

[27] See *O'Callaghan v O'Sullivan* [1925] 1 IR 90; *Dolan v K* [1994] IR 470; *O'Dea v O'Briain* [1992] ILRM 364.

began making PRSI contributions in 1998 when the state mandated all self-employed persons to contribute. They pay standard self-employed PRSI contributions.[28]

VI. Workshop VI: Church and philosophical and non-confessional organisations Tax

In Ireland there is no tax imposed on tax payers for the benefit of churches. Prior to 1869 there was a system of tithes that saw a tax imposed on the population, most of whom were Catholic, for the maintenance of the State Church which was the reformed Church of Ireland. This led to the largely non-violent era of political unrest known as the tithe war. The bloodiest clash was the Battle of Carrickshock[29] in 1831 when a force of 120 yeomanry tried to enforce a tithe on the cattle owned by a Catholic Priest. His parishioners resisted the efforts of the soldiers and twelve locals were killed. In retaliation a local militia ambushed and killed twelve constables, including the Chief Constable for County Kilkenny. Skirmishes and civil unrest continued until 1838 when Parliament in Westminster passed the Tithe Commutation (Ireland) Act, which greatly reduced the amount payable and made it payable to local authorities rather than to the Church of Ireland directly. Full relief from tithes only came with the disestablishment of the Church of Ireland in 1869.

VII. Other Research Questions

Efforts to engage clergy and lay people from a number of denominations on why they think the taxation of churches ought to be as it is now, or on why it ought to be different, has been a rather fruitless task. Most responses centre on the churches as charities, doing work in their communities and often doing that which the state fails to do, but without receiving state aid in the process. Churches are making efforts at present to comply with the new charities regulations and clearly they see charitable status and its attendant tax benefits as a system worth defending. Some non-confessional bodies point to the charitable status of religious bodies as unfair, and Atheist Ireland has referred religious groups to the Charities Regulatory Authority when it perceives them to be lobbying or campaigning politically rather than advancing religion.[30] In addition they have run a campaign since 2012 calling for the recognition of non-confessional or philosophical groups as charities in the same way as religious bodies. Their 'Good without Gods' campaign seeks to have a separate secular head for charity, though it is unclear what its charitable purpose is intended to be, as it

[28] Archdiocese of Dublin – Administrative Guidelines. December 2008, D4.

[29] Owens, Gary, 'The Carrickshock Incident, 1831: Social Memory and an Irish cause célèbre' Huron, Canada, 2009.

[30] https://atheist.ie/2018/04/regulator-iona-institute/ Accessed 1st August 2019.

focuses on doing good works in the community as opposed to the advancement of atheism or secularism.[31]

Religious bodies are not exempt from the payment of VAT, even on works carried out on religious buildings or on purchases necessary for the carrying out of their charitable purposes. As most charities do not offer goods or services for consideration they do not charge VAT, and so have traditionally been precluded from registering to reclaim VAT paid. In its 2018 Budget the Irish Government introduced a VAT Compensation Refund Scheme, to allow charities to reclaim some VAT. It is estimated that charities pay approximately €40m per annum in unclaimed VAT,[32] making the scheme relatively modest in its impact as it has a total fund of €5m, meaning that charities will be paid part of their claim on a pro rata basis if applications exceed the fund limit. Religious bodies are eligible to apply for the scheme as are all charities.

31 https://atheist.ie/campaigns/good-without-gods/ Accessed 1st August 2019.

32 VAT Compensation Scheme Factsheet. The Wheel. Dublin 2018.

TAXATION, RELIGION AND NON-RELIGIOUS PHILOSOPHICAL ORGANISATIONS IN EUROPE: THE ITALIAN CONTEXT

Roberto Mazzola

I. Tax Regimes for the Funding of Religious Organisations and Non-Religious Philosophical Associations

1. Funding of Religious Denominations

A distinction must first be made between 'direct' and 'indirect' sources of funding within the legal framework regulating the financing of religious denominations. In the case of direct financing, the recipient receives a direct payment, while for indirect financing, funds are derived from a tax benefit. A further distinction must be made between the funding of directly religious activities and those with indirect links to religion: the first concerns activities that are directly and explicitly carried out within a religious scope; the second concerns activities with indirect links to religion, such as secular events that the religious denomination is approved to hold.

Within this framework, what are the main funding instruments?

Public funding. It must first be noted that public funding occurs through a mechanism of *tax allocation*, that is, it is directly transferred from the taxpayer to the religion. In general, recipients of this type of funding are religious denominations that serve the needs of individual citizens. The individuality of this type of funding is, however, the source of some issues. Firstly, there is a danger that the mechanism may be used politically to the detriment of religious freedom. Secondly, the possibility to donate only to religious denominations does not take into consideration the wide array of organisational forms through which organised religious phenomenology manifests today. Indeed, the mechanism of public funding finds discipline and recognition only in the confines of the agreement system: to access dedicated financial streams, an agreement or arrangement with the Italian government is mandatory.[1]

[1] Cfr. N. Fiorita, *Il pluralismo in materie religiosa nel settore del finanziamento pubblico delle confessioni*, in *Diritto e religione in Italia. Rapporto nazionale sulla salvaguardia della libertà religiosa in regime di pluralismo confessionale e culturale*, a cura di S. Domianello, il Mulino, 2012, p. 75 ss.

But what activities carried out by religious organisations justify the right to benefit from public funds? Historically, the primary purpose of funding was to sustain the clergy and thus remunerate individuals in religious groups whose role it is to carry out specific liturgical and religious functions. Over time, other activities have been added that are not explicitly linked to these functions. These are: i) industrious/entrepreneurial activities (such as those in the tourism sector); ii) third party activities concerning solidarity and societal utility that, for ethical reasons, the State considers worthy of protection, even if they are not part of the religious realm. This expansion can be explained by the transformation from a Welfare State model to a Welfare Community model, both to affirm the principle of horizontal subsidiarity (as per art. 118, para. 4 of the Constitution) and the principle of non-discrimination of religious character or of an organisation's or institution's religious or worship objective (as per art. 20 of the Constitution). Effectively, as religious organisations carry out socially useful activities and operate in the same sector and fields as non-profit organisations, they find themselves increasingly governed by the regulatory framework stipulated for non-profits and thus subject to the same disciplinary actions. In this context, funding for religions can be extended to religious groups, which are not explicitly religious or cultural, but hold an equivalent social value. Obviously, the risk of having branches of *ONLUS* (non-profit organisations) within the range of religious activities is that the latter will end up benefiting from two streams of funding: one as a civilly recognised religion and one as a non-profit organization.[2] Instruments of public funding:

2. 8 for Thousand of IRPEF (Income Tax)

The introduction of the 8 for thousand system[3] came alongside the reform of systems that support the clergy within the Catholic Church. In 1983, there was a movement away from a system of congruent support with the reform of the *Codex iuris canonici* and the model based on the institution of diocesan or interdiocesan institutes for the support of the clergy.[4]

[2] See E. Costantino, *Carità e Terzo settore. L'associazione di volontariato*, in *Gli enti ecclesiastici nella riforma del Terzo settore*, a cura di P. Cavana, Giappichelli, Torino, 2021, p. 203 ss.

[3] See I. Pistolesi, *La quota di otto per mille di competenza statale: un'ulteriore forma di finanziamento (diretto) per la Chiesa cattolica?* in *Quad. dir. pol. eccl*. 1 (2006), p. 177 ss. See again: G. Vegas, *L'otto per mille a vent'anni dalla revisione del Concordato Lateranense*, in *Quad. dir. pol. eccl*. 1 (2004), p. 185 ss; C. Cardia, *Otto per mille e offerte deducibili*, in I. Bolgiani (a cura di), *Enti di culto e finanziamento delle confessioni religiose*, il Mulino, Bologna 2007, p. 252.

[4] See G. Di Cosimo, *Risorse economiche pubbliche e Chiesa cattolica: due nodi al vaglio dei giudici*, in *Rivista telematica (www.statoechiese.it)*, n. 29/2015 5 ottobre 2015, pp. 15. Read again: M. Cristina Folliero, *La legislazione vaticana in materia finanziaria: un banco di prova dell'art. 17 del TUE e dei principi di collaborazione e cooperazione tra Chiese, Stato e Unione Europea*, in Rivista telematica (www.statoechiese.it), n. 35/2013 11 novembre 2013.

The main source of funding of diocesan institutes for the support of Catholic clergy is the 8 per thousand systems, provided for under Laws 206 and 222 of 1985. Based on the bilateral model, these laws that have attracted the mechanism of public financing of religious denominations. The progressive implementation of art. 8 para.3 of the Constitution with the unfolding of the season of agreements resulted in the extension of the mechanisms provided for under 222/1985 to minority religions interested in this type of funding.[5]

How does the 8 for thousand system work? It is a part of a double system of public funding. A system where the Anglo-Saxon soul of tax deductibility is paired with the European tradition of State contributions to religious denominations. A system that introduces a safeguard clause of sorts in *favour religionis*, protecting religions where one of the two expected financial flows does not have the expected or desired outcome.

The Catholic Church defines this as a system of self-financing of the Church, facilitated by the State. It is true direct financing as it confirms a transfer of public funds from the treasury to ecclesiastic accounts. It is a funding system of a fiscal nature as the State devolves 8 for thousands of total tax revenues to the Catholic Church and other religious denominations by agreement, or to the State for income tax purposes for social or humanitarian use.

3. How does the 8 per Thousand System Work?

First, the taxpayer must choose to allocate a portion of income tax to religious organisations in their tax return. The choice is not proportional to the taxpayer's income, but rather expresses a preference for the allocation of their tax revenue. Unexpressed quotas are generally distributed according to the percentages of the quotas expressed.

The total quota for each religious denomination is assigned by a competent internal authority. As an example, for the Catholic Church, the CEI carries this out: each year, during the general Assembly, the CEI establishes the distribution quotas for varied purposes as provided for by art. 48 of Law 222/1985. These purposes include: worship needs of the population (religious buildings, protection of cultural goods), support of the clergy and charitable interventions assisting the national community or Third World countries. The CEI intervenes in two ways for the final two points: directly, but only for activities of national importance, or at a decentralised level, transferring funds to dioceses and diocesan institutes for the support of the clergy.

[5] See A. Licastro, *Postilla di aggiornamento, v. Sostentamento dei ministri di culto*, in *Enc. giur*., VIII Roma, Istituto della Enciclopedia Italiana Treccani, 2000, p. 2 ss. I. Pistolesi, *Il finanziamento delle confessioni religiose*, cap. XVI, *Nozioni di Diritto ecclesiastico*, a cura di G. Casuscelli, Giappichelli, Torino, 2006, p. 165 ss.

Regarding the use of the funds by the Catholic Church, the total amount is usually divided as follows: 42% for worship purposes, 36% for the support of the clergy and 22% for charitable interventions. Of this 22%, half is intended for dioceses; 30% for work in Third World countries and 20% for national interventions.[6]

Regarding religious denominations other than the Catholic Church, not all of them have decided to adhere to the 8 for thousand system. The Church of Jesus Christ and the Latter-day Saints (Mormons), for example, prefers voluntary funding from followers and does not benefit from this funding. The Waldensian Table originally did not receive the funding, but changed in 1993, introducing a rule approving the agreement that provides for the application of 8 per thousand, but only for the quotas expressed. The unexpressed quotas are to be allocated to the State (art. 4, paragraph 2, Law 409/1993). That said, in 2009, a further modification of the law approving the agreement occurred (Law 68/2009), where the Waldensian Table decided to benefit from the unexpressed quotas (art. 2, law 8 June 2009, no. 68).

The Assemblies of God in Italy and the Apostolic Church in Italy, on the other hand, have not had second thoughts. They immediately accepted the non-integral version of the 8 per thousand system, without benefiting from the unexpressed quotas.

The list of the religious denominations that have more recently stipulated an agreement are as follows: *Sacred Orthodox Archdiocese of Italy, The Italian Buddhist Union; The Italian Hindu Union Sanatana Dharma Samgha; the Italian Buddhist Institute Soka Gakkai.* These religions have decided to benefit from the 8 per thousand system.

The 8 for thousand model came under severe criticism in 2014 by the Judiciary of the Court of Auditors with Resolution no. 16/2014/G. This document brought the issue of public funding of religions to the attention of politicians, emphasising the defects and limitations of the system with severity, precision and clarity.

What are the critical points of the 8 per thousand system as highlighted by the judges?[7] **a)** In recent years, the contribution to religious denominations has exceeded 2/3 of the resources allocated for the preservation of the country's artistic heritage. This has resulted in a deduction by the Parliament of a significant portion of income tax revenue. If this is associated with a reduction in public spending, it can be interpreted as an unreasonable amount of public funding, bordering on a threshold of unconstitutionality when viewed in the context of the principle of secularism. **b)** Unexpressed quotas result in a triplication of revenues and benefit the major beneficiaries of allocated quotas; the Catholic Church alone is allocated 300 million euros of the

[6] See G. Casuscelli, *L'otto per mille nella nuova relazione della Corte dei Conti: spunti per una riforma*, in *Rivista telematica (www.statoechiese.it),* n. 39 del 2015.

[7] See S. Carmignani Caridi, *L'otto per mille dell'Irpef e la XVI legislatura, prospettive 'de jure condendo'*, in *Quad. dir. pol. eccl*. 1 (2006), p. 142 ss.

quota. This is then used to calculate a relative percentage from the 700 million euros of unspoken quotas. There appears to thus be a defect in the system with respect to the principles of proportionality, voluntariness and equality. Indeed, the mechanism results in an interpretation of unexpressed quotas as a sort of '*blank delegation'* in favour of those who allocate, so that the entire amount is divided in proportion to expressed choices only. **c)** This system confirms that there is an imperfect religious pluralism, the bilateral nature of which allows for the consolidation of privileged legal positions. Access to the 8 per thousand is subject to an agreement and access to such an agreement is dependent on the political discretion of the government, as was recently confirmed by the Constitutional Court in ruling 52/2016. **d)** The 8 for thousand system excludes non-confessional philosophical associations or, in general, those who have a negative religious objective. **e)** The 8 per thousand system has contributed to the economic strengthening of the Catholic Church and other religious denominations that benefit from this type of funding. The data on contributions allocated demonstrate that the system needs re-examination as the 8 per thousand is becoming too great a burden for the Italian Treasury. A reduction in the percentage of funding should thus be renegotiated down with the State. **f)** It is noted that there is a lack of transparency with regards to the use of the funds by those who benefit from the system. Indeed, the Lazio Regional Administrative Court (Judgment No 6634 of 8 September 2005) regarding the work of the Joint Committee reiterated that the measures taken are for internal use for the purposes of applying Law No 222/1985 and that they are of a proactive nature and are thus not covered by the *actio ad exibendum*. **g)** The lack of control on reporting of the contributions should be evidenced, with specific reference to the figures responsible for monitoring the management of these resources. The Court of Auditors notes a lack of control by the Ministry of Finance and the *Agenzia delle entrate* (Revenue Agency) in the development and management of computer data. There is thus a danger of manipulation of choices by intermediaries who are particularly close to certain beneficiaries. **h)** Checks on the use of funds are not provided for. The taxpayer is not provided with any opportunity to check that the choice indicated corresponds with the one sent to the Revenue Agency, as the data indicated in the model declaration can be modified by an intermediary prior to transmission. Controls carried out by the Court of Auditors demonstrate cases in which *Centri di assistenza fiscal* (Tax Assistance Centres – CAF) has transmitted data relative to the allocation of funds that differs from the will of the taxpayer. **i)** Procedures lack transparency and systems are unsatisfactory for use. **l)** Paradoxically, the reason why the 8 per thousand system was developed (for the support of the clergy) forms a marginal percentage when compared to the real use of the funding. This may give rise to an unreasonable form of public funding. Only 1/3 of the 8 for thousand is used by the Catholic Church for the support of the clergy. In this regard, the government has asked for a greater financial commitment from the Church, requesting the CEI to reevaluate the contributions. However, the Church does not agree with this, as it holds

that ministers of worship must be held to "service". The government has also asked the Catholic Church to increase spending in humanitarian and charity projects as only 20% of the sums received from the 8 per thousand system are used for this purpose. Use of the funds for purposes that can be traced back to the category of "worship and pastoral requirements" is also inappropriate. In this sense it is incorrect if these funds are used to fund institutions of religious science, archives or libraries. These should be funded at the State or diocesan level.

4. **5 for Thousand of IRPEF (Income Tax)**

The 5 for thousand system is intended for ecclesiastical entities that have established an *Onlus* (non-profit organisation) in accordance with Legislative Decree no. 460 of 1997, taking on the role of partial non-profit, able to take advantage of the funds granted from the 5 per thousand of income tax. As is provided for by common law, religious entities tend to give way to organisations of a foundational nature in non-profit sectors, through which the proceeds of the 5 per thousand can be channeled.[8] This practice often creates misunderstanding relative to the nature of the entity, as well as the type of activities it carries out. The proceeds of the 5 per thousand can become a significant item in the budget of religious organisations (and for other non-profit organisations). That said, unlike the 8 for thousand, in which the funds are intended for religious purposes, in the 5 for thousand, religious entities are direct beneficiaries of the funds, which can then be used for one of the activities indicated in art. 10 of Legislative Decree no. 460 of 1997, or the non-profit branch of the entity.[9]

[8] The 2006 Finance Act (Law No 266 of 23 December 2005, Article 1, paragraphs 337 et seq.) introduced the possibility for taxpayers to devolve 5 for thousand of their personal income tax to entities operating in sectors of recognised public interest for socially useful purposes. The institution of 5 for thousand was regularly refinanced in the following years, while specific provisions concerning the distribution and payment of the sums and their reporting by the beneficiaries were issued by decrees of the President of the Council of Ministers.

Taxpayers can allocate their 5 per thousand share of Irpef to subjects operating in the following sectors: i) Voluntary work (the Ministry of Labour and Social Policies - Directorate General of the Third Sector and Corporate Social Responsibility is responsible) ; Scientific and university research (the Ministry of Education, University and Research is responsible); health research (the Ministry of Health is responsible); Social policies pursued by municipalities (the Ministry of the Interior is responsible);- mateur sport activities (the Presidency of the Council of Ministers - Office for Sport with the support of CONI is competent, except for the years 2006 and 2007); activities for the protection, promotion and enhancement of cultural and landscape heritage (the Ministry of Cultural Heritage and Activities and Tourism is responsible - an activity introduced from 2012 by Law No 111 of 15 July 2011) ; Support for the management of protected areas (the Ministry for the Environment and Protection of Land and Sea is responsible - activity introduced from the year 2018 by Law n. 172 of 4th December 2017).

[9] See P. Consorti, *La disciplina dell'impresa sociale e in cinque per mille*, in *Quad. dir. pol. eccl*. 2 (2006), p. 473.

5. **Private Funding**

Tax deductibility of voluntary donations up to a maximum of 1032.91 euro.

This form of funding, provided for by art. 46 of Law 222/1985, concerns so-called "liberal acts" through which citizens freely and voluntarily donate personal economic resources to religious denominations to contribute to and support religious activities. The taxpayer is actively participating as the monetary donation is tax-deductible, resulting in a tax saving. The detaxation of donations results in a reduction in State revenue, classifying it as another negative budget item.

The tax in question is IRPEF (*imposta sul reddito delle persone,* or personal income tax). On a national level, the total amount is paid towards the Central Institute for the support of the clergy. Tax deductible donations act as a barometer to display the real level of consideration granted towards support of the clergy and the truth is that the number of donations is extremely low. What are the reasons for this failure? First, the fact that the donations can only be addressed to the ICSC. Sociologically, Italian Catholics are more inclined to donate to their own parish or community, rather than to a central institution that is abstract and distant.

This mechanism has been acknowledged by all religious denominations with an agreement, basically replicating the rule provided for in art. 46 of Law 222/1985. However, as donations are only for religious denominations with an agreement, its success is accompanied by clear criticism of the fact that it may lead to situations of a discriminatory nature. This issue was raised before the Constitutional Court, but the appeal was declared inadmissible. Religious denominations request to raise the ceiling of deductibility was rejected and no changes have been made in this regard.

II. **Fundraising**

It is surprising to speak of fundraising in the context of religious organisations. The organisational structures of religions, especially Catholic ones, have always implemented policies with the objective of sourcing global economic resources. The term used for the sourcing of these resources is fundraising. These resources are used to support primarily devotional religious activities, but they also support charitable activities, welfare and others. Religious fundraising was borne out of the Catholic Church: for centuries it has systematically provided for and implemented fund collections so that it may meet social and cultural goals, as well as provide aid to the needy. Economic contributions to the life and operations of an organisation carrying out activities on behalf of one's religion satisfies a personal need to legitimise religious belonging by exercising a constitutional right to religious action.

In this case, the *utilitas* that is derived from such donations must be understood in a strictly non-profit sense. Indeed, the act provides gratification for those who donate on moral grounds. Overall, this logic is in line with that of fundraising, as the

exchange is of a meta-economic good, a relational good that leads to moral and not economic enrichment.

As an example, where the Catholic Church is concerned, it is the duty of the faithful to "assist with the needs of the Church so that the Church has what is necessary for divine worship, works of apostolate and charity and for the decent support of ministers" as provided for in § 1 of can. 222 of the 1983 CIC. That said, similar duties are stipulated by other religions. Fundraising tools compatible with the specific nature of religious entities that are able to utilise the economic resources available to the entity include general event organisation, fundraising campaigns of various styles and sizes (big, medium and small donators, for-profit companies, banks, public institutions), mail outs, collaborations, partnerships and sponsorships for religious initiatives with private and public subjects, legacy programmes and donations. The preparation and use of innovative fundraising tools with the help of the internet, social networks and the media are in general of fundamental importance.

For non-confessional philosophical associations, the UAAR statutes (which are legally presented as APT),[10] identify the main sources of funding as: i) amounts left to the religion in wills, with the proceeds bequeathed and accounted for in special tables outside of the budget; ii) public funding such as the UAAR library funds which are contributed to by the Ministry of Heritage and Culture; iii) income from extra activities such as the sale of goods – these goods are mainly books published directly by the association but may also include copies of the association's magazine and various other gadgets; iv) income from membership fees; v) 5 for thousand of income tax; vi) 2 per thousand of income tax for cultural associations; vii) donations; viii) financial and asset income.

III. Taxation of Immovable Property Belonging to Religious Denominations and Non-Confessional Philosophical Organisations

The first measure concerns the ICI exemption regime provided for by letter i) of art. 7 of Legislative Decree no. 504/1992 for buildings used by ecclesiastical entities in social and philanthropic activities; in particular, the letter i) exempts buildings belonging to non-commercial entities, "intended exclusively for the performance of welfare, social security, health, educational, housing, cultural, recreational and sporting activities, as well as the activities referred to in art. 16, letter a), of Law no. 222 of 20 May 1985" (activities of religion or worship). The exemption is recognised when the following conditions are jointly met: i) the first is of a subjective nature,

[10] See S. Baldassarre, *Codice europeo della libertà di non credere. Normativa e giurisprudenza sui diritti dei non credenti nell'Unione europea*, Repubblica italiana, Premessa di F. Margiotta Broglio, Nessun Dogma, Roma 2020, pp. 206–216.

specifying that the property be used by a non-commercial entity as per art. 73 (ex. art. 87), paragraph 1, letter c) of Presidential Decree no. 917 of 22 December 1986 (TUIR); ii) the second is of an objective nature, where the property must be used exclusively for the performance of the activities listed in the regulation.

With regard to the aforesaid conditions, it is noted that religious entities may qualify for the exemption in two cases: when they carry out the activities referred to in art. 16, letter a), of Law No. 222/1985 (religion and worship activities) in the buildings; or, outside of these cases, when the buildings are used for welfare, social security, health, education, housing, culture and recreational and sporting activities. In the second case, the religious body may take advantage of the exemption not as a religious organisation, but as a non-commercial entity. It is thus classified in the same way as all other non-commercial entities that carry out the same activities. This is the most problematic issue from a community point of view, indeed, Italy has received a formal invitation (letter from 5 November 2007, prot. D/54393-CP71/2006) to provide further information relative to an alleged conflict with the State aid regime – an invitation which has not been taken up with the initiation of infringement proceedings before the Court of Justice.

Finally, art. 36(3) of Presidential Decree No 917/1986, TUIR, does not appear be affected in any way by the prohibition of State aid. The article states that "real estate intended exclusively for worship purposes, including monasteries, shall not generate income if they are not rented out, provided that they are compatible with the provisions of arts. 8 and 19 of the Constitution, and their additional amendments". The exclusion to this, which is consistent with the objective inability of the buildings to produce income, exclusively covers places where worship occurs: it is therefore structurally incompatible that business activities occur in these places, as they are the only ones to which the prohibition of State aid can be applied.

With regards to non-confessional philosophical associations, paragraph 7 of art. 85 of the CTS provides for a tax benefit relative to the exclusion from IRES of real estate income used exclusively to carry out or finance non-commercial activities. This tax benefit came into force on 1 January 2018.[11]

IV. Taxation of Religious and Monastic Orders

The Italian legal system provides that religious institutions (which includes religious orders) with pontifical rights (can. 634 § 1) can respond as legal canonic persons, able to obtain civil recognition as ecclesiastic entities. In this sense, it is possible to divide the framework according to the principle taxes provided for by Italian tax law.

[11] See S. Baldassarre, *op. cit.*, pp. 206 ss.

i) Value added tax (VAT). From a fiscal perspective, all civilly recognised ecclesiastical entities should be considered non-commercial activities, as their principal or exclusive objective is not commercial. By law, their purpose is that of worship and religion and their main objective is to carry out activities that meet the needs of these objectives. Such activities include worship and soul exercises, training of clergy and religious figures, achievement of missionary goals, catechesis and Christian education. This does not mean that these entities cannot carry out other activities in addition to those that are typically institutional (management of parish theatres, cinemas, bars or catering activities in the oratorial space, kindergartens, parish museums, sports facilities, accommodation and reception facilities, etc.). As previously discussed, in this case, it must be decided whether the entity is covered by the tax legislation in force and objectively established if the economic activity exercised by the religious association is only instrumental, occasional, sporadic or incidental in comparison to the other work carried out, or if it is the most prevalent activity. Where the non-religious activities are primary, the entity is obliged to keep separate accounting records as the activity is subject to the specific tax regime provided for by State law. The main source of legislation relative to VAT is without doubt Presidential Decree no. 633 of 26/10/1972. The decree states that for (non-commercial) religious associations, only transactions (supplies of goods or services) carried out within the scope of their commercial activity are relevant for the purposes of VAT. Therefore, those carried out within the institutional framework are not subject to this tax. Art.1 of this Decree states that "Value added tax shall be applied to the supply of goods and the provision of services". All things considered, ecclesiastical entities are normally excluded from the scope of the application of VAT when their activities are carried out within the institutional confines. The exclusion applies only when commercial or agricultural activities are sporadic and not common or habitual; in defining the concept of "habitual" relative to these activities, they must be viewed not only in considering the number of them carried out, but also in their planning, frequency and economic impact. On the other hand, in the case of non-routine transactions relative to the supply of goods and services, the entity may lose, at least for tax purposes, their status as a "non-commercial activity" and be subjected to tax regulations intended for commercial entities. If the entity assumes a commercial connotation, where it regularly and professionally carries out a commercial activity (including activities considered "non-exclusive"), it will be required to have a VAT code (*partita I.V.A*), together with its fiscal code. It must fulfil all accounting and reporting obligations stipulated by the law in force with regards to: records, liquidation and payments and annual VAT declarations. Additionally, the hypothesis of regular commercial activity enforces the obligation to separate commercial accounts from those of the institution's non-commercial activity. In practice, this separation should separate the two activities. The intent of the provision is to render the commercial accounting of non-commercial entities more transparent and to avoid

mixing these activities with institutional activities, so that the main purpose and real classification of the entity is clear.

ii) I.R.E.S (corporate tax). The same considerations made for VAT can be applied to income tax on company revenue; if it is fundamental to establish whether the ecclesiastical entity carries out commercial activities in addition to religious for VAT, for the purpose of company taxation the assessment only concerns the four revenue categories subject to tax and the relative company revenues. This effectively means that even in the absence of an economic activity alongside religious activities, an ecclesiastical entity that produces income of another nature (fixed assets, capital and other income) is subject in any case to corporate income tax.

All things considered, it seems that all civilly recognised ecclesiastical entities must be considered non-commercial entities, within their fiscal profile. This since they do not have commercial activities as an exclusive or principal objective (cf. art. 73, para. 1, letter c) of Presidential Decree no. 917/1986) and as such activities are considered non-taxable for the purpose of corporate. Indeed, by law their main purpose is based on religion and worship and their principle objective is to carry out activities that correspond to this purpose, that is "those that are for the exercise of worship and care of souls, training of the clergy and religious figures for missionary purposes, catechesis and Christian education" (Law 222/1985, art. 16, letter a). However, they may also carry out other activities (cf. l. 222/1985, arts. 15 and 16, letter b) which "with respect to the structure and purpose of the entity are subject to the laws of the State concerning such activities and to the applicable tax regime" (art. 7, paragraph 3, of Agreement 18 February 1984). In all other cases, the economic activity that may produce company revenue must be declared and reported to the relevant entities (The Revenue Agency, Chamber of Commerce, INPS, etc.). The final income earned must be declared and separate accounts must be kept so that the various revenue streams and outgoings relative to commercial and institutional activities may be distinguished.

It has been said that as ecclesiastical entities are passive subjects for the purposes of corporate tax as they are non-commercial, as per art. 73, paragraph 1, letter c) of the T.U.I.R. Obviously this passive subjectivity, from which the obligation to pay tax to the Treasury arises, is necessarily connected to one of the four categories of income included in paragraph 1 of art. 143 of the T.U.I.R., that is: fixed asset revenue; capital revenue; business revenue; other revenues.

Here it is perhaps easier to understand the differences between indirect and direct taxation: the problems relative to VAT are exclusively linked to verification and confirmation of whether or not the activity carried out by the ecclesiastical entity is civilly recognised as applicable to one of the VAT categories for corporate tax, while for the other method it is necessary to assess the existence not only of income from various activities that institutions may carry out, but also income from other

sources. This is to ascertain if the entity is subject to payment of a tax on income, even if such income is not earnt through a commercial activity. An example of this may be earnings from a property owned by the entity. Some pastoral activities may be considered commercial if there is a payment of a fee for services rendered (for example, management of a parish cinema, resale of religious articles to the public, etc.). Ecclesiastical entities, even when engaged in institutional religious or worship-related activities retain a non-commercial classification, with specific taxation requirements that differ from those relative to commercial companies. In this case, the entity must keep separate fiscal records for the commercial activity and not for institutional religious or worship activities. This means that a distinction must be made between which revenues need to be included in account records and which expenses relate to commercial activities. In other words, it is necessary to identify the income that should be allocated to taxable accounts and the expenses that are relative to commercial activity and those relative to institutional activity. This distinction is not always easy to make; however, it is necessary for tax purposes if expenses and VAT are to be legitimately deducted where provided for.

For ecclesiastic entities, business revenue occurs in the transfer of goods and services. Examples of this are: a) health care facilities (nursing homes, hospitals); b) welfare and social welfare facilities (retirement homes); c) education (schools, from kindergarten to secondary education); d) culture (cinemas, theatres, museums); e) accommodation (holiday homes, hotels); f) recreation (oratories, courses of various types).

With regards to banking privacy for religious organisations, reference must be made to the Convention signed between the Holy See and Italy on taxation matters. The Convention follows the OCSE model and the "exchange of information" is relative to tax periods starting from 1 January 2009. The convention provides for full compliance with a simplified model of the tax obligations relative to financial activities carried out by the entities in the Holy See by certain natural and legal persons who are Italian residents for tax purposes. These persons have access to a regularisation procedure of these activities as those established by Law no. 186/2014. This is the most significant part of the agreement signed between the Vatican Foreign Minister and the Italian Minister of Economy.

There are four main innovations in the agreement: i) the exchange of financial information between the Vatican and Italy that does not negatively impact any obligations of secrecy; ii) the simplification of tax payments on revenue derived from financial assets held in the Vatican City; iii) finally, modifications of retribution or pension payments for employees of the Holy See, as well as for those who receive a pension from the *Ior* or the Vatican bank. For these individuals, a tax simplification is provided for, referring to art. 1 of the *Convention between the Holy See and the Government of the Italian Republic*. The article provides that the respective authorities of the contracting parties "exchange such information as is most likely

necessary for carrying out the provisions of this convention or of the domestic laws of the Contracting States concerning taxes of any nature or name collected on behalf of the Contracting Parties, their political entities or local authorities provided that the relevant taxation is not against this Convention".

Furthermore, paragraph 1 of the law provides that information received by a contracting Party must be treated as secret, in the same manner as information obtained under the Party's relative tax legislation. This information may only be disclosed to persons or authorities carrying out: the assessment or collection of taxes as per paragraph 1; procedures or proceedings concerning these amounts; decisions or appeals relative to these amounts or controls of previous actions. Such persons or authorities may use this information for these purposes only. The information may eventually be disclosed in the context of a public judicial procedure or judicial decision.

V. Tax Regime of Religious-Social Institutions (Religious Schools, Charities, Religious Hospitals)

Education. So that the right to study and education may be effective, the State adopts a financing plan for the country's regions, as well as the autonomous provinces of Trento and Bolzano. This plan is intended to support families with the costs of education through allocated scholarships of equal amounts. However, the use of these scholarships does not result in the allocation of sums of money for those who are entitled to them, but rather gives rise to a tax benefit in their favour. This results in a deduction of an equivalent amount from gross personal income tax "referring to the year in which the expenditure was incurred" (Art. 1, paragraph 10 of Law No. 62 of 10 March 2000).

This legislation is part of an equal education framework between State and private schools which has led to indirect private funding of private schools and thus, of religious schools.

Hospitals. This sector includes hospitals of a religious nature. These hospitals provide aid and assistance and were subject to the regime of public assistance and charity institutions (IPAB) as per art. 1 of Law no. 6972 of 17 July 1890. The application of this law raised doubts about whether these institutions were governed by public or by private law. With sentence no. 396 of 7 April 1988, the Constitutional Court intervened to declare the illegitimacy of art. 1 of Law 1890/6972, which confirmed that if they meet the requisite characteristics, regional or sub-regional IPABs may exist as private entities. There is thus no doubt that ecclesiastical hospitals are religious entities and cannot be in any way classified as public entities. The hospital must be classified as a private legal entity where the medical activities carried out are not of a religious nature or for the purposes of worship, as per art. 16 of Law 222 of 1985. In any case, when carrying out aid, the hospital must comply with all

State regulations with regards to the provision of services, including those relative to employment, social security and tax.

This is demonstrated in the regulations covering the activities of the *Hospital of Bambino Gesù* in Rome. The hospital, which is dependent on the Holy See, was recognised in 1985 as a Scientific Institute for Research, Hospitalisation and Treatment. The recognition was granted as it is a hospital of national importance and high specialisation that carries out biomedical research with international significance based on its aid activities. It has adequate resources, personnel and the means to do so. As a result of its confirmed legal-administrative autonomy, and so that it may guarantee the recognition of employee qualifications and services within the framework of its institutional recognition, where possible, the *Hospital of Bambino Gesù* has adapted the organisation of its hospital staff to comply with the relevant national legislative provisions. Considering its origins, nature and institutional links, *Hospital of Bambino Gesù* applies corporate managerial principles to the management of economic, tax, financial and patrimonial aspects as well as to the treatment of personnel. The hospital does not, however, seek to make a profit.

VI. The Tax Regime for Religious Ministers and Leaders of Philosophical and Religious Associations

The tax treatment of majority and minority ministers of religions that have an agreement uses the same regulatory model. For tax purposes, the payment of Catholic ministers and ministers of minority religions that have an agreement is equal to that of full-time income (as per art. 25, paragraph 1, Law no. 222 of 20 May 1985, art. 32, paragraph 1, Law no. 516 of 22 November 1988; art. 22, paragraph 1, Law no. 517 of 22 November 1988). In the case of the Catholic Church, the Central Institute for the Support of the Clergy withholds tax and pays social security and other contributions for clergy, as provided for by the laws in force. In the case of minority religions that have an agreement, this is carried out by the representatives of the religion. As an example, in the Italian Union of the seventh day Adventist Churches, it is the Union itself that provides for this as per the relevant tax provisions (art. 32 comma 2, l. 516/1988). This is also reflected in the social security profile where the specific Fund takes care of these issues for Catholic clergy as well as religious ministers of other religions. Indeed, the Fund was unified with Law No 903 of 22 December 1973. This unification corrected a dichotomy present in the previous law: Law No 579 of 5 July 1961 established disability and old age insurance for Catholic clergy, while Law No 580 of 5 July 1961 established the same for religious ministers of other, non-Catholic religious denominations. Additionally, with the unification of the two funds, the pensions of those eligible also came under the expense of the fund. At present, the fund provides a total of 13,788 pensions (2014 data). The fund has not yet been affected by the *Monti-Fornero* pension reform (art. 24 of Decree Law 201/2011 converted

by Law 214/2011) as this is intended only for "workers enrolled in the general compulsory insurance and its replacement and exclusive forms as well as the separate management pursuant to art. 2, paragraph 26 of Law 335/1992". The fund provides a minimum value for all pensions it provides, which is equal to the minimum amount of general compulsory insurance (502.39 euros in 2015).

Around 72% of the fourteen thousand pensioners who are members of the fund hold pensions from other funds as well. This is possible because, unlike most other funds, this fund is compatible with general compulsory insurance for invalidity, old age and survivors, as well as with other forms of additional pension plans, whether they are exclusive or exonerative. This effectively means that it is possible to be registered simultaneously with both the clergy pension fund and other funds. Contributions to the fund may not be combined with other payments to or credits from other funds, except if they are aggregated. For those who are entitled to another pension, the pension they receive from the fund is reduced by a maximum of one-third.

As a result of this, 9,960 pensioners of the *Clergy Fund* are holders of another pension, the average amount of which is 1,000 euros gross monthly; about 1,000 pensioners of this fund receive a second pension of an amount greater than 2,000 euros gross.

All secular priests and ministers of worship of non-Catholic religious are obliged to register with the fund at the time of their ordination, or from the start of the ministry of worship, until the date that their old-age or invalidity pension goes into effect. Originally, membership of the fund was limited to secular priests and ministers of religion who hold Italian citizenship and reside in Italy; as of 1 January 2000, art. 42 of Law 488/1999 has extended the obligation of insurance to priests and ministers of religion who hold Italian citizenship but work overseas in Italian dioceses and recognised non-Catholic churches or entities.

Is there a specific legal regime for monks? Moreover, are ministers of worship of minority religions without an agreement subject to different rules? Finally, do those working in non-confessional philosophical associations enjoy a special legal regime?

Regarding the first question, it is necessary to examine Chapter III of the text of the "Constitutions of Cistercian Monks", coded as "The administration of temporal goods", c. 41 et seq. updated with the Chapters of 2002. This chapter provides that the fixed income of the community should primarily be derived from the proceeds of its work. Every monk has the "right and duty to serve the community by taking part in the work, considering one's own strength and in line with the economic structure of the monastery". It is up to the Abbot, as administrator of the house of God, "to provide the use of the monastery and temporal goods and to simultaneously provide for human needs and obey evangelical law" (c. 2).

Regarding ministers of minority religions without an agreement, the rules vary from religion to religion. Law 1159/1929, which regulates the legal position of

religions without a governmental agreement, is silent on this point but allows for various solutions: there is an option based on the principle of 'gratuitousness' and 'freedom' provided for first by art. 14 of the Statute of the Christian Congregation of Jehovah's Witnesses, which states: "All offices are free. The same persons can always be re-elected". Another option can be deduced from art. 3 paragraph 3 of the Decree of 19 September 2012 concerning "Rules for the regulation of relations between the State and the Christian Congregation of Jehovah's Witnesses in Italy, implemented with art. 8, paragraph three, of the Constitution". This allows ministers of worship to decide whether to join "the special fund of welfare and assistance for ministers of worship".

In other cases, if the professionalism of the minister of worship is considered worthy of regular economic compensation, a more traditional model prevails. Art. XII of the guidelines suggested by UCOII (Union of Italian Islamic Communities), in the document: "Mosques and Imams in Italy. Guidelines. Our commitment to Italian society" reads: "Regarding the relationship between leaders of mosques or associations and the Imam, attention should be paid to defining the social and legal status of the Imam. Adequate remuneration should be provided to enable the Imam to carry out their duties with the utmost dedication and availability, as well as to avoid the Imam carrying out work that could diminish their role within and outside the community". In this case, the legal tax regime would be that of ordinary law provided for employees.

With regard to the tax regime of members of non-confessional philosophical associations, at points 3 and 4 of art. 1 of the Statute of the National Association for Social Promotion, "Union of Atheists and Agnostic Rationalists APS", with the acronym "UAAR APS", it states that the association "primarily makes use of the voluntary acts provided freely and free of charge by its members for the pursuit of its institutional goals" and only in special cases may it "hire employees or make use of self-employed individuals, even if they are members". In the latter case, the general tax rules for employees or self-employed persons will apply. No special legal tax regime is stipulated for the leaders of non-confessional philosophical organisations.

Finally, to clearly understand the rules that must be applied in matters of succession when the deceased or testator is a religious minister, the provisions in favour of the soul, as per art. 629 of the Civil Code should be considered first. These provisions ensure that the will of those with specific beliefs is carried out with regards to specific liturgical activities or rituals intended to facilitate the soul of the deceased's passage to heaven (such activities may include masses, lighting of votive candles, liturgical activities). Anyone, including a religious minister, may be indicated in the will as facilitator of the requested activities, however the testator must have expressly indicated as such in the will. Concerning the Catholic Church, if a minister has not been elected, they cannot carry out the activity, due to their position. A diocesan bishop

does not qualify in this case, as they represent the entire Catholic community and do not have the capacity to consider the fulfillment of a private provision.

Finally, pursuant to art. 629 of the Civil Code, all conditional testamentary provisions are considered illegal, where the fulfillment of the conditions is considered a serious violation of the right to religious freedom. The "Sabinian" rule underlies this discipline by providing that "in the testamentary provisions, impossible conditions and those that are contrary to the law, public order or morality shall not be applied, except for what is stipulated by art. 626".

VII. Taxes, Religion and Non-Confessional Movements

The only case of State recognition of the power to tax by a religious denomination in recent Italian history occurred during the twenty years of fascism with art. 24 of Royal Decree 1731 of 1930. The Italian Israeli Communities were conferred with a power to impose a contribution on members of the individual Communities in proportion to their total income; the Union of the communities was granted the power to impose taxes in respect of the contribution made to the union by each community.

These powers were no longer applicable when Law 101 of 1989 implementing the agreement between the Italian Government and the Union of Italian Jewish Communities (UCEI) entered into force. Art. 30 of this law provides that, from 1989, revenue is to be composed of annual contributions, as per under arts. 34 to 36 of the Statute, paid by individual members who have freely decided to enter the Community. Art. 34(1) of the Statute provides that it is the duty of each registered member of the Community to support the institutional activities listed in art. 1(2). Each member is indeed "required to pay an annual contribution based on their capacity to contribute. The calculation of the amount must be based on the models and collection methods defined in the following paragraphs and articles, or alternatively, using a different method, in the community regulation".

Art. 30 of Law 101/1989, amended by Law 638 of 20 December 1996, also provides that the individual member of the Community may deduct the above contribution to a maximum amount of 1,032.91 euros. Additionally, this amount is subject to review by a joint committee at the end of every three years after 1987 so that adjustments can be made if necessary. Regarding the fact that there are special taxes on certain products that benefit religious organisations for their social work, the ICI exemption regime provided[12] for in letter i) of art. 7 of Legislative Decree no.

[12] See A. Perego, *Il recupero dell'ICI non versata dagli enti non commerciali (anche religiosi). Presupposti ed esiti di una recente pronuncia della Corte di giustizia dell'Unione europea,* in *Rivista telematica (www.statoechiese.it)*, n. 26 del 2019, p. 28.

504/1992 (ICI decree) for buildings and other assets used by ecclesiastical entities in activities with a social and philanthropic purposes should be noted; in particular, the abovementioned letter 1) provides for the exemption of buildings belonging to non-commercial organisations *"intended exclusively for the carrying out of welfare, social security, health, educational, accommodation, cultural, recreational and sports activities, as well as activities under art. 16, letter a) of Law No. 222 of 20 May 1985"* (activities of religion or worship). The exemption is applied when the following conditions are all met: i) the first is of a subjective nature, specifying that the property be used by a non-commercial entity as per art. 73 (ex. art. 87), paragraph 1, letter c) of Presidential Decree no. 917 of 22 December 1986 (TUIR); ii) the second is of an objective nature, where the property must be used exclusively for the performance of the activities listed in the regulation.[13]

With regard to the aforesaid conditions, it is noted that religious entities may qualify for the exemption in two cases: when they carry out the activities referred to in art. 16, letter a), of Law No. 222/1985 (religion and worship activities) in the buildings; or, outside of these cases, when the buildings are used for welfare, social security, health, education, housing, culture and recreational and sporting activities. In the second case, the religious body may take advantage of the exemption not as a religious organisation, but as a non-commercial entity. It is thus classified in the same way as all other non-commercial entities that carry out the same activities. This is the most problematic issue from a Community point of view, indeed, Italy has received a formal invitation (letter from 5 November 2007, prot. D/54393-CP71/2006) to provide further information relative to an alleged conflict with the State aid regime – an invitation which has not been taken up with the initiation of infringement proceedings before the Court of Justice of Luxembourg.

Finally, when civilly recognised ecclesiastical entities or associations carrying out religious and/or worship activities operate in the Third Sector, they are then subject to the general rules laid down for those who operate in the Third Sector for the quota of activities carried out that are not linked to religion. In this regard, even entities operating in this area can take advantage of tax benefits existing for the sector. With the reform of the Third Sector, from 2018 onwards, new and more advantageous rules have been introduced to support non-profit organisations, voluntary organisations, social promotion associations, Non-Governmental organisations (NGOs) and social cooperatives. There are varied tax benefits for company donations. Companies can deduct the amount donated without limit, to a maximum of 10% of the total revenue

[13] A. Licastro - A. Ruggeri, *Diritto concordatario versus diritto eurounitario: a chi spetta la primauté? (a margine della pronunzia della Corte di Giustizia del 27 giugno 2017, C-74/16, in tema di agevolazioni fiscali per le "attività economiche" della Chiesa),* in Rivista telematica (www.statoechiese.it), n. 26 del 2017.

declared (without the limit of 70,000 euros, as previously discussed). Moreover, within the limit of 10%, where the donations exceed the value of the total income, the amount of the deduction not applied can be reported in the following years' tax declarations, for the subsequent four tax periods (for example, a donation made in 2018 can be deducted each fiscal year until 2023). Obviously, payments made as dues or untraced cash donations cannot be deducted.

TAXATION, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN LATVIA

Ringolds Balodis, Edvins Danovskis

I. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Tax law is a sub-branch of administrative law and is regulated by several laws: the Law on Taxes and Duties[1] and various laws regulating particular taxes, for instance, Law on Personal Income Tax,[2] Law on Immovable Property Tax.[3] Tax law contains several provisions on religious organisations, however, the term "religious organisation" is provided in the Law on Religious Organisations and denotes that "religious organisations are parishes, religious associations (churches) and dioceses registered in accordance with the procedures specified in this Law."[4] The legal term "religious organisation" does not contain a distinction between dominant, "known" religions or other "non-recognised religions". Although there exist eight particular laws regulating traditionally recognised and longstanding churches,[5] in respect of tax law they are treated as any other religious organisation.

If the law contains any rules on religious organisations, they are treated equally.

[1] Law on Taxes and Duties. Adopted on 02.02.1995. Available at https://likumi.lv/ta/en/en/id/33946-on-taxes-and-duties. Last accessed 05.10.2019.

[2] Law on Personal Income Tax. Adopted on 11.05.1993. Available at https://likumi.lv/ta/en/en/id/56880-on-personal-income-tax. Last accessed on 05.10.2019.

[3] Law on Immovable Property Tax. Adopted on 04.06.1997. Available at https://likumi.lv/ta/en/en/id/43913-on-immovable-property-tax. Last accessed on 05.10.2019.

[4] Law on Religious Organisations. Adopted on 07.09.1995. Available at https://likumi.lv/ta/en/en/id/36874-law-on-religious-organisations. Last accessed on 05.10.2019.

[5] Concordat with the Holy See and seven laws on the Evangelical Lutheran Church of Latvia, the Orthodox Church of Latvia, the United Methodist Church of Latvia, the Union of Baptist Parishes of Latvia, the Old Believer Pomora's Church of Latvia, Riga's Judaic Religious Congregation and the Union of Seventh-day Adventist Parishes of Latvia. See further Balodis R. Latvia. In: Encyclopedia of Law and Religion. Volume 4: Europe. General Editors Gerhard Robbers and W. Cole Durham Jr. Boston, Leiden: Brill Nijhoff, 2016, pp. 222–223.

As has been resumed by Professor Ringolds Balodis, "the Latvian State does not require the registration of religious groups. Every group is free to choose its desired form of legal personality and exercise its religion freely without having been registered. Every unregistered religious group has the right to conduct services, religious rituals, and ceremonies, and to carry out charitable work, unless these activities violate the law. [..] The Law on Religious Organisations accords religious organisations certain rights and privileges when they register, such as status as a separate legal entity for owning property or other financial transactions, as well as tax benefits for donors. Registration also eases the rules for public gatherings. According to Article 13 of the Law on Religious Organisations, only registered religious associations (churches) or dioceses shall be entitled to establish educational institutions, monasteries, missions, and deaconate institutions. Additionally, only registered religious organisations and establishments formed by such organisations shall be entitled to use names and emblems of religious organisations in their official forms and stamps. The law does not single out any church and the churches are equal in their opportunities to obtain a more favourable status. Article 5 paragraph 7 of the Law on Religious Organisations states that the relationship between the State and religious unions (churches) can be regulated by special laws. On this basis, in the period from 2007 to 2008 the Latvian parliament developed and adopted several religious union laws and one congregation law ("Special Church Laws", or SCLs) including the Seventh-day Adventist Latvian Congregation Law, the Latvian Baptist Union Law, the Latvian United Methodist Church Law, the Latvian Old Believers Pomorie Church Law, the Latvian Evangelical Lutheran Church Law, the Latvian Orthodox Church Law, and the Riga Jewish Congregation Law."[6]

If the law provides special provisions (tax rebates etc.) on religious organisations, then usually similar provisions are provided also for other private law associations which act for public benefit. For instance, the Law on Immovable Property Tax provides that immovable property tax shall not be imposed on "the immovable property of religious organisations (excluding the objects and the land for the maintenance thereof referred to in Section 3, Paragraph one, Clause 2 of this Law), which is not used for economic activities. The immovable property tax shall not be imposed on the objects and the land for the maintenance thereof belonging to religious organisations and referred to in Section 3, Paragraph one, Clause 2 of this Law, if they are not being rented or leased out. Regarding the immovable property of religious organisations, its utilisation for charity and social care, as well as the activities of an educational institution for religious personnel, which is registered with the Register of Religious Organisations, and their Institutions shall also not be considered as economic

[6] Balodis R. Latvia. In: Encyclopedia of Law and Religion. Volume 4: Europe. General Editors G. Robbers and W. Cole Durham Jr. Boston, Leiden: Brill Nijhoff, 2016, pp. 221-222.

activity." However, the law also provides similar exemptions to "the buildings or engineering structures belonging to associations and foundations in accordance with criteria determined and a list approved by the Cabinet of Ministers" which includes exemptions to buildings belonging to associations which have been acknowledged as "public benefit organisations" according with the Public Benefit Organisation Law.[7] The Public Benefit Organisation Law provides that "a public benefit activity is an activity which provides a significant benefit to society or a part thereof, especially if it is directed towards charitable activities, protection of civil rights and human rights, development of civil society, education, science, culture and promotion of health and disease prophylaxis, support for sports, environmental protection, provision of assistance in cases of catastrophes and extraordinary situations, and raising the social welfare of society, especially for low-income and socially disadvantaged person groups."

Article 4 of the Law on Accounting[8] *provides as follows:*

> "For accounting purposes, information and data, which in accordance with the existing laws and regulations has to be included in the reports of the undertaking, shall not be deemed to be commercial secrets.
>
> All other accounting information of the undertaking shall be deemed to be commercial secrets and shall be accessible only for audits, the tax administration for verification of the correctness of tax calculations, as well as other authorities in the cases provided for by legislative enactments."

The law clearly states that an undertaking in the meaning of this law is also religious organisation. Therefore tax secrecy applies also to religious organisations.

In 2019, wide media attention was drawn to the fact that the State Revenue Service made a search and investigation in several parishes of the Roman Catholic Church. As can be perceived from the information obtained by media, the focus of the investigation is fraudulent schemes of value added tax and irregularities on registering donations.[9] No decisions yet have been adopted by the State Revenue Service, however, the State Council on Religious Affairs has gathered to discuss the practices on tax issues of the churches.

[7] Public Benefit Organisation Law. Adopted on 17.06.2004. Available at: https://likumi.lv/ta/en/en/id/90822-public-benefit-organisation-law. Last accessed on 05.10.2019.

[8] Law on Accounting. Adopted on 14.10.1992. Available at: https://likumi.lv/ta/en/en/id/66460-on-accounting. Last accessed on 05.10.2019.

[9] Kokarēviča D. Baznīca no VID nav šķirta: garīdzniekiem nodokļi jāmaksā. [The Church is not separated from the State Revenue Service: priests shall pay taxes]. La.Lv. 30.07.2019. Available at: http://www.la.lv/baznica-no-vid-nav-skirta. Last accessed on 06.10.2019.

II. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

The real estate of religious organisations (land plots, buildings, and structures) is real property tax-exempt provided it is not used by religious organisations for economic activities (item 4, section 2, chapter 1 of the law "On real estate property tax"). The use of the real property for charity purposes and for social care is not considered to be an economic activity; the same refers to the functioning of registered educational institutions preparing theological staff. According to the Regulation No. 131, item 7 of the Cabinet of Ministers, dated April 4, 2000 "Application instructions of norms specified in the Law on the real property tax", the tax relief is applied only to the estates of those religious organisations that are registered in accordance with the Law on religious organisations.

Only registered religious organisations are subject to tax rebate on immovable property.

Other associations which have been acknowledged as public benefit organisations are also entitled to exemption of real estate tax.

Religious organisations and other associations acknowledged as public benefit organisations do have exemption from the real estate tax, whereas other associations are usually treated as any other subject of real estate tax.

III. Taxation of Monastic Communities/Orders

Monastic communities and orders do not have any particular legal provisions regarding tax. If a monastic community or order is a registered religious organisation or a part of a registered religious organisation, all legal provisions on religious organisations apply to them.

IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)

Tax law is a sub-branch of administrative law and is regulated by several laws: the Law on Taxes and Duties[10] and various laws regulating particular taxes, for instance, Law on Personal Income Tax,[11] Law on Immovable Property Tax.[12] There are no particular laws regulating taxes specifically for these institutions.

[10] Law on Taxes and Duties. Adopted on 02.02.1995. Available at: https://likumi.lv/ta/en/en/id/33946-on-taxes-and-duties. Last accessed 05.10.2019.

[11] Law on Personal Income Tax. Adopted on 11.05.1993. Available at https://likumi.lv/ta/en/en/id/56880-on-personal-income-tax. Last accessed on 05.10.2019.

[12] Law on Immovable Property Tax. Adopted on 04.06.1997. Available at https://likumi.lv/ta/en/en/id/43913-on-immovable-property-tax. Last accessed on 05.10.2019.

The Law on Immovable Property Tax provides that immovable property tax shall not be imposed on the buildings or the parts (groups of premises) thereof, which are used for educational, health, social care needs, on the buildings or engineering structures belonging to associations and foundations in accordance with criteria determined and a list approved by the Cabinet of Ministers (associations which have acquired the status of a public benefit organisation (see above)). Therefore if an immovable property belongs to an association (public benefit organisation) and is not used for economic gain, then the building is tax exempt.

All buildings used for educational purposes are liable for tax except irrespective of the owner.

V. Taxation of Religious Ministers and for the Leaders of Philosophical and Non-Confessional Organisations

There are no particular provisions or privileges for these persons.

VI. Church and Philosophical and Non-Confessional Organisations Tax

There is no special tax imposed on the taxpayers for the benefit of a church.

The Law on Personal Income Tax provides that aid given by a religious organisation to a physical person by way of money, things or services which does not exceed 1000 euros per year is exempt from personal income tax. The law also provides that prior to imposing tax on income, the amount of a donation or gift that has been given to a religious organisation with the status of public benefit organisation shall be deducted from the donor's annual taxable income.[13] Similar provisions are included in the Enterprise Income Tax Law.[14]

VII. Other research questions

Religious organisations do not enjoy any special treatment regarding VAT.

[13] Danovskis E. Annotated Legal Documents on Islam in Europe. Volume 8. Latvia. Leiden, Boston: Brill, 2016, pp. 26–27.

[14] Enterprise Income Tax Law. Adopted on 28.07.2017. Available at: https://likumi.lv/ta/en/en/id/292700-enterprise-income-tax-law. Last accessed on 06.10.2019.

TAX LAW AND RELIGION IN EUROPE. MALTA

Neville Gatt

I. Reference to "Religion" in the Constitution of Malta

Article 2 of the Constitution of Malta lays down that:

> "(1) The religion of Malta is the Roman Catholic Apostolic Religion.
>
> (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong.
>
> (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all State schools as part of compulsory education."

Although the Roman Catholic religion is the official religion in Malta[1] freedom of worship is guaranteed by Article 40 of the Constitution of Malta, sub-article (1) of which lays down the following:

> "(1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship."

The European Convention Act[2] also makes provision for the substantive Articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to be enforceable as part of Maltese law. This includes[3] the right to freedom of thought, conscience and religion.

[1] A survey conducted by the newspaper Malta Today in 2018 reports that some 93.9% of respondents still identified themselves as Catholic and although such percentages vary particularly in terms of how many are practising Catholics, the pre-eminence of the Catholic faith in Malta is still quite undisputed.

[2] Chapter 319, Laws of Malta.

[3] Article 9 of the Convention.

II. Income Tax Framework of Religious Organisations

(a) The law that introduced income tax in Malta

Due to the dominant position of the Roman Catholic Church (RCC) in Malta, the Act introducing income tax in Malta[4] referred exclusively to the said religion and granted the following exemptions:

> " (b) the income accruing to the Metropolitan Archbishop of Malta and to the Bishop of Gozo by virtue of their respective offices;[5]
>
> (f) the income of any educational institution of a public character, in so far as such income is not derived from a trade or business carried on by such institution, and the income of ecclesiastical or charitable institutions, trusts, bequests or foundations of a public character."

The exemption in paragraph (b) applied only to the Catholic bishops of Malta and Gozo and did not extend to bishops of other religious denominations. To the extent they had income arising in Malta, bishops of other religions and entities forming part of other churches, philosophical and non-confessional organisations were subject to the normal taxing provisions of the Income Tax Act.

On the other hand paragraph (f) applied to any educational institution of a public character satisfying the provisions of the paragraph, irrespective of the promoter thereof.

This situation changed dramatically in 1975[6] with even the Roman Catholic Church being integrated into the general provisions of the Income Tax Act (ITA).

Since then, the imposition of income tax on religious organisations is regulated mainly by an article[7] introduced by the 1975 amendments. Although some amendments were made over the years, the structure of the taxation of ecclesiastical entities remains to a large extent based on the 1975 provisions.

The relevant article is now Article 30, ITA.

This is to a considerable extent a standalone article, laying down the tax treatment of the religious organisations referred to therein through tailoring the general concepts laid down in the ITA to the ad hoc nature of such organizations.

Due to it being virtually the only specific article dealing with the taxation of ecclesiastical entities under Maltese law, its key features are essential to understanding the manner in which Maltese tax law regulates religious institutions.

4 Act IV of 1948.

5 This terminology may have left some element of debate as to whether it covered all income earned by ecclesiastical institutions, but it is understood that in practice the RCC's income was not subject to tax.

6 Through Act XLII of 1975.

7 Article14A at the time.

(b) "Entities"

The Direct Taxation Manual[8] states that "The most significant provision made is that whereby the prima facie monolithic structure of the Church was, for tax purposes, broken down into its various component parts, called "entities"."

Article 30(1) refers to these entities:

> "(a) a diocese, including, in respect of any income accruing to him or vested in him by reason of his office, the bishop thereof;
>
> (b) a parish;
>
> (c) a church not falling under the jurisdiction of a parish and not due to be dealt with under paragraph (d);
>
> (d) an ecclesiastical community defined in sub-article (9);
>
> (e) a province or similar division of any religious order."

This terminology is based on the structure of the Roman Catholic Church and the provisions are clearly targeted to ensure the taxation of the said Church, substituting the exemption applying until 1975.

However, many of article 30's provisions do not distinguish between different religions and thus it is submitted that to the extent that the structure of other religions/organisations falls within the terms used in article 30, this provision could also apply thereto.

Contrarily, if the structure of a particular religion or organization does not fall within that referred to in article 30, its income should be taxed under the ordinary ITA provisions applicable to any other person without reference to article 30.

(c) Entities operating a trading or commercial undertaking

Where an ecclesiastical entity operates what is considered as "a trading or commercial undertaking" including a school, printing press, hospital or cinema, the entity and the undertaking are chargeable to tax separately on the income generated by such undertakings. Article 30 applies only to the entity, with the trading or commercial undertaking considered as a separate body of persons.

This is important from a competition perspective, for such undertakings to be treated in an identical manner to the enterprises with which they would be competing. For such undertakings, this also brings the benefit of entitlement to tax losses, similarly to the situation applicable for competing trading/commercial undertakings.

[8] Malta Institute of Taxation (2009), Part II, p. 369.

(d) Ecclesiastical entities' chargeable income

An ecclesiastical entity's chargeable income consists of the total gross receipts on revenue account accruing to or derived by such entity and income accruing to or derived by any associated, linked or allied organization or body of persons, net of deductions for expenses incurred in the production of its income.[9]

Such income is considered as derived from a trade or business,[10] so however that such entities (other than those referred to in (c) above) are not granted the benefit of trading losses.

Similarly to other taxpayers, such entities are not charged to tax on donations they receive, as long as these are purely gratuitous and non-remunerative.

(e) Ecclesiastical communities and their individual members

Income received by an individual member of an ecclesiastical community in his own right is included in the entity's gross receipts up to a capping of Euro2,330.[11] The ecclesiastical community is then entitled to a deduction of the same amount in respect of each of its members.

These provisions are aimed at safeguarding two apparently opposing principles: 1. The income of individual members of such a community should in principle pertain to such community; 2. however individual members of such communities remain taxable on any income received by them in their own right.[12]

So individual members remain taxable with the community being taxed on a notional amount in respect of each member but this charge is annulled through an equivalent deduction, thus avoiding the risk of double taxation.

(f) Charging sub-article

The charging sub-article requires two computations, i.e.:

Each entity's total gross receipts on revenue account (trading income) – excluding trading losses;

Another computation consisting solely of the entity's investment income, with no deductions allowed for expenses and other charges, other than ground-rents/ other burdens on immovable property.

The entity is then charged to tax on the higher of the two figures.

9 Article 14(1)(a), ITA.

10 Trade or business income is chargeable under article 4(1)(a).

11 Article 30(4), ITA.

12 Article 30(6), ITA

(g) Distinguishing the bishops' income from that of ecclesiastical entities

One issue which is inherent in these provisions is the difficulty of distinguishing between income accruing to the bishops in a personal capacity and that which is attributable to them in their capacity as heads of the respective diocese.

The law deals with this by providing that income accruing to or vested in the head of a diocese in virtue of his office without constituting personal gains/ profits, is considered to be derived by, and taxed in the hands of a specific entity.

Then a deeming provision establishes the Archbishop of Malta's and the Bishop of Gozo's personal chargeable income derived from their office. This is fixed at an annual Euro6,550 for the former and Euro3,500 for the latter.[13]

In order to eliminate double taxation, the Commissioner is required[14] to grant relief to any person/ entity as will prevent the said amounts from being taxed again in the hands of such other person/ entity.

(h) Tax Rates

The persons referred to in article 30, ITA are subjected to different tax rates/ sets of tax rates.

Ecclesiastical entities are taxed at a flat rate of 20%.[15] This rate also applies to the income of any organization or body of persons the income whereof is specifically due to be wholly applied in providing income to members of the clergy; so however that – presumably in order to avoid double taxation of such income - where the Commissioner is satisfied that any part of such income has been so applied in respect of Maltese-resident members of the clergy or of ecclesiastical communities, such part of the income is exempt in the hands of such organization or body of persons .

The standard corporate rate of 35% applies to entities operating a trading or commercial undertaking. This puts such entities on par with companies and establishes a level playing field from a competition perspective.

Members of the clergy are subject to the same progressive rates (maximum rate of 35%) applying to individuals under the ITA.

(i) Preferential tax treatment for the dominant religion?

In the pre-1975 scenario, the RCC enjoyed a tax exemption on its income. Thus the amendments made through Act XLII of 1975 were aimed at removing such exemption and taxing the RCC under the ITA.

[13] Or such other higher level as may be determined by the Minister responsible for Finance, article 30(8), ITA.

[14] Article 30(8), ITA.

[15] Article 56(4), ITA.

Due to the RCC's complex structure and operations, ad hoc provisions were necessary to apply the taxing provisions in a coherent manner thereto. Hence the terminology used is clearly oriented towards ensuring the effective taxation of the said Church's income.

It is submitted that Article 30 does not as such introduce a separate tax regime for ecclesiastical entities but rather creates a framework within which the ITA's charging provisions can apply to a complex structure as that of the RCC.[16]

To the extent that other denominations have a similar structure to that referred to in article 30, the ITA's charging provisions could possibly apply thereto within the framework set by the said article. If a denomination's structure is incompatible with that contemplated in that article, the ITA's charging provisions also apply thereto but without reference to article 30.

(j) Tax policy vis-à-vis religions, religious institutions, philosophical or non-confessional organisations

The Maltese Government has not announced any fiscal state policy in respect of such religions, institutions and organisations. The ITA brings to charge income (including chargeable capital gains) irrespective of the person/ body of persons earning them; article 30 simply creates the framework within which the charging provisions apply in the context of the ecclesiastical entities referred to.

(k) Tax exemptions or other tax incentives for religious institutions

The State does not provide tax exemptions or other tax incentives exclusively for religious institutions.[17]

(l) Tax policy relative to religious institutions and secular legal persons

The ITA's taxing provisions apply to both and are aimed at bringing to charge all of a person's chargeable income (including capital gains), irrespective of the person earning it.

(m) Are religious institutions covered by tax and/or bank secrecy?

Taxpayers' rights to professional secrecy are extremely restricted due to the Commissioner's extensive powers to collect information in exercising his functions.[18]

[16] It is debatable whether article 30 provides a comprehensive enough framework for the operation of income tax, given the level of complexity of the RCC's structure.

[17] But refer to the Voluntary Organisations Act, Chapter 492 of the Laws of Malta which contemplates the possibility of introduction of tax exemptions for voluntary organisations which could also be of a religious nature – without distinction between different religions.

[18] Ref. e.g. articles 10A and 14, Income Tax Management Act (ITMA).

Indeed, professional secrecy obligations referred to in article 17, ITMA are "subject to articles 10A and 14(3)", which grant the Commissioner extensive rights to request information, e.g. in the context of international exchange of information and where the Commissioner suspects that tax evasion may exist.

Religious institutions are treated in the same manner as any other taxpayer in these respects.

(n) Transactions between religious institutions

In general transactions between religious institutions are treated similarly to transactions with third parties.

This is also emphasized in article 30(7), ITA, laying down among others that:

> "(a) a parish which is entrusted to an ecclesiastical community shall be deemed to be a separate entity …;
>
> (b) where more than one ecclesiastical community belong to the same religious order, each such community shall be dealt with as a separate entity… if … so considered by the statute of the order;
>
> (c) the province or similar division of a religious order shall be deemed to be a separate entity …;" …

However article 30, ITA tries to avoid circumstances where double taxation could arise as a result of this line of demarcation between different religious institutions and their members or the bishops.

Thus for instance, where an ecclesiastical entity operates a trading or commercial undertaking, no profits/ other income arising from such undertaking in favour of the ecclesiastical entity is included with the gross receipts of the entity (these are taxable in the undertaking's hands), whilst no deductions are allowed for payments made to the ecclesiastical entity.

(o) Tax evasion by religious institutions

No distinction is made between penalties imposed for tax evasion by religious institutions and those imposed for similar crimes on other taxpayers.

III. Real Estate Tax of Religious Organisations

No real estate tax is imposed in Malta.

However two taxes are imposed in transfers of immovable property:

(i) tax on capital gains (or property transfer tax) is part of the income tax charge and is imposed at specific rates on the transfer value (typically 10%

for transfers of property acquired by the transferor prior to 2004 and 8% for property acquired thereafter[19]). This tax is imposed on the transferor[20];

(ii) duty on documents and transfers imposed on transfers inter vivos and transmissions causa mortis of immovable property (typically a burden of the transferee, being part of the expenses relative to such transfers) at a 5% rate on the higher of consideration and real value of the transferred property.[21]

The said legislation does not distinguish between religious organisations and other taxpayers.

The same applies to the other transactions charged to tax in terms of the DDTA, particularly transfers inter vivos and causa mortis of marketable securities and duty on insurance policies.

IV. Taxation of Monastic Communities/ Orders

Monastic communities/ orders are not regulated separately but they are also regulated by article 30, ITA as part and parcel of the taxation of ecclesiastical entities.

V. Taxation of Religious Social Institutions

As explained in part 1 above, many activities typically carried out by religious institutions are for tax purposes considered as giving rise not to a social activity but to a trade or business and brought to charge under the general rules set out in article 30, ITA.

Thus article 30(7)(d), ITA refers to the operation by an eccelesiastical entity of "a trading or commercial undertaking, including a school, printing press, hospital or cinema". Such activities[22] are considered to give rise to the conduct of a trade or business and are taxed accordingly.

To the extent that the entity carrying on such activities is not one referred to in article 30, it is submitted that such activities should still be construed as giving rise to a trade or business and to be taxed accordingly, similarly to other commercial operators undertaking such activities.

One provision which however recognizes the possibility of a social function deserving of an exemption is article 12(1)(e), ITA which exempts:

> "the income of any institution, trust, bequest or foundation, of a public character, and of any other similar organization or body of persons, also of a public character, which is engaged in

[19] Some other rates are also imposed in instances specified by law.

[20] Ref. article 5A, ITA.

[21] Ref. article 32, Duty on Documents and Transfers Act (DDTA) – Chapter 364 of the Laws of Malta.

[22] Clearly non-exhaustive.

> philanthropic work and either qualifies for exemption under this paragraph in accordance with rules made … by the Minister responsible for finance … or is named by the said Minister as engaged in philanthropic work …;"

To the extent that the particular entity and activity fall within the terms of the said sub-article the exemption applies to them irrespective of whether the promoters are religious institutions or otherwise.

Other aspects of the income tax framework relevant to such Institutions have been dealt with in point 1.

VI. **VAT**

Being a European Union member state, Malta's Value Added Tax Act ("VAT Act")[23] applies the principles contained in EU Directive 2006/112/EC on the common system of value added tax ("the Directive").

The references to religious services in both the Directive and in the VAT Act are limited.

In the Directive, article 132(1) obliges Member States to exempt the following transactions:

> "(k) the supply of staff by religious or philosophical institutions for the purpose of the activities referred to in points (b), (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 organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition."

In the Maltese VAT Act, reference to religious services is made in item 4 of Part Two of the Fourth Schedule to the Act. These services are classified as exempt without credit supplies.

In line with the Directive, Item 6(1) also exempts:

> "The supply of staff by religious and philosophical institutions recognised as such by the Commissioner for the purpose of providing services referred to … with a view to spiritual welfare."

The same is the case in Item 8 exempting "the supply of services for the benefit of their members in return for a subscription fixed in accordance with their rules by non-profit making organisations with aims of a political, trade union, religious, patriotic, philosophical, philanthropic or civic nature …".

So, to the extent that religious organisations are engaged in such activities/ transactions, no VAT is chargeable on such services but with the organization supplying

[23] Chapter 406 of the Laws of Malta.

them not being entitled to recover input VAT that it would have suffered in the conduct of its activities.

It is also possible for religious organisations to provide other types of services, whether taxable, exempt with credit or exempt without credit. In such cases the VAT treatment thereof would be similar to that applicable to other persons conducting such services in similar circumstances.

No distinction is made between religious institutions and philosophical or non-confessional organisations in the law. However, one issue that may arise in practice is that once no definition exists of the terms "religious services", "religious and philosophical institutions" and non-profit making organisations with aims of a "religious …" nature, in certain instances doubts may arise regarding whether the activities conducted by the particular institution fall within the purport of the particular exemption or otherwise.

VII. Taxation of Religious Ministers

Except for situations where article 30, ITA deals with certain issues applicable to members of ecclesiastical communities as well as the bishops of Malta and Gozo, principally from the perspective of ensuring that no double taxation of income occurs, no difference is made between the taxation of income earned by religious ministers and that earned by other individuals.

The same uniformity of treatment with other taxpayers applies to transmissions causa mortis. (In Malta such transmissions are only taxable if they involve immovable property or real rights thereon (taxed at 5%) and marketable securities referred to in the DDTA (5% in case of property companies and 2% in other cases)).

VIII. Church Tax

No Church Tax (other than the taxes referred to above) is imposed in Malta.

IX. Critique

The key tax laws applicable in Malta are few; mainly the ITA, DDTA and VAT Act. These are also the main tax laws to which religious institutions and communities are subjected. Most of their provisions do not distinguish between such institutions/communities and other taxpayers.

Apart from the EU VAT Directive-based provisions relative to the exempt without credit status of religious and related services, the key event in the taxation of religious entities occurred in 1975 with the introduction of the article currently numbered 30 in the ITA.

This provision's main significance was the removal of the exemption existing since the introduction of income tax on income accruing to the Maltese Roman

Catholic bishops by virtue of their offices and the creation of a framework to tailor the application of income tax to ecclesiastical entities.

Whilst removal of the exemption was a subject of some political controversy,[24] once this occurred, the issue gradually lost its controversial significance and seems to have been accepted as the status quo by Church, State and public.

Naturally, the article is not perfect. Primarily, although it tries to lay a framework covering the entire structure of the RCC, it is doubtful whether it is actually so comprehensive and from time to time issues arise which are not directly tackled by the article.

Secondly, the framework is based so much on the RCC's structure that it seems to ignore the existence of other institutions/ communities in other religions and whose structure may vary from that of the RCC.

Possibly the legislator may have done so on purpose. Primarily because the RCC's status as the super-dominant religion in Malta distinguishes it from other religions and the RCC's importance in Maltese society for centuries means that over the years it accumulated material wealth and expanded its activities in a manner which put it in a position to generate substantial revenues. The perception was/is that in Malta none of the other religions come anywhere close to the RCC's standing in this respect.

Furthermore, institutions and organisations of other religions do not go untaxed, but they are taxed in terms of the normal ITA provisions. They are possibly perceived as not being material and significant to the country's social fabric enough to require enactment of a specific legal framework to apply these taxing provisions to their structure.

Whatever the reason, despite the last substantive amendments to this article having occurred decades ago, there are no known proposals/ lobby – at least in public – to amend this tax regime whether from Government, Opposition political parties, NGOs or the religious institutions/ communities (whether RCC or otherwise).

Even the amendments made over the years were not that material and the structure of the article remains to a large degree that of 1975. One can submit that this article has been an example of tax law stability for nearly 50 years notwithstanding all the changes to Maltese tax law enacted since then; an oasis of calm in the sometimes tumultuous relations between Church and State in Malta over that period and perhaps, recognition that materially revisiting the article may re-open old wounds that are best kept closed.

[24] Ref e.g. Pirotta Joseph: Fortress Colony the Final Act, Vol. 4 (2018), page 824, footnote 184, for reference to the RCC's concern in the 1960s when certain points in the Opposition Malta Labour Party's programme appeared to refer to lifting this exemption if the party was returned to power (which took place in 1971).

TAXATION OF RELIGIOUS ORGANISATIONS IN POLAND

Piotr Stanisz

I. Introduction

In Poland, just as in other European states, taxation of religious organisations traditionally constitutes an important element of State–Church relations. In the period of the so-called People's Poland (1945–1989), the provisions concerning taxation of religious organisations (and especially the Catholic Church) were subordinated to the official ideology with its anti-religious orientation and used by State authorities in an instrumental way.[1] Along with the process of democratisation of Polish law, important changes were introduced in this regard. They resulted from the adoption of the model of cooperation between the State and religious organisations (in Article 25 para. 3 of the Constitution of the Republic of Poland of 2 April 1997,[2] their cooperation for the individual and the common good was clearly recognised as fundamental in their mutual relations). Nevertheless, the issues concerning taxation of religious organisations have not lost their relevance, although the attention of both researchers and politicians has shifted to such questions as the conformity of statutory provisions with the constitutional principle of equal rights of churches and other religious organisations and the justification for the preferential treatment of these entities over, for example, public benefit organisations.

II. General Rules

Polish tax regulations generally treat all churches and religious organisations in the same way. Tax laws do not mention any names of religious organisations, nor do they regulate the legal situation of any specific category of these entities in any special manner. Therefore, it should be assumed that they refer to all religious organisations

[1] See T. Stanisławski T., 'Wykorzystanie opodatkowania Kościoła w polityce wyznaniowej PRL', in A. Mezglewski, P. Stanisz and M. Ordon (eds.), *Prawo i polityka wyznaniowa w Polsce Ludowej* (Lublin: Wydawnictwo KUL 2005), pp. 263–270**;** Tyrakowski M., 'Kontrowersje wokół opodatkowania dochodów kościelnych osób prawnych w latach 1945-1989', in *Roczniki Nauk Prawnych* 2(2000), pp. 113–153.

[2] *Dziennik Ustaw* 1997, no. 78, item 483, as amended.

with a regulated legal status.[3] On the other hand, some differences result from the provisions of the laws on the relations between the State and individual religious organisations.

Tax regulations pertaining to religious organisations do not apply to informal religious communities and entities that function using other legally recognised organisational forms (such as, in particular, associations), irrespective of whether they have religious character or not. They are subject to taxation depending on their organisational form and the kind of activity they undertake (for example, cultural, religious or scientific activity).

The generally uniform treatment of all religious organisations in tax law is strictly connected with the constitutional principle of equal rights of churches and other religious organisations, which is expressed in Article 25 para. 1 of the Constitution of the Republic of Poland. When interpreting this principle, however, one ought to remember that it does not imply schematic egalitarianism. According to the Polish Constitutional Tribunal, not every instance of diversification of the legal situation of religious organisations constitutes infringement of the principle of equal rights. Equal treatment should be given to such religious organisations which have, in equal degree, a common distinctive feature. On the other hand, different treatment is justified in relation to those churches and other religious organisations that do not have a common feature relevant from the point of view of a particular regulation (judgment of 2 April 2003, K 13/02).[4]

The principle expressed in Article 25 para. 1 of the Polish Constitution does not pertain to "philosophical and non-confessional organisations". In fact, Polish law does not use this term (or any of its equivalents) at all. As a result, no regulations are directly dedicated to this category of entities. Obviously, this does not mean that organisations of this kind do not exist in Poland. Examples of such organisations are in particular associations belonging to the Polish Humanist Federation (such as the Humanist Association) or the Grand National Lodge of Poland (also functioning

[3] The most basic form of regulating the legal status of religious organisations in Poland is the entry in the register of churches and other religious organisations, where 166 such entities are listed at the moment. Besides, the legal situation of 15 religious organisations (including the Catholic Church whose relations with the State are defined also and primarily by the Concordat) is regulated in individual laws. P. Stanisz, *Religion and Law in Poland* (Alphen aan den Rijn: Wolters Kluwer 2017), p. 63; M. Rynkowski, 'State and Church in Poland', in G. Robbers (ed.), *State and Church in the European Union* (Baden-Baden: Nomos 2019).

[4] *Orzecznictwo Trybunału Konstytucyjnego*, series A, 2003, no. 4, item 28. *See* A. Abramowicz, 'Equality of Religious Organisations. How Polish Solutions Compare with Constitutional Provisions of Other European States', in *Teka Komisji Prawniczej PAN Oddział w Lublinie* 9(2016), pp. 15–16; P. Stanisz, 'The Status of Religious Organisations in Poland: Equal Rights and Differentiation', in W. Cole Durham, Jr. and D. D. Thayer (eds.), *Religion, Pluralism and Reconciling Difference* (London-New York: Routledge 2019), pp. 152–154.

as an association). Thus, these organisations are subject to regulations concerning associations (rather than those pertaining to religious organisations).

According to Article 13 of the Act of 17 May 1989 on the Guarantees of Freedom of Conscience and Religion,[5] "the assets and revenues of churches and other religious organisations are subject to generally applicable fiscal regulations", albeit "with exceptions defined by statute". The exceptions in question are quite relevant in practice. In consequence, the tax status of ecclesiastical legal persons (that is, in particular, parishes or dioceses) is more favourable than the analogical status of, say, associations.

In reference to ministers of religion (established according to the internal law of their own religious organisation), Article 12 of the Act on the Guarantees of Freedom of Conscience and Religion reads that – unless otherwise stated in separate provisions – "[they] enjoy the rights and are subject to duties on an equal footing to other citizens in all areas of national, political, economic, social and cultural life". This also pertains to taxation.

III. Income Tax

Incomes of ecclesiastical legal persons – in a similar way to legal persons in general – are subject to income tax regulated in the Act of 15 February 1992 on Corporate Income Tax.[6] Its Article 17(1.4a) refers to tax exemptions concerning such entities. Although the legislator uses the term 'ecclesiastical legal persons' (*kościelne osoby prawne*), there should be no doubt that the regulations under discussion also pertain to religious organisations that are not churches (and to their legal persons). As for the revenues that are subject to taxation, they can, for example, come from both membership fees and subsidies or donations.

The rules of taxation of ecclesiastical legal persons depend primarily on the nature of their income-generating activity. Income from non-economic statutory activities of such entities is treated in a different way from that coming from their remaining (business) activities.

The legal regime concerning income from non-economic statutory activities is particularly advantageous for ecclesiastical legal persons. Such income is entirely exempt from income tax. Moreover, ecclesiastical legal persons are released from the obligation to keep records required by the provisions of the Act of 29 August 1997 – Tax Law[7] and to submit any tax reports whatsoever (*vide* Article 27.1 of the Act on Corporate Income Tax).

[5] *Dziennik Ustaw* 2017, item 1153.
[6] *Dziennik Ustaw* 2019, item 865, as amended.
[7] *Dziennik Ustaw* 2017, item 201, as amended.

The term 'non-economic statutory activity' used in the regulations discussed should be understood as an antonym to regular business activity (which is aimed at generating revenue).[8] Absolute exemption from corporate income tax is at the same time limited to gains coming from activities which are reflected in the internal law of a given religious organisation.[9]

Different taxation rules apply to the income of ecclesiastical legal persons derived from business activities. It is tax-free in the part allocated to legally defined purposes (such as worship, education and upbringing, science, culture, charity and welfare, preservation of monuments, management of religious education facilities, as well as construction of places of worship) and related to regular and typical activities of religious entities. This exemption does not concern gains coming from some kinds of activity clearly specified in the law, such as especially manufacturing electronic, oil, tobacco, alcohol and precious metal products. With respect to income reaped from business activities, there is no relief from the obligation to keep the records required by the regulations of the Tax Law. Neither is there any exemption from the obligation to submit tax reports. A similar approach is adopted to companies whose only shareholders are legal persons belonging to the structures of a religious organisation. The income of such companies is exempt from corporate income tax only in the part allocated to the purposes specified in the list discussed above.[10]

As already explained, Polish law does not contain any separate provisions concerning philosophical and non-confessional organisations. In consequence, the rules of their taxation according to the Act on Corporate Income Tax depend on their statutory goals (unless, obviously, they function as informal groups). Insofar as they carry out scientific, educational, cultural or, for example, charitable activities, their income is exempt from taxation in the part allocated to the goals connected with these activities (art. 17.4 of the Act on Corporate Income Tax). When realising goals which are not subject to exemption, their income will be taxed under general rules.

IV. Real Estate Tax

Legal persons of religious organisations are also entitled to important tax exemptions in the domain of real estate tax. The exemptions in question were established in the laws concerning the legal situation of these entities (that is, in the laws defining

[8] B. Rakoczy, *Ustawa o stosunku państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej. Komentarz* (Warszawa: Wolters Kluwer 2008), p. 332.

[9] Vide, for example, the communication of the Director of the National Revenue Information Service (*Krajowa Informacja Skarbowa*) of 18 April 2019 (0111-KDIB1-2.4010.38.2019.2.MS); https://sip.mf.gov.pl/ (last access: 2020-01-11).

[10] P. Stanisz, *Religion and Law*, pp. 122-123; J. Patyk, *Opodatkowanie Kościoła Katolickiego i jego osób duchownych* (Toruń: Dom Organizatora 2008), pp. 129–131.

the relations of the State with individual religious organisations and in the Act on the Guarantees of Freedom of Conscience and Religion). Such laws are expressly referred to in Article 1b(1) of the Act of 12 January 1991 on Local Taxes and Charges,[11] whose Chapter 2 applies to real estate tax.

In accordance with the provisions of the relevant laws, of decisive significance for taxation applicable to the property of ecclesiastical legal persons is the character of such property. The legislator highlights the difference between real property used for residential and non-residential purposes. The rule is that properties used for non-residential purposes are exempt from taxation. It does not pertain, however, to properties or their parts occupied for business activities (such properties are subject to taxation according to general rules). As regards real properties used for residential purposes, they are generally subject to taxation. Yet, the laws defining the legal status of individual religious organisations (that have been passed since 1989) contain a number of exceptions concerning properties used for residential purposes by the clergy or members of religious orders. According to these laws, no tax is levied on real properties that have the status of buildings entered in the register of historical monuments. Free from tax are also properties serving as dormitories for theological schools and seminaries, occupied by the governing boards of individual religious organisations or housing the boards of dioceses (districts, communities) that belong to the structures of these organisations. Moreover, acts concerning different religious organisations also introduce other exemptions, tailored to the needs of individual organisations. In the case of the Catholic Church, these exemptions cover, for example, buildings occupied by contemplative orders or formation centres of religious orders, retirement homes of nuns or priests and buildings housing general or provincial boards of religious orders. When it comes to some churches whose doctrine does not require celibacy of the clergy, exemptions also apply, for instance, to retirement homes of priests' widows.[12]

Moreover, Article 7(1.14) of the Act on Local Taxes and Charges introduces an exemption pertaining to real estates (or their parts) which are used by public benefit organisations to perform unpaid statutory public benefit activities. This exemption could also be used by philosophical or non-confessional organisations on condition that they acquire the status of public benefit organisations. In a similar way, the Act on Local Taxes and Charges contains provisions concerning tax exemptions of different educational institutions. Such exemptions concern all public and non-public

[11] *Dziennik Ustaw* 2019, item 1170.

[12] B. Pahl, *Majątek kościołów i innych związków wyznaniowych. Zasady opodatkowania* (Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie 2008), pp. 84–98; T. Stanisławski, *Finansowanie instytucji wyznaniowych ze środków publicznych w Polsce* (Lublin: Wydawnictwo KUL 2011), pp. 86–88.

organisational units functioning within the system of education (that is, schools in particular) and all universities (Article 7.2.1 and 7.2.2). They also pertain to real estates used by associations which, according to their statutes, conduct activities for children and young teenagers in the areas of education, upbringing, science and technology, sport and physical education (Article 7.1.5). Whether the character of a given institution or organisation is religious or non-confessional does not affect the scope of exemption in any way.

V. Taxation of Ministers of Religion

In reference to the revenues of ministers of religion, two kinds of taxation regimes can apply: lump-sum taxation or taxation according to general rules. In any case, a minister of religion who obtains personal income also has the obligation to pay personal income tax, just as any other person with personal income in Poland.

The former of the above-mentioned forms of taxation is regulated by the provisions of the Act of 20 November 1998 on Lump-Sum Income Tax on Certain Revenues Earned by Natural Persons (see especially chapter IV).[13] It only applies to the revenues earned by religious ministers in tight connection with their pastoral functions. In this reference, it should be observed that in most cases, and in particular in the Roman Catholic Church, clergymen involved in pastoral activities in Polish parishes are not guaranteed any pre-defined remuneration and their revenues mainly come from offerings made by the faithful on various occasions (such as, for example, celebration of a Holy Mass, administration of some sacraments or annual pastoral visits to the faithful in the period after Christmas). The amount of the tax payable quarterly is established on the basis of the annually modified annexes to the Act on Lump-Sum Income Tax and without any reference to the precise amount of religious ministers' income. Of importance are such circumstances as the function performed (for example, a parish priest, vicar, etc.) and the size of a parish in which they perform their ministry.[14]

The taxpayers in question also have the right to change from lump-sum taxation to regular income tax under the general rules established in the Act of 26 July 1991 on Personal Income Tax.[15] Such a change entails the obligation to maintain a revenue and expense record, which permits a precise determination of income and tax due (and can be verified by tax authorities).

The above-mentioned rules do not apply to religious ministers' income obtained from sources other than strictly pastoral activities, such as in particular employment

[13] *Dziennik Ustaw* 2019, item 43, as amended.

[14] D. Walencik, 'Zryczałtowany podatek dochodowy od przychodów osób duchownych. Wątpliwości interpretacyjne i postulaty de lege ferenda', in *Annales Canonici* 4(2008), pp. 231-253.

[15] *Dziennik Ustaw* 2019, item 1387, as amended.

under an employment relationship (which is quite common). In reality, many ministers of religion (that is, especially but not exclusively, Catholic priests and members of Catholic institutes of consecrated life) quite often take up employment as religion teachers in public or private schools, as researchers in universities or, for example, as chaplains in hospitals. One of the consequences of entering an employment relationship is that income generated in this way is subject to taxation under general rules.

VI. Tax Incentives for Donations to Religious Organisations

In Poland, there is no special tax imposed on taxpayers for the benefit of churches or other religious organisations. At the same time, the State guarantees all religious organisations the right to collect contributions, receive donations and accept inheritance and other benefits not only from their own faithful, but also from other natural and legal persons (see Article 19.1.8 of the Act on the Guarantees of Freedom of Conscience and Religion). From the point of view of State law, contributions or donations to religious organisations are made exclusively on a voluntary basis, and the requirement to make such donations – as included in the internal law of some religious organisations – is not subject to any State sanction. Under the current law, however, there exist some regulations that can be treated as incentives to motivate the faithful to provide donations to religious organisations.

Payers who make donations to religious organisations qualify for tax relief provided for by both the Act on Personal Income Tax (see Article 26.1.9) and the Act on Corporate Income Tax (see Article 18.1.1 and 7). According to these provisions, the tax base (taxable income) may be reduced by the amount of donation to religious purposes and public benefit activities (that is, socially beneficial activities realised by the entitled entities in the domain of so-called public tasks, such as for instance in the areas of social assistance, charity, education, teaching and assistance to the victims of calamities, natural disasters or armed conflicts). It should be underlined that religious organisations are not the only entities entitled to receive donations which can be detracted from the tax base. It pertains to a much broader array of entities (including, for example, associations) which are all required to conduct public benefit activity in accordance with the statutes. The regulations under discussion can thus be applied, especially, to such philosophical and non-confessional organisations that function as associations. The level of tax deductions for the donations in question is restricted by the law. Currently, the limits are 10% and 6% of taxable income in corporate income tax and in personal income tax, respectively.[16]

[16] J. Koredczuk, 'Ulgi podatkowe z tytułu darowizn jako źródło finansowania Kościołów i innych związków wyznaniowych oraz ich działalności', in P. Sobczyk and K. Warchałowski (eds.), *Finansowanie Kościołów i innych związków wyznaniowych* (Warszawa: Oficyna Wydawnicza ASPRA-JR

More advantageous is the legal regime governing donations made by natural persons to ecclesiastical charity and welfare activities (*kościelna działalność charytatywno-opiekuńcza*). In this case, the legal basis are the provisions of ten acts on the relations between the State and individual religious organisations (passed since 1989), rather than tax laws.[17] As a consequence, the tax reliefs under discussion do not apply to donations made in favour of institutions of all religious organisations, which should be criticised as inconsistent with Article 25 para. 1 (as well as Article 32) of the Constitution.[18] What is crucial, in the case of the reliefs in question no limits specified in tax law are applicable. Therefore, donations for this kind of ecclesiastical activity may be excluded from the tax base, regardless of their size (theoretically, a taxpayer may donate all his income, reducing the tax base and his income tax to zero).[19] However, to take advantage of such a relief, the beneficiary is obliged to prepare – within the period of two years from the date of a donation – a detailed report on allocating the donation to charitable and welfare activity.[20]

Another solution supporting some church institutions in raising funds is that taxpayers who are natural persons can grant 1% of their income tax to public benefit organisations (in the literature, this solution has even been referred to as 'quasi «church tax»'[21]). What is important, the status of public benefit organisations can be obtained

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2013), pp. 265-276; B. Pieron, 'Finansowanie celów kultu religijnego realizowanego przez kościoły i inne związki wyznaniowe', in *Studia z Prawa Wyznaniowego* 14(2011), pp. 143–151.

17 D. Walencik, 'Darowizny na działalność charytatywno-opiekuńczą kościelnych osób prawnych', in *Studia z Prawa Wyznaniowego* 13(2010), p. 262.

18 A. Abramowicz, *Równouprawnienie związków wyznaniowych w prawie polskim* (Lublin: Wydawnictwo KUL 2018), pp. 289-293.

19 The issue of applicability of the limits defined in tax laws in reference to donations to ecclesiastical charitable and welfare activity used to raise serious doubts and was resolved for practical purposes by the resolution of the Supreme Administrative Court of 14 March 2005 (FPS 5/04); published in *Zeszyty Naukowe Sądownictwa Administracyjnego* 2–3(2005), pp. 77–95. The Court rightly stated that the relevant provisions of laws concerning the relations between the State and religious organisations should be treated as *lex specialis* [which] *derogat legi generali*. *See* R. Mastalski, 'Glosa I', in *Zeszyty Naukowe Sądownictwa Administracyjnego* 2-3(2005), pp. 142–147. The resolution under discussion is criticised by P. Borecki, 'Glosa II', in *Zeszyty Naukowe Sądownictwa Administracyjnego* 2-3(2005), pp. 148–157.

20 The question of how detailed such reports should be has been a constant subject of interest for administrative courts for a number of years now. Numerous judgments have been issued in cases where tax authorities questioned the level of detail of reports submitted. One of recent judgements of this kind is the judgment of the Supreme Administrative Court of 15 May 2019, II FSK 1836/17 (http://orzeczenia.nsa.gov.pl; last access: 2020-01-08), in which it was stated, among other things, that the report at issue should allow tax authorities to verify whether the charitable and welfare goals were in fact realised by an ecclesiastical legal person.

21 M. Rynkowski, 'Financing of Churches and Religious Communities in Poland', in B. Basdevant-Gaudemet and S. Berlingò (eds.), *The Financing of Religious Communities in the European Union* (Leuven – Paris – Dudley, MA: Peeters 2009), p. 278.

inter alia by legal persons belonging to churches and other religious organisations.[22] They can apply to obtain such a status if their statutory goals involve socially beneficial activities belonging to the domain of public tasks. Like other eligible entities, they acquire the status of public benefit organisations upon entry in the National Court Register. The right to grant 1% of income tax is exercised by indicating an organisation that will benefit from the donation of the equivalent of 1% of income tax shown in the annual tax return. Competent tax authorities are obliged to transfer the calculated amount to the entity indicated by the taxpayer.[23]

VII. Tax on Goods and Services (VAT)

Article 43(1.31) of the Act of 11 March 2004 on Tax on Goods and Services,[24] among a number of tax exemptions, also introduces the exemption pertaining to services (and the associated delivery of goods) realised by churches and other religious organisations as well as organisations that fulfil philanthropic goals. These services and deliveries, in order to be subject to the exemption at issue, have to be realised by the above-mentioned entities in the common interest of their members and "performed for their members in return for a subscription fixed in accordance with the internal statutes of these entities, on condition that these entities do not aim to generate profit and this exemption is not likely to cause distortion of competition".[25] Interpretation of this provision raises a number of doubts, including, for example, the possibility of applying it to funeral services performed by administrators of church cemeteries. In accordance with the position of some tax authorities, this exemption does not apply to such situations, since not all conditions are met (for example, funeral services are performed in return for donations or fees rather than subscriptions, and moreover, there is a real risk of distortion of competition). A different view is held by (at least some) representatives of the Catholic Church. A long-standing dispute pertaining to this issue in reference to the Archdiocese of Łódź – despite a number of judgments which have already been passed – has not yet been finally resolved.[26]

[22] See the Act of 24 April 2003 on Public Benefit Activity and Volunteerism, *Dziennik Ustaw* 2019, item 688.

[23] D. Walencik, 'Wpłaty 1% podatku dochodowego od osób fizycznych jako źródło finansowania działalności instytucji kościelnych', in *Studia z Prawa Wyznaniowego* 12(2009), pp. 311–329.

[24] *Dziennik Ustaw* 2018, item 2174, as amended.

[25] The regulation under discussion – as it realises the law of the European Union – is strictly dependent on Article 132(1.l) of the Council Directive 2006/112/CE of 26 November 2006 on the common system of value added tax.

[26] See especially the judgment of the Supreme Administrative Court of 27 June 2018, I FSK 1249/16 (http://orzeczenia.nsa.gov.pl; last access: 2020-01-11), which was the basis for dismissing the cassation appeal of the Minister of Finance (currently: Head of National Revenue Administration) against the judgment of the Regional (Voivodeship) Administrative Court in Łódź of 14 April 2016 (I SA/Łd

VIII. Conclusion

Under Polish law, as follows from the analyses provided above, religious organisations enjoy a number of different tax exemptions and reliefs that in some cases have no counterpart in regulations concerning other entities (although, as a rule, the tax status of non-profit organisations is also favourable). The justification for this State of affairs can be found in the constitutional principle of its cooperation with religious organisations for the individual and the common good. It is also evident that the legislator has attempted to shape the tax provisions in accordance with the principles of equal rights of churches and other religious organisations and equality of individuals, an aim that has generally been achieved. What should be called into question, however, are the regulations regarding donations to ecclesiastical charitable and welfare activity. The visible differences in the legal situation of religious organisations and their members in this regard do not find any relevant justification.

172/16). It means that the latter judgement remains in force; accordingly, the interpretation issued on behalf of the Minister of Finance in this case (questioning the position of the Church representatives) has been considered incorrect as it was issued without properly determining the actual State of affairs.

THE TAXATION OF RELIGIOUS COMMUNITIES AND SECULAR NON-PROFIT ENTITIES IN PORTUGAL

Jónatas E.M. Machado[1], Paulo Nogueira da Costa[2]

I. Introduction

The Portuguese Constitution guarantees a broad range of individual and collective religious freedom rights. In Portuguese constitutional law there is a principle of non-confessionality of the State. It is a structural corollary of the right of religious freedom. This does not mean, however, that there should be an absolute separation between the State and religious communities. In tax matters, there is no church tax or similar solution. Even so, the law provides some tax benefits for religious communities, closely linked to the exercise of religious freedom.

The tax benefits provided for religious communities derive from the recognition that the promotion of the immaterial, moral, social and non-economic dimensions of human existence must be excluded *a priori* from the tax base. It is not a matter of financing religious confessions in a surreptitious way, apart from the principle of non-confessionality of the State. It is a matter of recognising that the importance of nontangible and non-material dimensions of human existence.

In this article we intend to explain this special tax regime and clarify some controversial issues related to it. Taxation is an important part of the more general government task of regulating religion.

II. Taxation and Religious Communities in Portugal

According to Article 103 of the Portuguese Constitution, the tax system aims at meeting the financial needs of the State and other public entities and a fair distribution of income and wealth. It also establishes that taxes are created by law, which determines the incidence, rate, tax benefits and guarantees of taxpayers. True to the

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legality principle, so important in matters of taxation, that article states that no one may be required to pay taxes which have not been created under the Constitution, which are retroactive or whose assessment and collection are not done under the law.

Article 104 of the Constitution establishes the basic types of taxation and the principles and purposes to which they are subjected. It says that personal income tax is aimed at reducing inequalities and will be unique and progressive, taking into account the needs and income of the household. Corporate taxation is primarily about your actual income. Taxation of assets should contribute to equality between citizens. The taxation of consumption aims to adapt the structure of consumption to the changing needs of economic development and social justice, and should burden luxury consumption.

In view of the fact that tax money is essential to finance the State structure and the civil, political, economic, social and cultural rights it seeks to secure, it is understood that the principles of universality and equality enshrined in the Articles 12 and 13 of the Constitution are of central importance in fiscal matters. The default rule is that everyone must pay taxes and must do so to the extent of their ability to pay. Of course, the distinction between those who engage in economic activities, which generate income and wealth, and those who engage in non-economic activities, which generate social immaterial goods that are irreducible to a pecuniary measure, is also of great importance when it comes to understanding the tax regime of religious denominations.

1. **Two Basic Legal Regimes**

The Religious Freedom Act, adopted in 2001 and subject to various amendments, came to concretize and apply to non-Catholic religious confessions the constitutional principles of equal dignity of all citizens, equal religious freedom, non-confessionality of the State and collaboration between the State and religious confessions in promoting the dignity of the human person and fundamental rights, the integral development of each person and the values of peace, freedom, solidarity and tolerance.

The Religious Freedom Act develops the various aspects of individual and collective religious freedom, addressing subjects such as the individual rights of conscience, religion and worship, including rights of religious individuals and entities, religious participation, conscientious objection, the right to religious assistance in public facilities, work exemption or exempetion to examinations for religious reasons or the rights of ministers of religion. The Religious Freedom Act also addresses important aspects of collective religious freedom, such as the rights of self-organisation of religious communities, the definition of religious purposes, freedom to exercise religious functions, religious teaching in public schools, the right of religious broadcasting in the television and radio public service and zoning and land use norms relating to buildings of the religious communities.

An important aspect is the distinction, with relevance for tax purposes, between legal persons of a religious nature and religious communities that have been established for more than 30 years in the country or for more than 60 years in the rest of the world. As might be expected, the Religious Freedom Act devotes significant space to taxation.

Article 58 of the Religious Freedom Act expressly provides for the special system created by the Concordat between the Holy See and the Portuguese Republic of 7 May 1940, the Additional Protocol thereto of 15 February 1975, as well as the applicable legislation to the Catholic Church. This means that the provisions of the Religious Freedom Act concerning the churches or religious communities registered or based in the country do not apply to the Catholic Church unless there is the adoption of any provisions by agreement between the State and the Catholic Church or by remission of the law.

In the Concordat of 2004, the Portuguese State and the Catholic Church recognise the deep historical relations between them and the need to adapt the legal framework resulting from the 1940 Concordat to the constitutional and democratic transformations that took place after the Carnations Revolution of 1974 and the entry into force of the 1976 Constitution, still in force with some amendments. The Catholic Church has thus the right to a different legal regime, taking into account the factual conditions resulting from the profound historical and cultural roots of Catholicism in Portugal. It is important to bear in mind, for example, that the Catholic Church already had properties in the territory that is now Portugal even before the formation of the Portuguese Kingdom in 1143.

The Concordat of 2004 regulates various aspects of the relationship between the Catholic Church and the State, such as the recognition of legal personality of the Church and of its constituent units, the appointment and dismissal of Bishops, the right to self-organisation through canon law, the legal status of Catholic charitable organisations, the civil effects of Catholic marriage, religious assistance in public institutions dedicated to health, education, security and defense, Church-State cooperation in the education of children and young people, religious education in public and proper educational establishments of the Catholic Church or the preservation, appreciation and enjoyment of the vast artistic, real estate and monumental heritage of the Catholic Church. Naturally, fiscal issues occupy an important place in the 2004 Concordat.

2. **Direct Taxes**

A) ***Personal Income Taxes***

Direct taxation has a significant impact on religion. All residents in Portugal are subject to personal income tax, levied on all of their income, including foreign sources of income. Religious ministers must pay income tax like any other citizen.

Under the Concordat of 1940, Catholic priests were exempt from taxation in respect of amounts they received for the exercise of their spiritual office (article 8). With the entry into force of the 2004 Concordat, this exemption is no longer envisaged. Thus, the amounts paid to Catholic priests by the diocese as well as by a different entity (Parish Fund or other canonically equivalent entity) which, according to canon law, constitute "appropriate remuneration" for the priests, are subjected to taxation as income from dependent work.

The Portuguese Income Tax Code considers that the taxable income includes the fringe benefits attributed to the worker by the employer. One of these fringe benefits is the provision of housing to the worker. With regard to Catholic priests, however, it is considered that the provision of housing, as a result of the norms of Canon Law that impose the obligation of residence of the priest in a religious community in the respective Parish, does not constitute a fringe benefit to be taxed.

Article 32 (3) of the Religious Freedom Act provides that donations granted by natural persons to religious legal persons registered for the purposes of income tax are to be deducted from the collection, in accordance with the terms and limits laid down in Article 63 (1) (b) and (c) of the Statute of the Tax Benefits, and the deduction is considered at 130% of its amount. That means that if one gives 100 € to a religious community, the tax deduction will be of 130 €. This means that, to a certain extent, giving money to religious communities is positively rewarded.

An identical provision exists in the Concordat. In its article 26, paragraph 6, it establishes that donations made to canon law entities, to which civil personality has been recognised under this Concordat, allow for a personal income deduction, under the terms and limits of the Portuguese law. Article 27 of the 2004 Concordat states that the Portuguese Episcopal Conference may exercise the right to include the Catholic Church in the tax revenue collection system provided for in Portuguese law, which may be subject to agreement between the competent organs of the Republic and the competent ecclesiastical authorities.

This possibility of tax deduction serves at least two main purposes. On the one hand, the State recognises the social relevance of religious experience and activity. On the other hand, it encourages religious communities and their members to formalise their donations. This is very important from the standpoint of the need to prevent religious communities from being used for tax evasion, money laundering and corruption activities.

Article 32 (4) of the Religious Freedom Act stipulates that a contribution equal to 0.5% of the personal income tax paid on the basis of the annual declarations may be used by the taxpayer for religious or charitable purposes, to a church or religious community based in the country. As we can see, this is not an ecclesiastical tax but a possibility for the taxpayer to decide on the fate of a small part of his tax in favour of his own religious confession or any other listed non-profit secular entities. It is also important to bear in mind that this applies only to religious communities rooted in

the country, that is, under article 37 of the Religious Freedom Act, that already have a social presence organised in Portugal for more than 30 years or more 60 years in any other part of the world.

In this case, the taxpayer must indicate the beneficiary confession in his annual declaration of income, and must be a church or religious community that has requested the tax benefit. The funds thus allocated to churches and religious communities shall be handed over by the Treasury to them or to their representative organisations, which shall submit to the Directorate-General for Taxation an annual report of the destination given to the amounts received. As stated above, taxpayers who do not use this option may make an equivalent contribution in the tax return in favour of non-religious public interest legal entities which pursue cultural, philosophical, artistic, humanitarian or charitable purposes. The amounts to be delivered to the entities mentioned should be entered in a separate heading in the State Budget.

Tax authorities shall publish on the electronic declarations page, up to the first day of the deadline for submitting the declarations, provided for in article 60, all entities that are in a position to benefit from the tax provisions envisaged. The tax assessment note of the personal tax (IRS) must include the identification of the beneficiary entity, as well as the designated amount. The amounts referred to with respect to personal income tax paid on the basis of income declarations delivered within the legal deadline must be transferred to the beneficiary entities by 31 March of the year following the date of submission of the said declaration.

The entities registered in the register of religious legal persons (RPCR) that wish to benefit from the provisions of article 32 of the Religious Freedom Act must prove that registration. And, if they so wish, they shall also apply for the tax benefit provided for in article 32 (4) of the Religious Freedom Act.

Entities benefiting from the application of article 32 (4) shall submit an annual report of the destination given to the amounts received, which shall be done by the last working day of June of the year following the year in which they were received.

B) *Corporate Taxation*

Religious communities enjoy important tax benefits when it comes to corporate taxation. This is understandable, since they don't engage in a profit-making business. Article 31 of the Law on Religious Freedom establishes that churches and other religious communities may freely, without being subject to any tax, a) receive contributions from believers for the exercise of worship and rites, (b) make public collections, in particular within or at the door of places of worship, as well as of buildings or places belonging to them, and (c) distribute free publications containing statements, warnings or instructions thereon and place them in places of worship. This exemption does not cover the price of the provision of spiritual training, therapy or counseling services.

In the case of the Catholic Church, and its canonical entities, the 2004 Concordat establishes, in its article 26, the total exemption of taxes on a) the constritutions of believers for the exercise of worship and rites; b) donations for the fulfillment of their religious purposes; c) the result of public collections for religious purposes; d) the free distribution of publications with religious declarations, warnings or instructions and their display in places of worship.

The same article prescribes that canonical legal entities, also engaged in activities for purposes other than religious, so considered by law, such as social solidarity, education and culture, as well as commercial and lucrative, are subject to the tax regime applicable to their activity. This means that the tax benefits are limited to income from their adherents assigned for religious purposes. Any income that they may derive from other sources (v.g. interest, rents, dividends, capital gains) is subjected to the corresponding tax regime, even if it is used for religious purposes.

Religious organisations and institutions may, in addition to religious purposes, intend to carry out activities with social solidarity purposes. To do this, they can create Private Social Solidarity Institutions (IPSS), namely associations and foundations, which benefit from a specific legal regime.

In the case of the Catholic Church, the 2004 Concordat provides for the possibility of creation of institutions for social solidarity purposes, namely Parish Social Centres and Diocesan and Parish Caritas, which benefit from the legal status recognised to IPSS [Article 2 (2) of Decree-Law no. 172-A/2014, of November 14].

The abovementioned purposes of social solidarity can be pursued through various activities that contribute to the realisation of citizens' social rights, namely in the following areas: a) child and youth support; b) family support; c) elderly support; d) support for persons with disabilities; e) support for social and community integration; f) social protection of citizens in all situations of lack, or reduction, of means of subsistence or of capacity for work; g) prevention, promotion and protection of health; h) education and vocational training; i) resolution of population housing problems; j) other social responses that contribute to the realisation of citizens' social rights.

Private social solidarity institutions and legally equivalent legal entities are exempt from corporate taxation [article 10 (1-b) of the Corporate Tax Code]. The idea here is to submit religious and secular entities that pursue similar non-profit activities of a social relevance and public utility to the same tax regime, in order to minimise discrimination.

This exemption does not cover business income derived from the pursuit of commercial or industrial activities carried out outside the scope of statutory purposes and is subject to the continued compliance with the following requirements:

Effective exercise, exclusively or predominantly, of activities aimed at the pursuit of the purposes that justified the respective recognition of the quality of public utility;

Allocation for the purposes referred to in the previous paragraph of at least 50% of the total net income that would be subject to taxation under the general terms;

Absence of any direct or indirect interest of the members of the statutory bodies, by themselves or by interposed person, in the results of the exploitation of the economic activities pursued [article 10 (3) of the Corporate Tax Code].

As mentioned, monetary and in-kind donations made for religious purposes are not subject to taxation. However, the income that such assets may generate, such as interests or rents, are subject to the corporate tax, even if their destination is the realisation of religious purposes. Particularly important is the absence of any direct economic interest from the leaders of the religious community or the secular entity concerned in the economic results of the activity. A Church in which the Pastor is shown to have an economic interest in the activity of the Church, namely by having unrestricted access to the respective bank account and using it for personal gain, should be disregarded as a religious community, for tax purposes, although it may continue to be considered as such for other purposes.

3. **Consumer Taxation**

Article 65 of the Religious Freedom Act provides that churches and religious communities located in the country, institutes of consecrated life and other institutes with the nature of associations or foundations founded or recognised therein, and federations and associations in which they are included, may opt for the regime of VAT (Value Added Tax) exemption set forth in no. 1 of Article 1 of Decree-Law no. 20/90, of January 13, successively amended. As long as it is in force, and in this case, paragraph 4 of Article 32 of this law is not applicable to them.

If one of the aforementioned entities opts for the special VAT regime, the Tax Administration will refund the tax corresponding to the purchases and imports made in respect of:

a. Objects intended solely and exclusively for religious worship, contained in import declarations, invoices or equivalent documents of a value equal to or greater than € 249.20 (excluding VAT), and this value should be totally related to that type of goods;
b. Goods and services relating to the construction, maintenance and preservation of real estate exclusively for worship, housing and formation of priests and religious, apostolate and the exercise of charity, included in invoices or equivalent documents with a value equal to or greater than € 997,60 (excluding VAT).

In this case, the religious community cannot benefit from the contribution of 0.5% of the personal income tax that could be earmarked by the taxpayers.

4. **Property Taxation**

In Portugal, the main property taxes are IMI and IMT. The IMI is an annual tax levied on the taxable value of real estate. The IMT is a one-off tax levied on the

onerous transfer of the property right of real estate (or portions of that right). Both are local taxes.

In 2017, another annual additional property tax, the AIMI, came into effect, which is levied on the sum of the taxable value of residential real estate and building land. In the case of natural persons, there is only taxation when this sum exceeds 650 000 euros (or double for aggregates that opt for joint taxation), applying a progressive rate, which can go from 0.7% to 1.5%. In the case of legal persons, the rate is 0.4% whatever the value of the already mentioned real estate properties. It is not subject to AIMI the value of real estate assets that were exempted or not subject to IMI in the previous year.

Places of worship are symbols of religious freedom and centres of religious activity. There is an intimate connection between religious freedom and the right to property. For the exercise of their specific ritual functions of worship, worship, transmission of doctrines and strengthening of identity and intergenerational continuity of the community, religious denominations need to acquire property or the right to use property. For that reason, law provides for tax benefits for religious denominations in the field of property taxation.

In the area of property taxation, Article 32 of the Religious Freedom Act enshrines a wide range of tax benefits, which affect all religious legal persons registered in the national register of legal persons. They include exemption from any regional or local tax or contribution to places of worship or other buildings or parts thereof directly intended for religious purposes, as well as facilities for direct and exclusive support of activities for religious purposes. Seminars or any establishments or institutions which are effectively intended for the training of ministers of religion or for the teaching of religion are also exempt from taxation, together with the premises or annexes of such buildings which are used by private charitable institutions, including gardens and town hall, which are not for profit.

Along with the buildings, the respective acquisitions are exempt. In fact, registered religious persons are also exempt from IMT and on successions and donations or any other assets with a subsidiary effect on the acquisition of goods for religious purposes.

As far as the Catholic Church is concerned, Article 26 (2) of the 2004 Concordat states that the Holy See, the Portuguese Episcopal Conference and the canonical legal entities legally recognised as belonging to the Catholic Church are exempt from any tax or general, regional or local contribution to:

a. places of worship or other buildings or part of them directly intended for religious purposes;
b. the facilities of direct and exclusive support to activities for religious purposes;
c. seminaries or any establishments intended for ecclesiastical training or teaching of the Catholic religion;

d. the dependencies or annexes of the buildings described in a) to c) the use of private social solidarity institutions;
e. the gardens and public areas of the buildings described in points (a) to (d), provided they are not for profit;
f. movable property of a religious character, integrated in the buildings referred to in the preceding paragraphs or that are ancillary thereto.

Equally exempt, under paragraph 3 of the same article, are acquisitions of real property for religious purposes and any free acquisition of goods for religious purposes.

All properties purchased by religious legal entities for income are subjected to IMI and IMT, and their respective income is subjected to corporate taxation (IRC), regardless of their allocation. The allocation of the property is thus crucial to determine the applicable tax regime.

It may happen that from the formal point of view a property has a certain purpose or destination – for example, housing – but, in reality, it is being used for religious purposes. In fact, Article 29 (1) of the Religious Freedom Act admits that a building intended for a certain purpose (housing, commerce or services) may be used for religious purposes without the authorisation of the administration.

In this case, the principle of the prevalence of the substance over the form should assume relevance, and the taxpayer must be able to prove the real destination of the property. The tax administration cannot conclude that a property is not intended for religious purposes, based on the property records, without giving the interested parties the possibility of proving otherwise.

The property records may justify the presumption by the tax administration that the property is destined for a certain purpose, but such a presumption has to admit evidence to the contrary.

5. **Stamp Duty**

Stamp duty is a multifaceted tax, with incidence on wide range of acts (v.g. notarial acts and free acquisition of goods) not subject to other taxes. In this sense, the stamp duty has a residual character. There are some stamp duty exemptions for religious entities.

Article 32 of the Religious Freedom Act and 26 of the Concordata establish a tax exemption to acts of foundations, once registered as religious persons. Any free acquisition of goods for religious purposes is also tax exempted.

III. Religious Purposes

It is easily understandable that the concept of religious purpose or purposes is of great practical importance, since it will condition the obtaining of tax benefits. The Law of Religious Freedom aims to circumscribe the notion “religious purposes”

for legal and tax purposes. The legislator seeks to use objective and abstract criteria, which are not confused with the subjective and concrete self-understanding or self-definition of each individual religious confession.

Article 21 of the Law on Religious Freedom states that, regardless of whether they are proposed as religious by a given community, religious purposes are considered as such, for the purposes of determining the legal regime of religious worship and rituals, religious assistance, of the ministers of the cult, of mission and diffusion of professed confession of faith and of teaching of religion. They are considered different from religious purposes, among others, those of social assistance and charity, education and culture, as well as commercial and profit.

Activities with a non-religious purpose developed by churches and religious communities are subjected to the legal regime and, in particular, to the tax regime of such activities. This is also required by European Union State aid law. It is largely a matter of assuring free and fair competition in the market. The law recognises that religious confessions can develop multiple activities and make diverse investments, not strictly religious, but somehow linked to the financing and pursuit of their religious goals.

In fact, the possibility that religious denominations may be majority or minority shareholders of different companies cannot be rejected in order to allow them to diversify and perpetuate their sources of financing, without being too dependent on the oscillation and volatility of the contributions of their faithful.

Indeed, Article 27 of the Religious Freedom Act provides that churches and other religious communities may engage in non-religious activities that are instrumental, consequential or complementary to their religious functions, such as creating private schools and cooperatives, practising as a charity of believers, or of any persons, to promote their own cultural expressions or to education and culture in general, and to use their own means of communication for the continuation of their activities.

IV. Critical Assessment

The tax regime of religious denominations in Portugal reveals some interesting aspects. First of all, it should be noted that a positive overall view of the social contribution of religious phenomena and of different religious denominations is welcomed. The religious and non-religious convictions of all Portuguese are taken seriously and considered in their social, institutional, legal and tax implications.

On the other hand, the tax regime of religious communities reflects a perspective of cooperation between the State and religious confessions in the promotion of different social aims. The proper and reasonable recognition of the historical and cultural importance of the Catholic Church in the identity of the Portuguese people and State must also be noted. The formal difference between the Religious Freedom Act applicable to most non-Catholic religious denominations and the 2004 Concordat does

not translate into arbitrary and discriminatory differentiations in the legal treatment of religious and secular minorities.

On the other hand, the difference between the majority of non-Catholic religious communities and those that are rooted in Portugal, visible in the system of 0.5% of income, does not appear problematic either. It has a reasonable and acceptable justification on grounds of administrative feasibility and has an abuse prevention purpose and effect. The same goes for limiting the tax benefits of religious denominations. Although the legislator has a broad view of the different religious and non-religious goals that religious communities can pursue, tax exemptions are narrower in scope and are strictly aimed at religious purposes.

Overall, the regime reflects a reasonable balance between individual and collective religious freedom, on the one hand, and tax equality, free and fair competition, and protection of the State's tax base. It also expresses the understanding that religious and non-religious entities that carry out activities of the same nature and social relevance must have identical tax treatment.

All tax provisions should be interpreted in accordance with general and anti-abuse principles and rules. In Portugal, the general anti-abuse rule stipulates that an arrangement or a series of arrangements which, having been carried out for the principal purpose or one of the principal purposes of obtaining a tax advantage which frustrates the object or purpose of the applicable tax law, is carried out with abuse of legal forms or is not considered to be genuine, taking into account all the relevant facts and circumstances, is disregarded for tax purposes, being taxed in accordance with the rules applicable to the business or acts that correspond to the economic substance or reality and do not produce the desired tax advantages [article 38(2) of the General Tax Act].

An arrangement or series of arrangements is not genuine when it is not carried out for valid economic reasons that reflects the economic substance [article 38(3) of the General Tax Act]. This general anti-abuse rule results from the transposition of article 6 of the European Directive no. 2016/1164, of 12 July 2016, which establishes rules against tax avoidance practices that directly affect the functioning of the internal market.

This means that if the leadership of a given religious denomination develops religious activities for almost commercial purposes, to earn high incomes for the leaders and not maintaining a legal and formal separation between the patrimonial assets of the religious community and the personal patrimony of the leadership, the Tax Authority is entitled to consider that strictly religious purposes are not being pursued, and may recharacterise the activity of religious confession for tax purposes and refuse to apply to it the tax benefits provided for by law.

V. Conclusion

Religion and religious communities are seen as a very important sector of the non-profit-making civil society, providing a sense of purpose, meaning and spiritual, emotional and social welbeing. Cooperation between the State and religious communities, within the framework of constitutional principles, is seen as a positive outcome.

The constitutional principle of separation of religious communities and the State coexists with the principles of individual and collective religious freedom, equality, tolerance and cooperation. Taxation is only one means through which the Portuguese State acknowledges the social relevance of religious communities. There are several relevant tax exemptions, as far as corporate, consumption and property taxation are concerned, alongside personal income deductions of charitable donations made to religious communities.

This tax treatment largely replicates the one afforded to non-religious social institutions that develop their activities in the domains of culture, science and sports. It is confined to religious institutions to the extent that they themselves and their goods, services and buildings are directly linked to the promotion of religious activities.

To the extent that religious communities engage in market business activity, they will be subjected to the corresponding taxation. In the interpretation and application of tax law provisions to religious communities, it is necessary to adopt an anti-abuse methodology, in order to avoid that, under the pretext of the alleged promotion of religious purposes, in fact, business and commercial objectives are being pursued.

TAXATION LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN ROMANIA

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All Romanian political regimes, since the establishment of the modern state, have stipulated some form of financial support for religious activities. This was felt to be especially important after the secularisation of the church's assets when the Orthodox Church was left without any financial means to support its activities. The Romanian State undertook to partially compensate it for losses suffered by covering the costs of the church's activities. The main principle guiding the State in its support of church activities continued and was expanded throughout the following century and a half.

In recent years, there has been a real debate in Romania about financing religious communities, especially the amount of money given to the Orthodox Church. What started this debate was the building of the new patriarchal cathedral in Bucharest. People do not understand that according to Romanian law, State money is given to religious organisations based on two principles: equality and, more importantly, proportionality. Taking into account the particularity of religions and faiths and their different needs, Law nr. 489/2006 stipulates that financing depends not only on the number of their believers but also on the real needs of these religions and faiths, estimated annually in collaboration with these.

I. Income Taxation of Religious Organisations and of Philosophical and Non-Confessional Organisations

According to the Constitution (2003), Romania is the common land of all its citizens, without differences based on race, nationality, ethnicity, language or religion (Art.4, Par.2). Art. 29 Par. 5 of the same law establishes that the religious organisations are autonomous in their relationship with the State and they enjoy its assistance. The State recognises in Romania the important role of the Romanian Orthodox Church and the other Churches and religious denominations to both the national history and the life of the Romanian society (law 489/28.12.2006). The recognised religious organisations in Romania are juridical persons of public utility and they

are organised by and function according to the Constitution, the law for religious denominations (law 489/2006), as well as their statutes or canonical codes.

Religions and faiths are equal in the face of the law and public authorities, and the State neither promotes nor favours the granting of privileges or discrimination against any religion or faith, making the Romanian State as neutral concerning all religions.

The expenses for maintenance of religious organisations and their activities are to be paid for with the income of the organisations, raised and administered following their statutes (Art. 10 Par 1, law 489/2006). According to the second paragraph of article 10 of the same law, religious organisations may fix the financial contributions of their believers to sustain their activities. The Romanian State also encourages parishioners and citizens to support religious communities and organisations making religious contributions tax-deductible (Art. 10 Par. 3). At the same time, the law states that nobody may be forced to contribute to religious organisations.

As was stated before, the religious communities depend mostly on parishioners' free contributions. They are collected directly from the parishioners by the representatives of religious organisations. There should be a distinction made between the existing contributions in the Romanian Orthodox Church. In the Romanian Orthodox Church, Parish Councils fix amounts that all parishioners are expected to contribute. This so-called "sidoxial tax" was fixed during the Habsburg era and is an annual tax that was due to be paid by the priests to their bishop. In this way, each family should have paid three creiţari.[1] These days, the tax varies from one community to another. Along with this tax, religious organisations can also finance their community through free contributions, by parishioners, for the holly services, the so-called "stole taxes".[2] Both these possibilities are examples of voluntary contributions, as not paying them does not result in any coercion by the Church. These contributions are also free of any other financial taxes as we will soon see.

[1] Paul Brusanowski, *Situaţia juridică şi dotaţia Bisericii Ortodoxe din Ardeal între 1761–1810. Fondul Sidoxial. Asemănări şi deosebiri faţă de celelalte confesiuni din Monarhia habsburgică*; Suciu, Constantinescu, *Rescriptum declaratorium*, § 22, point 6 I, p. 419 (Latin text on p. 394See also Pavel Vesa, *Episcopia Aradului. Istori.e. Cultură. Mentalităţi* (1706-1918), Presa Universitară Clujeană, Cluj-Napoca, 2006, p. 301; Johann v. Csaplovics, *Gemälde von Ungern*, vol. I, Hartleben Publishing, Pesta, 1829, pp. 300–301; Ioan A. de Preda, *Constituţia bisericei gr.-or. Române din Ungaria şi Transilvania sau Statutul Organic comentat şi cu concluzele şi normele referitoare întregit*, Tiparul Tipografiei arhidiecezane, Sibiu, 1914, p. 53.

[2] The "Stole Tax" represents the contribution of the parishioners for the holly services celebrated by the priests with the stole (liturgical cloth element).

1. Financing the Religious Communities by the State

The officially recognised religious communities receive money from the State for paying part of their personnel's salaries. This support is based on two principles: the principle of equality of all officially recognised religious organisations before the State and the principle of proportionality to the number of parishioners. The State support is accorded each year and is based on the recommendations and needs expressed by the religious organisation to the State Secretariat for Religious Denominations. Through the law Nr.142/27.07.1999 article 1 par.1, the State supports officially recognised religious organisations with part of the salaries for their personnel (clergy and non-clergy). The persons who benefit from this law remain employees of the religious community and not of the State. The number of the positions financially supported by the State for each religious organisation is approved each year by the State Secretariat for Religious Denominations based on religious organisations' recommendations, by taking into account the number of parishioners in each organisation and the total sum of money foreseen for this aspect.

The leaders of the officially recognised religious organisations are considered to be equivalent to statesmen/dignitaries and they get a monthly salary per the laws about the salaries of the State dignitaries. The State's financial support for the religious organisations' personnel is taxable. As said before, this State support represents only a part of the clergy's salary as the other part should be paid by contributions of the believers and community members. According to Law 132/04.07.2008 art.2 par.2, the number of places for clergy may be increased annually by the State budget law. The amount of the monthly financial assistance accorded to the clergy can be increased through other laws about enhancing the salaries of the state/budget workers. According to article 2^1 of the same law, the clergy who serve in poor areas receive an additional 25% of financial support, but only 30% of the clergy of each religious organisation may take benefit of this legal stipulation.

2. Financing the Religious Communities Abroad

When we speak about the religious communities abroad, we mean first of all those of the Romanian Orthodox Church which are the most numerous and representative.

According to the law Nr.142/1999, the State in Romania is interested in supporting the Romanian Orthodox Church organised abroad to maintain its cultural, linguistic and religious identity. In this way, the Romanian clergy who serve abroad are allocated a sum of money, equivalent to the currencies of the countries where they work, through making them equivalent with the functions of the Romanian diplomatic employees. There are 52 allocated positions in such places and they concern only the

bishops of the Romanian Orthodox Church.[3] This programme was created because of the frequent contact with the Romanians who live abroad, more frequent than the contact with ambassadors or of other diplomatic representatives of Romania. Giving the bishops the equivalent of diplomatic ranks means also giving them the afferent salaries of the functions they are made equivalent to. The priests and deacons who serve the Church in parishes abroad also receive a State subsidy, so that the communities abroad do not have to support the entire salary of their clergy.

Through Law 114/27.4.2007, the Romanian monastery Prodromou on the Holy Mountain Athos receives annually 250.000 euros (article 2) for restoring, reparation and maintaining the buildings and the four churches (article 4), for promotional materials and sustaining the activity of the monks who serve and live there.

One should also mention that the State has also bought the property in the furtherance of the new dioceses of the Romanian Orthodox Church in Europe and Australia. The State bought a building near Rome for the new Romanian Orthodox Diocese of Italy in 2008. Before that, the State gave one of its properties near Paris, in Limours, as a concession for the Romanian Orthodox Metropolitan for Western Europe. There was also bought an old church in Brussels which now serves as a parish church for the Romanian orthodox community there and as a representation of the Church to the European Institutions. Another church, with a cultural centre, parish house and library, was bought in 2008 for the Romanian Orthodox community in Christchurch, New Zealand. This support of the State is not new in the life of the Church. The Romanian State has always shown special interest in communities abroad, as when in 1885 the Romanian Government bought the Dominicans Church in Paris[4] and in 1943 bought the Jerusalem Church in Berlin,[5] and so on.

II. Real Estate Taxation of Religious Organisations and of Philosophical and Non-Confessional Organisations

According to the article 15 letter "e" of the Romanian Fiscal Code, the incomes of the religious communities obtained by economic activities and which are used for sustaining the charitable and social activities of those organisations are exempt from taxes.[6] The religious communities have the exclusive rights to the production, sale and trade of liturgical products (law 103/1992) and they are also exempt from taxes

[3] This does not represent discrimination for the other officially recognised religious organisations, but only the Romania Orthodox Church has such persons and structures (dioceses) organised abroad.

[4] Veniamin Pocitan, *Biserica Ortodoxă Română din Paris (The Romanian Orthodox Church in Paris),* Tipografia cărţilor bisericeşti, Bucharest, 1941.

[5] The church was destroyed during World War II.

[6] Ministerul Culturii şi Cultelor, *Viata religioasă din România (Religious Life in Romania)*, 3rd edition, Bucharest, 2008, p. 156.

obtained from producing and marketing the necessary products for the holy services. The same exemption applies to the rents which the religious communities earn from their properties if this money is used for maintaining, building or restoring the church buildings.

Building, consolidating, enlarging, restoring and rehabilitating church buildings or other buildings used for religious purposes are exempted from paying VAT. Churches are also exempted from paying all taxes on buildings, land on which buildings are built, as well as all lands (plough, forest etc.) which are on the church property (Law 571/2003, article 250 par.1 and article 257 letter "b").[7]

As a result of all the difficulties of the Church during the communist period, after the 1989 events, the Church obtained through Law 18/1991 land properties as follows: each parish five hectares, the monasteries ten hectares each and the dioceses 100 hectares each. Through Law 169/1997, these properties were enlarged, where possible, to ten hectares for the parishes and 50 hectares for the monasteries. The forests which were owned by the Church before 1945 were given back to the Church, up to a maximum of 30 hectares, but most were not given back in the same location they were before.

In addition to the tax-exempt status of religious contributions, Romanian taxpayers have the option, as per article 57, par.4-6 and 84 par.2-4 of the Fiscal Code, to direct 2% of their income taxes to a non-profit organisation or to a religious community. This option provides religious communities with additional revenue.

III. Taxation of Monastic Communities/Orders

The State Secretariat for Religious Affairs covers the health insurance for religious personnel who do not have any income, such as monastics and other clerical personnel of the recognised religions.

If we are speaking about taxation, the monastic communities are perceived as part of the main religious organisation and the main rules apply to them as well.

IV. Taxation of Religious Social Institutions and of Philosophical and Non-Confessional Organisations (charity; educational, etc.)

The social institutions organised by the religious organisations have the same tax exemptions on the real estate as the buildings of the religious organisation itself.

The exemptions are kept in the New Fiscal Code of Romania for all the religious buildings which have social use.

[7] *Ibidem,* p. 167.

V. Taxation of Religious Ministers and of the Leaders of Philosophical and Non-Confessional Organisations

According to the judicial principles and legal provisions mentioned above and based on existing openness, the Romanian State offers monthly contributions worth some 22,000,000 lei for the salaries of about 16,600 employees of recognised religions and faiths (priests, pastors, imams, rabbis, deacons, etc. and leadership staff). Although all 18 recognised religions may request assistance for the salaries of their clerical staff, the Baptist Church, the Seventh-Day Adventist Church, and the Jehovah's Witnesses may not request financial assistance.

Since salary assistance is offered based on proportionality, each religion or faith receives an amount directly proportional to the number of believers reported in the last census. Thus, for example, in 2018, the religious personnel of the Romanian Orthodox Church received a monthly 18,144,538 lei or 82.8% of the total, while the religious staff of the Greek Catholic Church received a monthly 742,341 lei, or 3.4% of the total.

Based on the proportion of believers reported in the census of 2011, namely 86.7% Orthodox, 4.73% Roman Catholic, 3.23% Reformed, 1.50% Pentecostal, 0.9% Greek Catholic, etc., the level of funds allocated to several minority religions is comparatively higher than their share of the population (Reformed, Greek Catholic, Unitarians, etc.), while the level for others (Pentecostal) is lower than their share of the population. This differentiated distribution of funds is an expression of the fact that the Romanian State recognises the different needs of minority faiths among each other and with the majority religions (principle of respecting real needs of religions/faiths).

According to Law 284/2010 on the uniform remuneration of the personnel paid from public funds, the salaries for clerical staff are matched against those of the pre-university State education teaching staff (with the State paying only a portion of clerical salaries). The main leadership functions of religions and faiths (religious leaders, down to the level of bishop-vicar) are assimilated with public dignitary positions, and the holders thereof (93 functions) receive a fixed monthly indemnity, by grade.

The state's contribution to the remuneration of religious personnel (15,237 positions) is partial, covering 65% of the full amount of salaries for most positions (10,683 positions), or 80% for units with lower incomes (4,554 posts or 30% of the total thereof).

The State provides full salaries for the higher management personnel of religions and faiths, besides those of public dignitary grade, from Vice President of the union to Abbot (1,272 positions). Depending on the number of years in employment, the level of education, and position held, the financial support offered for religious staff differs.

Religions make up the difference of salaries for clerical staff from their funds and pay income tax, health insurance, and social taxes to the State. Salaries for military

clergy are covered by the institutions to which they are posted. Additional positions created by the various faiths are financed by the latter from their funds.

VI. Church and Philosophical and Non-Confessional Organisations Taxation

There is no tax imposed on the believers except for the Adventist Church where the members have the moral duty to support the social activity of the organisation with the 10th part of their income. This is perceived as a donation and is tax exempted.

There is the possibility to direct 2% of the personal income tax to the Churches or religious or philosophical organisations.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN SLOVENIA

Blaž Ivanc

I. Introduction

From a general perspective, the State legal regulation of financial (including taxation) issues of churches, religious communities and other philosophical and non-confessional organisation is important for assuring a true freedom of religious activities in a democratic, pluralistic, and free society. The Constitution of the Republic of Slovenia[1] guarantees the autonomy of religious communities, equal treatment between religious communities and the separation between the State and religious communities (Art. 7).[2] At the same time, the Constitution also guarantees the individual religious freedom (Art. 41) and the right to conscience objection (Art. 46).[3]

The Religious Freedom Act 2007[4] provides for a mixed type of financing of churches and religious communities. The National Assembly did not opt for the introduction of a church tax, although – from a historical perspective – such a solution could be regarded as a way of making better for grave interferences of the former Communist State into property rights of churches and of religious communities, which were a substantive part of the restrictive State policy in the domain of church financing. According to the Religious Freedom Act, the mechanism of self-financing is the main source of churches and religious communities, but it is supplemented by some elements of direct State financing and by different modes of indirect financing

[1] The Constitution of the Republic of Slovenia (Official Gazette RS, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 and 75/16 – UZ70a).

[2] See Ivanc, Blaž, '*State and Church in Slovenia*'. In: State and Church in the European Union, (3rd Edition), Edited by Gerhard Robbers. Baden-Baden: Nomos, 2019, p. 541.

[3] *See* Ivanc, Blaž, 'Dopolnitev komentarja 46. člena Ustave RS (pravica do ugovora vesti)', 738-757. In: Komentar Ustave Republike Slovenije; Dopolnitev-A (Commentary on the Constitution of the Republic of Slovenia – Supplement–A). Edited by Lovro Šturm. Ljubljana: Fakulteta za podiplomske državne in evropske študije, 2011.

[4] The Religious Freedom Act 2007 (Official Gazette RS, No. 14/07, 46/10 – odl. US, 40/12 – ZUJF and 100/13).

of churches and religious communities on the part of the State and local authorities. Various donations and other contributions made by natural and legal persons, an income from church property, and the contributions of international religious organisations (whose members they are), constitute the main financial sources for registered churches and other religious communities (see Art. 29. para. 1 Religious Freedom Act). Under Art. 29 para. 2 of the Religious Freedom Act, registered churches or other religious communities have the freedom to collect voluntary contributions in compliance with their rules and State legislation.

The Law on Religion has dual legal basis for direct or indirect financing of churches and religious communities. The provision of Article 20 Legal Status of Religious Communities Act from 1976 is still valid and enables the State to give a direct financial support to a church or to a religious community. However, this legal ground is rarely used in practice. In addition, the Religious Freedom Act provided for a new direct financing mechanism in the provision of Art. para. 3 that enables the State to provide material support to registered churches and other religious communities if their activities are generally beneficial. The provision of Art. 5 para. 1 of the Religious Freedom Act, which determines the substance of such activities, reads as follows: "Churches and other religious communities promoting spirituality and human dignity in private and public life, endeavour to create meaning in terms of existence as regards religious life and at the same time exert an important role in public life through their activities by developing their cultural, educational, solidarity, charitable and other activities in the field of social state, thus enriching the national identity and performing an important social role, are organisations of general benefit."

Although the Religious Freedom Act explicitly only refers to "churches and other religious communities" (see Art. 1), it also applies to philosophical and non-confessional organisations which have been registered by the Ministry of Culture. The registration of a philosophical or of a non-confessional organisation is not mandatory (as it is of facultative nature also for a church or a religious community), but the status of a registered body does have important consequences for accessing statutory rights provided under the Religious Freedom Act. The Constitutional Court decided that the requirement that a religious community must be registered to obtain financial support from the State is reasonable and objectively justified since it represents a natural condition for the participation of the religious community with the State in the funding (and realization) of generally beneficial activities in the sphere of the social State. The Court also held that regulations governing public finances require that financial support to churches and religious communities may only be given through public tenders.[5]

[5] See the Decision of the Constitutional Court *Zakon o verski svobodi* No. U-I-92/07 (dated 15. 4. 2010) (Official Gazette RS, No. 46/2010 and OdlUS XIX, 4).

II. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

The Slovenian Law on Religion provides for various exemptions or reliefs in fiscal and customs matters concerning the goods of various religious entities. According to the provision of Art. 9 para. 1 of the Corporate Income Tax Act,[6] registered churches and religious communities (which have to be entered in the register of taxpayers) are not obliged to pay tax under this Act if a church or a religious community is established in accordance with a special law for the pursuit of a non-profit activity and actually operates in accordance with the purpose of its establishment and operation. In other situations, a church or a religious community is obliged to pay taxes (see Art. 9 para. 2 of the Corporate Income Tax Act).

The Value Added Tax Act[7] in Art. 42 para. 1 establishes an exemption for:

— the activities of personnel of religious communities or philosophical associations for the purposes of health care, social care, youth care and education when providing public service (see items 1, 6, 7 and 8 of this Article) for the purpose of satisfying spiritual needs (see point 10);
— services provided by non-profit organisations for the purposes of reimbursement of membership dues determined in accordance with their rules for political, trade union, religious, patriotic, philosophical, humanitarian, or civic purposes, and the supply of goods directly related thereto services where such exemption is unlikely to distort competition (point 11).

The Inheritance and Gift Tax Act[8] in Art. 9 para. 1 (point 2) stipulate that (also) religious communities are exempted from paying taxes for gifts or inheritance, if a gift or an inheritance was given and received with the intention for carrying out religious activities.

III. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Art. 59 of the Building Land Act 1984[9] provides that religious communities are exempted from paying compensation for the use of building land, but only for that land they use for religious activities. In November 2013, the National Assembly

[6] The Corporate Income Tax Act (Official Gazette RS, No. 117/06, 56/08, 76/08, 5/09, 96/09, 110/09 – ZDavP-2B, 43/10, 59/11, 24/12, 30/12, 94/12, 81/13, 50/14, 23/15, 82/15, 68/16, 69/17 and 79/18).

[7] The Value Added Tax Act (Official Gazette RS, No. 13/11 – officially consolidated text, 18/11, 78/11, 38/12, 83/12, 86/14, 90/15, 77/18 and 59/19).

[8] Inheritance and Gift Tax Act (Official Gazette RS, No. 117/06 and 36/16 – odl. US).

[9] The Building Land Act - 1984 (Official Gazette SRS, No. 18/1984).

passed the Real Property Tax Act,[10] which only provided for tax exemptions for cultural and sacred objects that are owned by registered churches and religious communities or their constitutive parts (Art. 9 para. 1). The Council of Christian Churches and the Islamic Community criticised the bill because the legislature was trying to impose a severe and disproportionate financial load upon religious communities.[11] However, the Constitutional Court abrogated the Real Property Tax Act, and the provision of Art. 59 of the Building Land Act (1984) remains in place.

According to the provisions of Art. 9 and Art. 10 of the Real Property Transaction Tax Act,[12] churches and religious communities are required to pay tax at the rate of 2% of the tax base, if they sell the property that is a cultural monument, but it is not open to a general public or is not permanently intended for the execution of cultural activities.

IV. Taxation of Monastic Communities/Orders

In Slovenia, there is no special system or a separate legal regime that would regulate the taxation of monastic communities or orders. They are perceived as constitutive parts of (registered) churches or religious communities. If monastic communities are a part of non-registered religious communities, they are not able to make benefit from the exemptions for example, in the relation to the use of building land.

V. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (charity; educational, etc.)

The greatest amount of public financial means within the church and religious communities financing system is related to the financing of their activities in the fields of social care, education, health care, culture, and art.

In principle, the taxation of various social institutions that are established by churches, religious communities or by philosophical/non-confessional organisations is based on the equal favourable principle as the above-mentioned way of regulation of different tax exemptions that is prescribed for churches and religious communities. In practice, other questions related to different social Institutions that are established by churches, religious communities or by philosophical/non-confessional organisations have emerged in court case law.

[10] The Real Property Tax Act (Official Gazette RS, No. 101/13).

[11] See a 'Declaration by the Council of Christian Churches and the Islamic Community in the Republic of Slovenia regarding the Property Tax Law and the Freedom of Religion Law', http://en.katoliska-cerkev.si/a-declaration-by-the-council-of-christian-churches-and-the-islamic-community-in-the-republic-of-slovenia-regarding-the-property-tax-law-and-the-freedom-of-religion-law, 1 Dec. 2014.

[12] The Real Property Transaction Tax Act (Official Gazette RS, No. 117/06 and 25/16 – odl. US).

The Constitutional Court in 2014 decided that private (religious on non-religious) elementary schools are entitled not only to 85% but to full financing of their obligatory educational programmes. However, this requirement does not include other expenses (for example, for maintenance costs).[13] Five years after the decision of the court, the legislature still did not change the statute. In 2014, an amount of EUR 9.3 million (of totally 'EUR 13.7 million intended for all seventeen private schools in Slovenia) was given to seven Catholic schools. The data on financing of social Institutions that are established by churches, religious communities or by philosophical/non-confessional organisations are hard to gather, but Slovenia remains a country with one of the lowest financing rates of religious activities/organisations per capita (in correlation to the GDP) (10,43 EUR) in the European Union.[14]

The other judicial case is related to the largest Church humanitarian organisation – the 'Slovenska Karitas' – which could not apply for State support on a public tender. The Constitutional Court[15] decided that the provision of the public tender that excluded all charitable organisations that were either established by or operated within (the legal personality of) churches or religious communities from participation in the public tender was discriminatory and violated the equal treatment requirement arising from Art. 14 of the Constitution. Thus, the Constitutional Court annulled the decisions of the Administrative Court and of the Supreme Court. This judicial case is of great importance, because it somehow shows a conflict of interest (that tacitly influenced the setting of conditions for a public tender) between the NGOs on the one side and the interest (or rights) of social institutions that are established by churches and religious communities.

VI. Taxation of Religious Ministers and Leaders of Philosophical and Non-Confessional Organisations

The Religious Freedom Act in Art. 27 provides for the payment of contributions of an insured person for the social security of employees of registered churches and other religious communities. This kind of payment represents the main form of direct church financing in Slovenia. The State contribution only partially covers the costs of obligatory public social insurance for social care, health care and retirement for priests and monks of registered religious communities. Due to the reasonable pro-

[13] See the decision of the Constitutional Court *Zavod svetega Stanislava* No. U–I–269/12-24 (4 Dec. 2014), http://odlocitve.us-rs.si/sl/odlocitev/US30557?q=U-i-269%2F12, 1 Jan 2015.

[14] See Janez Blažič & Igor Zobavnik, *Javno financiranje verskih skupnosti – Analiza*. (Ljubljana: Državni zbor Republike Slovenije 2014), 44, Table 3, http://www.dz-rs.si/wps/portal/Home/deloDZ/raziskovalnaDejavnost/RaziskovalneNaloge#, 1 Feb. 2015.

[15] See the decision of the Constitutional Court *Slovenska Karitas* No. Up-217/14-22 (7. July 2018), http://odlocitve.us-rs.si/sl/odlocitev/US31335?q=Slovenska+Karitas, 15 Okt. 2019.

portion criteria, which is one grant per each 1,000 church or religious community members, only the seven greatest churches and religious communities (the Catholic Church, the Islamic Community, the Protestant Church of Augsburg Confession in the Republic of Slovenia, the Serb Orthodox Church, the Baptist Church in the Republic of Slovenia, the Adventist Church and the Slovene Muslim Community) are included in the direct State support scheme.[16] The Ministry of Culture has a responsibility for providing the financial support, which is around 1.7 million EUR per year, whereas the number of beneficiaries is decreasing steadily (even below the number of 1000 beneficiaries).[17]

According to Art. 38 (para 4.) of the Personal Income Tax Act,[18] religious ministers and monks are obliged to file their tax returns (their income must not be lower than the amount needed to sustain social security and not higher than the amount of a minimum salary in Slovenia). Their tax base is reduced for paid mandatory social insurance costs.

The Decree determining revenues of the clergy from their relationship with the religious community[19] regulates the income of religious workers from a relationship with a religious community that does not have all the elements of a working relationship (Art. 1). The religious worker is an individual who conducts religious activities and ceremonies and does not receive remuneration for the work done (Art. 2). Art. 3 of the Decree determines the income for individual groups of religious workers in the following amounts: 1. for bishops, in the amount of the minimum wage in accordance with the law governing the minimum wage; 2. for parishioners who are responsible for more than 5000 believers according to the yearbook of the religious community and for priests who are responsible for more than 5000 believers in an amount equal to 65 percent of the minimum wage; 3. for other religious workers in an amount equal to the basic amount of the minimum income, published annually by the minister responsible for social protection, in accordance with the law governing social protection.

In addition, Art. 108 of the Personal Income Tax Act provides that the tax base does not include receipts intended to cover the documented costs of transportation, overnight accommodation and subsistence allowance when the payment is made to

[16] See Ivanc, Blaž. Torfs, Rik (ed.). Religion and law in Slovenia, (International Encyclopaedia of Laws, Religion). Alphen aan den Rijn: Kluwer Law International, 2015, p. 131.

[17] Id.

[18] The Personal Income Tax Act (Official Gazette RS, No. 13/11 – officially consolidated text, 9/12 – odl. US, 24/12, 30/12, 40/12 – ZUJF, 75/12, 94/12, 52/13 – odl. US, 96/13, 29/14 – odl. US, 50/14, 23/15, 55/15, 63/16, 69/17, 21/19 and 28/19).

[19] Decree determining revenues of the clergy from their relationship with the religious community (Official Gazette RS, No. 136/06).

a natural person who participates voluntarily or by invitation in voluntary non-profit activities of religious communities.

Art. 19 para. 6 of the Pension and Disability Insurance Act[20] requires that religious workers must be insured and pay mandatory contributions for their pensions.

The Personal Income Tax Act (Art. 142) provides that residents have the right to allocate 0.5% of their personal income tax for generally beneficial purposes to, *inter alia*, churches, religious communities or other organisations.[21]

VII. Church and Philosophical and Non-Confessional Organisations Tax

The Slovenian legislature did not introduce a church (or philosophical and non-confessional organisation) tax. The introduction of church tax remains only a theoretical possibility due to the strict legal interpretation of the church-state separation system that is enshrined in Art. 7 of the Constitution of the Republic of Slovenia.

VIII. Other Research Questions

Churches and religious communities mostly support their current fiscal status and are against proposals that would amend the existing tax system in a way that would worsen their financial situation. Because the State does not contribute to their financial stability, for example, via Church tax, their position is understandable.

Examples of tax evasion by religious social institutions are rare, one should mention one case in which the Administrative Court did not rule in favour of an individual (that was a minister of a registered religious community) that applied for a tax exemption regarding his personal apartment. Because the apartment was not mainly intended for religious activities, the court rejected the claim.[22]

IX. Conclusion

The analysis of the legal regulation of tax and other issues that are related to financing of churches, religious communities and philosophical/non-confessional organisations, reveals that the legislature decided on a differentiated approach based on the distinction of registered and non-registered communities. The Constitutional Court held the reasons of the legislature to be convincing, objective and non-discrimi-

[20] Pension and Disability Insurance Act (Official Gazette RS, No. 96/12, 39/13, 99/13 – ZSVar-Pre-C, 101/13 – ZIPRS1415, 44/14 – ORZPIZ206, 85/14 – ZUJF-B, 95/14 – ZUJF-C, 90/15 – ZIUPTD, 102/15, 23/17, 40/17, 65/17 and 28/19).

[21] See also Čepar, Drago (ed.) & Zaviršek, Katja et al. (Transl.). Država in vera v Sloveniji - The State and Religion in Slovenia. Ljubljana: Urad Vlade Republike Slovenije za verske skupnosti – Office of the Government of the Republic of Slovenia for Religious Communities, 2008, p. 27.

[22] The decision of the Administrative Court No. I U 1299/2015 (25 August 2016), http://sodisce.si/usrs/odlocitve/2015081111401540/, 15 Okt. 2019.

natory. Although the Slovenian Law on Religion has introduced many tax exemptions, the amount of Church financing remained rather modest. Because churches, religious communities and philosophical/non-confessional organisations do not have a stable financing arrangement, every unfavourable change in the domain of taxation laws runs the risk of having drastic consequences on their financial stability. In practice, issues that are related to financing of religious activities tend more to be a matter of ideological political struggle than a matter of reasonable and comprehensive State policy towards churches, religious communities and philosophical/non-confessional organisations.

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TAX LAW AND RELIGION IN SPAIN[1]

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I. Income Tax of Religious Organisations

1. General Legal Framework

Article 16 of the Spanish Constitution recognises the fundamental right of freedom of religion and conscience, and article 14 foresees the principle of non-discrimination for religious motivations. Nevertheless, there is a "Mediterranean" interpretation of the principles of equality and neutrality, because we can easily distinguish between those religious groups regulated by the *common* legislation of associations, and those which enjoy a *special* legislation, with a more favourable legal status[2]:

[1] Research Project: "Estatuto Jurídico de las Confesiones Religiosas sin Acuerdo de Cooperación en España - Legal Statute of Religious Groups without Cooperation Agreement in Spain". PID2020-114825GB-I00. Financed by the Spanish Ministry of Science and Innovation, MCIN/AEI/10.13039/501100011033, directed by Professors Alejandro Torres Gutiérrez, (UPNA) and Óscar Celador Angón, (University Carlos III of Madrid).

[2] Castro Jover, Adoración, "Laicidad y actividad positiva de los poderes públicos" en *RGDCDEE*, 3 (Madrid: Iustel, 2003), pp. 1–32. Ferrez Ortiz, Javier, (Coord.), *Derecho eclesiástico del Estado español* (Pamplona: EUNSA, 2007), 6th Edition. Ibán Pérez, Iván Carlos, Prieto Sanchís, Luis, and Motilla de la Calle, Agustín, *Manual de Derecho Eclesiástico* (Madrid: Trotta, 2016), 2nd Edition. Llamazares Fernández, Dionisio, *Derecho de la Libertad de Conciencia I. Libertad de conciencia y laicidad* (Madrid: Civitas, 2007), pp. 394–396. Llamazares Fernandez, Dionisio, *Derecho de la libertad de conciencia. I. Libertad de conciencia y laicidad* (Madrid: Civitas, 2007), p. 284. Motilla de la Calle, Agustín, *El concepto de confesión religiosa en el Derecho español. Práctica administrativa y doctrina jurisprudencial* (Madrid: Centro de Estudios Políticos y Constitucionales, 1999), pp. 23–32. Souto Paz, José Antonio, "Relevancia jurídica de las minorías religiosas", in De Lucas Martín, Javier, (Coord.), *Derechos de las minorías en una sociedad multicultural* (Madrid: Consejo General del Poder Judicial, 1999), p. 137. Suárez Pertierra, Gustavo, "Laicidad y cooperación como bases del modelo español: Un intento de interpretación integral (y una nueva plataforma de consenso)", in *Revista Española de Derecho Constitucional,* n. 92, May-August, 2011, Madrid, 2011, pp. 52 y ss. Suárez Pertierra, Gustavo, "Acuerdos y Convenios: Crisis de un modelo", in *Libertad de Conciencia, Laicidad y Derecho. Liber Discipulorum* en homenaje al Profesor Dionisio Llamazares (Cizur Menor: Civitas, 2014), p. 242.

1. The regime of the Catholic Church, which enjoys special privileges recognised in the Agreements of 1979.[3] The Catholic Church has been directly financed from the public budget in a very generous way. This commitment was already recognised by the Spanish Constitution of 1837, after the first ecclesiastical confiscation, and only the Catholic Church enjoy some exclusive tax benefits, as the *Income Tax Assignment,* in the Income Tax.
2. The situation of the religious groups that signed the Agreements of 1992: Evangelical Christians,[4] Jews[5] and Muslims.[6] These Agreements are more limited in nature and rights,[7] for instance they do not have access to the *Income Tax Assignment,* that is an exclusive privilege of the Catholic Church.

   The Agreement with the Federation of Evangelical Religious Entities of Spain,[8] is also applicable to the Ecumenical Patriarchate of Constantinople and the Serbian Orthodox Church, because they have obtained "legal hospitality" in that Federation.
3. The remaining groups which do not have any agreements with the State. We may find here two more categories of minority religions:
   a. With recognition of "notorious presence" in Spain: Mormons,[9] Jehovah Witness,[10] Buddhism[11] and Orthodox.[12] This declaration of "notorious presence" has very limited consequences.[13] They have some expectations of signing an Agreement of Cooperation with the State, but only if there is some political will.

[3] Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979, (Official Bulletin of the State of 15 December 1979).

There is an English version at: https://www.religlaw.org/content/religlaw/documents/agrsphs1976.htm

[4] Law 24/1992, of 10 November 1992, (Official Bulletin of the State of 12 November 1992).

[5] Law 25/1992, of 10 November 1992, (Official Bulletin of the State of 12 November 1992).

[6] Law 26/1992, of 10 November 1992, (Official Bulletin of the State of 12 November 1992).

[7] Llamazares Fernández, Dionisio, *Derecho de la Libertad de Conciencia I. Libertad de conciencia y laicidad* (Madrid: Civitas, 2007), pp. 394–396. Motilla de la Calle, Agustín, *Contribución al estudio de las Entidades religiosas en el Derecho español. Fuentes de relación con el Estado,* (Granada: Comares, 2013). Suárez Pertierra, Gustavo, "Laicidad y cooperación como bases del modelo español: Un intento de interpretación integral (y una nueva plataforma de consenso)", in: *Revista Española de Derecho Constitucional*, vol. 92, 2011, pp. 41–64.

[8] In Spanish: FEREDE, *Federación de Entidades Religiosas Evangélicas de España*.

[9] With recognition of "notorious presence" of 23 April 2003.

[10] *Idem*, on 29 June 2006.

[11] *Idem*, on 18 October 2007.

[12] *Idem*, on 15 April 2010.

[13] The Royal Decree 932/2013, of 29 November 2013, (Official Bulletin of the State of 16 December 2013), allows them to have a representative in the Advisory Commission on Religious Freedom. Their religious marriage will be recognised by the State, because this is a new possibility open by Law 15/2015, of 2 July 2015, of voluntary jurisdiction, (Official Bulletin of the State of 3 July 2015).

b. Religious groups without that recognition, but inscribed at the public Register of Religious Groups. This inscription grants them legal personality.[14] It has very limited effects, but at least produces the full recognition of legal personality as a "religious group".

2. Specific Tax Regime

Law 49/2002, of 23 December 2002,[15] concerning the tax regime of non-profit organisations, is quite important on this matter. The provisions contained in its articles 5 to 14 are applicable to those religious groups with and Agreement of Cooperation with the State (Catholics, Evangelicals, Jews and Muslims).[16] All the other religious groups without an Agreement of Cooperation cannot enjoy specific tax benefits by their religious nature. The only option in order to enjoy tax benefits for all these religious groups without an Agreement of Cooperation, is to create Non-Profit Organisations (NPO), susceptible of being included under the requirements of Law 49/2002. The same alternative is possible for philosophical and non-confessional organisations. On 22 May 1987, the Spanish General Director of Religious Affairs denied the inscription of the "Monte de Piedad y Caja de Ahorros de Córdoba", as a Religious Foundation, because it was not considered an NPO, but rather a Local Savings Bank.[17]

The sociologically dominant religious group, the Catholic Church, has enjoyed some exclusive tax privileges, like the specific VAT exemptions for the purchases of objects intended for worship from 1 January 1986 to 1 January 2007, or the full exemption[18] in the Tax on Construction, Installations and Building Works (ICIO).[19]

All the religious groups with an Agreement of Cooperation enjoy the wide catalogue of Tax benefits on Gift Tax, and exemptions on Corporate Income Tax, in favour of Non-Profit Organisations that includes exemption in the Corporate Income Tax of[20]:

[14] This subject has been recently regulated by the Royal Decree 594/2015, of 3 July 2015, (Official Bulletin of the State of 1 August 2015).

[15] Official Bulletin of the State of 24 December 2002.

[16] Rodríguez Blanco, Miguel, *Las confesiones religiosas en el marco del régimen jurídico del mecenazgo* (Madrid: Edisofer, 2005).

[17] Catalá Rubio, Santiago, *El derecho a la personalidad jurídica de las entidades religiosas* (Cuenca: Universidad de Castilla-La Mancha, 2004), pp. 364–370.

[18] Recognised at Article IV.1.B) of the Agreement between the Spanish State and the Holy See on Economic Matters.

[19] ICIO means in Spanish: *Impuesto sobre Construcciones, Instalaciones y Obras*, sic.

[20] Article 6, of Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage.

1. Incomes from donatives and donations, for religious purposes, fees of membership, and subsidies, excluded those dedicated to non-exempted economic activities.
2. Incomes from movable assets, and real estate, such as dividends, participation in benefits, interests, royalties and rents
3. Incomes from exempt economic activities.

Article 7 of Law 49/2002 includes a wide list of exempt economic activities.[21]

Non-exempt incomes are subject to a reduced 10% Tax.

Only religious groups with an Agreement of Cooperation enjoy the deduction of donations in the Personal and Corporate Income Tax:

TAX DEDUCTIONS – INCOME TAX[22]

Donation[23]	**% of deduction**[24]
First 150 EUR Rest	80% 35%
Donations during at least 3 years.	40%

[21] Such as:

1) Protection of childhood.

2) Activities of social inclusion and assistance to elderly, people at risk of exclusion, and victims of ill-treatment, disability, ethnic minorities, refugees, immigrants, people with non-shared family burdens, social Community Activities, former inmates and prisoners, social reintegration and prevention of delinquency, alcoholics and drug-addicts.

3) Activities of development cooperation.

4) Economic activities of hospitalisation and health assistance, scientific research and technological development, museums, archives, and centres of documentation, musical, theatrical, cinematographic and circus representations, National Parks, education, in all the degrees of the educational system, and University Residences, edition, publication and sale of books, magazines, and audiovisual material, sports services, merely auxiliary activities of those before enumerated exempt activities, if the aggregate amount of the net income from these activities does not exceed 20% of the NPO's total income, economic activities of scarce relevance. That includes activities for a global amount lower to 20.000 EUR per year.

[22] Donations in favour of religious groups with Agreement of Cooperation.

[23] Limit: The donation must be smaller than 10% of the taxable income.

[24] Final Disposition 2nd, of the Royal Decree Law 17/2020, of 5 May 2020, (Official Bulletin of the State of 6 May 2020), and article 11 of Law 14/2021, of 11 October 2021, (Official Bulletin of the State of 12 October 2021).

TAX DEDUCTIONS – CORPORATE INCOME TAX.[25]

Donation[26]	**% of deduction**[27]
General donations	35%
Donations during at least 3 years.	40%

There are not specific provisions covering tax or bank secrecy for religious organisations.

Transactions between religious institutions are exempted on the Tax on capital transfers and documented legal acts, if these goods and rights are allocated to religious purposes and assistance activities.[28]

The Spanish Criminal Law doesn't contain specific provisions concerning cases of tax evasion by religious organisations or institutions.

In June 2001, the Spanish Government intervened in *Gescartera*, a Portfolio Management Company with a risky speculative activity, that we knew by the Spanish Press.[29]

In 2002, Spanish society knew that the Diocese of Bilbao had been investing in Jersey between 1998 and 2000.[30]

II. Real Estate Tax of Religious Organisations

There is a wide catalogue of tax benefits in the Real Estate Tax of those religious organisations with an Agreement of Cooperation with the State. Catholics, Evangelicals, Jews and Muslims do not pay the Real Estate Tax for the property of their places of worship (churches, cathedrals, mosques, and synagogues), the residences of ministers of worship (bishops, priests, and imams, (the Agreement with Jews remains quiet in relation with the residence of rabbis), all kinds of bureaux and offices destined for religious purposes, seminaries and centres for the instruction of clergy, and ecclesiastical universities while they are dedicated to ecclesiastical instruction.[31]

[25] Donations in favour of religious groups with Agreement of Cooperation.

[26] Limit: The donation must be smaller than 10% of the taxable income.

[27] Law 27/2014, of 27 November 2014, (Official Bulletin of the State of 28 November 2014).

[28] For the Catholic Church: Article IV.1.C) of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979.

For Christian Evangelicals, Jews and Muslims: Articles 11.3.C) of Laws 24, 25 and 26/1992.

[29] https://www.elmundo.es/especiales/2001/08/economia/gescartera/protagonistas.html https://elpais.com/diario/2001/08/19/economia/998172001_850215.html

[30] https://elpais.com/diario/2002/05/21/paisvasco/1022010008_850215.html

[31] For the Catholic Church: Article IV.1.A) of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979. https://www.religlaw.org/content/religlaw/documents/agrsphs1976.htm

The State does not follow the same tax policy for all religious groups, because those without an Agreement of Cooperation do not enjoy any of these tax benefits, that are always subjected to a previous Agreement of Cooperation with the State. For instance, a Jehovah's Witness Kingdom Hall must pay the Real Estate Tax. This situation is of dubious constitutionality, *because it is unfair to submit to the payment of taxes the mere possession of places of worship where any economic activity or business is not developed, and that are destined only to the exercise of a fundamental right*.

Only the Catholic Church has full exemption[32] in the Tax on Construction, Installations and Building Works (ICIO).[33] This tax benefit includes buildings where economic activities are developed. This tax privilege may disturb the commercial competition, and the European Legislation on State aid, as was analysed by the Court of Justice of the European Union in the case *Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe,*[34] on 27 June 2017. The Court points out that State aid not exceeding a ceiling of EUR 200,000 over any period of three years is deemed not to affect trade between Member States and not to distort or threaten to distort competition.[35]

For Christian Evangelicals, Jews and Muslims: Articles 11.3.A) of Laws 24, 25 and 26/1992.

[32] Article IV.1.B) of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979.

[33] ICIO means in Spanish: *Impuesto sobre Construcciones, Instalaciones y Obras*, sic.

[34] *Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe*, Court of Justice of the European Union, CJEU, § 82.

See: http://curia.europa.eu/juris/document/document.jsf?text=&docid=192143&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5582995

[35] Calvo Sales, Teresa, *La exención de la Iglesia católica en el Impuesto sobre las Construcciones, Instalaciones y Obras,* in: *La Ley,* 2001, nº 7, pp. 1640–1645. Calvo Sales, Teresa, *La exención de la Iglesia Católica en el Impuesto sobre Construcciones, Instalaciones y Obras no alcanza a las que se realicen en inmuebles afectos a actividades económicas*, in: *El Consultor de los Ayuntamientos y de los Juzgados*, 2004, nº 5, pp. 787–802. Cebriá García, María, *Los nuevos beneficios fiscales de las confesiones religiosas en los impuestos locales,* in: *Nueva Fiscalidad*, nº 6, June 2004, pp. 25–26. Cañamares Arribas, Santiago, *La (des)igualdad religiosa en la tributación local: Las exenciones de las confesiones religiosas en el Impuesto de Construcciones, Instalaciones u Obras y en el Impuesto sobre Vehículos de Tracción Mecánica*, in: *Anuario de la Facultad de Derecho*, vol. XXX, 2012–2013, pp. 304–305. Cebriá García, María, *Exención de la Iglesia católica en el Impuesto sobre Construcciones, Instalaciones y Obras: Problemas que plantea,* in: *Revista Quincena Fiscal*, nº 21/2016, pp. 17–19. Cebriá García, María, *El Acuerdo sobre Asuntos Económicos entre el Estado Español y la Santa Sede de 3 de enero de 1979 y la tributación de la Iglesia Católica en el Impuesto sobre Construcciones, Instalaciones y Obras,* in: Garcimartín Montero, Carmen, (Ed.), *La financiación de la libertad religiosa. Actas del VIII Simposio de Derecho Concordatario* (Granada: Comares, 2017), pp. 283–297. Félix Ballesta, Mª Ángeles and Martínez Félix, Claudia, ¿Es contraria al Derecho Comunitario la exención del Impuesto sobre Construcciones, Instalaciones y Obras (ICIO), de que goza la Iglesia Católica en España?, in: *Cuadernos de Integración Europea*, nº 7, December 2006, pp. 73–78. Torres Gutiérrez,

Other special points of tax benefits of *dubious* constitutionality, are:

a. The exemption on the payment of the Real Property Tax,[36] of the residences of Catholic, Protestant and Moslem priests.[37] This is a privilege that even the vast majority of public servants do not enjoy.
b. The exemption in the Property Tax of the orchards and religious gardens of those groups which have signed an agreement with the State.[38] This is a privilege born with the Law of 23 May 1845.[39] The Agreement about Economic Affairs with the Holy See of 1979 does not say anything on this topic, but a Ministerial Order of 24 September 1985[40] recognises it for the Catholic Church, and the same happens with the Ministerial Order of 2 February 1994[41] in relation to Evangelicals, Jews and Muslims. Our question is: Is this privilege necessary for the protection of the fundamental right of religious freedom? Where is the point of connection with the exercise of this fundamental right?

It will be convenient to renegotiate some of these exorbitant tax benefits (or even to denounce the Agreement of 1979, which could have a great political cost). Meanwhile we must be consequent with the imperatives of the rule of law. The Spanish Constitutional Court in the Sentence 207/2013, of 5 December 2013, declared the unconstitutionality of the Regional Law of Navarre 10/2013, of 12 March 2013, that ignored previous international compromises on this topic.[42]

The remaining religious groups not covered by any Agreement do not enjoy any of these privileges attributed to the Catholic Church, Evangelicals, Jews and Muslims in a country that claims to be secular, neutral and separate from the Church, where all citizens are supposedly *equal* under Law.

Alejandro, *Tutela de la libertad de conciencia y laicidad del Estado: el problema de los beneficios fiscales de las viviendas de los ministros de culto católico en España*, in: *Boletín de la Sociedad Española de Ciencias de las Religiones*, 2001, nº 16, pp. 191–192. Torres Gutiérrez, Alejandro, *Las exenciones fiscales de la Iglesia Católica en el Impuesto sobre Construcciones Instalaciones y Obras en España y su incompatibilidad con la normativa europea sobre ayudas de Estado,* in: *Quaderno di Diritto ed Política Ecclesiastica,* vol. 3/2017, Il Mulino, 2017, pp. 649–663.

36 The Spanish *I.B.I.*: *Impuesto sobre Bienes Inmuebles*.

37 The Agreement of 1992 with the Jews communities does not say anything about it.

38 The rest, the merely registered groups, do not enjoy this benefit.

39 Check it at: *Colección de las Leyes, Decretos y Declaraciones de las Cortes. Desde el 1 de enero hasta fin de junio de 1845,* Vol. XXXIV (Madrid: Imprenta Nacional, 1845), p. 219.

40 Official Bulletin of the State of 2 October 1985.

41 Official Bulletin of the State of 19 February 1994.

42 Catalá, Santiago, "Jurisprudencia del Tribunal Constitucional", in *ADEE*, 2014, Vol. XXX, pp. 934–937. Cubillas Recio, Mariano, "Cooperación, Acuerdos y conflictividad", in: *Libertad de Conciencia, Laicidad y Derecho. Liber Discipulorum en homenaje al Profesor Dionisio Llamazares* (Cizur Menor: Civitas, 2014), pp. 183 and following. Meseguer, Silvia, "La exención del impuesto sobre bienes inmuebles de las confesiones religiosas: Nuevos pronunciamientos jurisprudenciales", in *RGDCDEE*, 34, Iustel, Madrid, 2014, pp. 1–12.

III. Taxation of Monastic Communities/Orders

The legal coverage of Catholic monastic communities and Catholic religious orders is similar to the general regime applied to the Catholic secular clergy. They enjoy the same group of tax benefits in the Corporate Income Tax, and the Real Estate Tax, among others, because they are specifically covered by article IV of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979, and the Additional Disposition 9th of Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage. They enjoy exemption on the Real Estate Tax of their residences, monasteries and convents, a privileged legal tax regime better than that of public employees. This is a clear paradox in a country where there is not any *official religion,* according to article 16.3 of the Spanish Constitution, where it is written that *No religion shall have a State character.*[43] Their regime in the Corporate Income Tax is similar to the rest of the catholic clergy. They are exempted on the Tax on capital transfers and documented legal acts, if these goods and rights are allocated to religious purposes and assistance activities.[44]

This privilege is not extended to the monasteries and convents of monastic communities of those religious groups that are not covered with an Agreement of Cooperation with the State. This is the case of the Romanian Orthodox Church, that is not legally included by the Additional Disposition 9th of Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage, that specifically foresees that the provisions contained in its articles 5 to 15 are applicable (*only*) to those religious groups *with an Agreement of Cooperation with the State*, and this is not the case of the Orthodox Romanian Church, (the most important Orthodox Church rooted in Spain – in 2020, 667,478 Romanians were living in Spain – but without "legal hospitality" in the Evangelical Federation, FEREDE).

IV. Taxation of Religious Social Institutions

Religious Social Institutions enjoy the same legal regime as other Social Institutions; they are covered by Article V[45] of the Agreement between the Spanish State and

[43] http://www.congreso.es/portal/page/portal/Congreso/Congreso/Hist_Normas/Norm/const_espa_texto_ingles_0.pdf

[44] For the Catholic Church: Article IV.1.C) of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979.

For Christian Evangelicals, Jews and Muslims: Articles 11.3.C) of Laws 24, 25 and 26/1992.

[45] This article says: *The religious Associations and Organs not included among those listed in article IV of this Agreement, which are dedicated to religious, charitable, teaching, medical or hospitable or social care, shall have the right to the fiscal benefits that the Spanish State's legal and tax regulations provide for non-profit organisations, and in any case, those granted to private charitable organisations.*

https://www.religlaw.org/content/religlaw/documents/agrsphs1976.htm

the Holy See on Economic Matters of 1979, and the Additional Dispositions 8th and 9th of Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage.

The same happens with Religious Social Institutions owned by Evangelicals, Jews and Muslims, because it is specifically foreseen in articles 11.4 of Laws 24, 25 and 26/1992 of 10 November 1992, and the Additional Dispositions 8th and 9th of Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage.

In the case of Religious Social Institutions created by other religious groups without an Agreement of Cooperation with the State, it is possible to apply the tax benefits foreseen in Law 49/2002, of 23 December 2002, concerning the tax regime of non-profit organisations and tax incentives for patronage, if they meet the requirements established in articles 2 and 3 of this Law. These entities must have legal status of *foundation*, or must be declared *associations of public utility,* by the Public Administration.[46]

NPOs that accomplish legal requirements enjoy a complete exemption for donations and contributions, fees from associates, grants, income from movable and immovable property, (for example, dividends, interest, royalties and rents), capital gains, attributed income (for example, in respect of international fiscal transparency) and income from qualifying business activities.[47] The exemption is extended to ancillary activities connected with exempt qualifying business activities if the aggregate amount of the net income from these activities does not exceed 20% of the NPO's total income[48] and for business activities, in general, if their turnover does not exceed 20.000 euros.[49]

46 Article 2 of Law 49/2002, of 23 December 2002.
47 Articles 6 and 7 of Law 49/2002, of 23 December 2002.
48 Article 7.11 of Law 49/2002, of 23 December 2002.
49 Article 7.12 of Law 49/2002, of 23 December 2002.

For non-exempt incomes,[50] the taxable base is subject to Corporate Income Tax at a reduced rate of 10%.[51] The tax credit for donations to an NPO was increased by Law 49/2002, from 20% to 25% for resident and non-resident individual income tax purposes, and actually there is a deduction of 80% for the first EUR 150, (35%, from EUR 150).[52] A tax credit of 35% is available in respect of Corporate Income Tax purposes.[53] To encourage donations for certain non-profit activities, these credits can increase to a 5% more for individuals and companies, respectively.[54]

V. VAT TAX

According to article III of the Agreement about Economic Affairs with the Holy See of 1979, it shall not be subject to income tax or value-added tax, as appropriate:

a. Payments from the faithful, public collections, alms and offerings, the publication of instructions, statutes, pastoral letters, diocesan bulletins and any other document written by the competent church authorities, nor their placement in the usual places.
b. Teaching activities in diocesan and religious Seminaries, as well as ecclesiastical disciplines at Church Universities.
c. The purchase of objects intended for worship.

And article IV.1.C) of that Agreement says that the Holy See, the Episcopal Conference, the Dioceses, Parishes and other territorial districts, religious Orders and Congregations and religious Institutions and their Provincials, and their convents and monasteries are entitled to the exemption… on transfer taxes, as long as the

[50] As we stated, article 7 of Law 49/2002, includes a wide list of exempt economic activities, such us: Protection of childhood and activities of social inclusion and assistance to elderly, people on risk of exclusion, and victims of ill-treatment, disability, ethnic minorities, refugees, immigrants, people with non-shared family burdens, social Community Activities, former inmates and prisoners, social reintegration and prevention of delinquency, or alcoholics and drug-addicts. Activities of development cooperation are also exempt, and the same happens with economic activities of hospitalisation and health assistance, scientific research and technological development, museums, archives, and centres of documentation, musical, theatrical, cinematographic and circus representations, National Parks, education, in all the degrees of the educational system, and University Residences, edition, publication and sale of books, magazines, and audiovisual material, sports services. It is also included merely auxiliary activities of those before enumerated exempt activities, if the aggregate amount of the net income from these activities does not exceed 20% of the NPO's total income, and economic activities of scarce relevance. That includes activities for a global amount lower to 20,000 EUR per year.

[51] Article 12 of Law 49/2002, of 23 December 2002.

[52] Article 19 of Law 49/2002, of 23 December 2002. And a 40%, if the donation is for a period of 3 years.

[53] Article 20 of Law 49/2002, of 23 December 2002.

[54] Article 22 of Law 49/2002, of 23 December 2002. And a 40%, if the donation is for a period of 3 years.

acquired goods or rights are intended for worship, maintenance of the clergy, the sacred apostolate and charitable purposes. This provision includes cases of transfers of goods that may be subject to VAT.

The Commission of the European Communities, on 23 November 1989, sent a complaint to the Spanish representation, considering that the tax benefits of the Catholic Church included in the Ministerial Order of 29 February 1988 of the Spanish Ministry of Finance[55] and the Resolution of the Directorate General for Taxation of 14 March 1988,[56] developing the article III.C) of the Agreement between the Spanish State and the Holy See on Economic Matters, were not included in the Sixth Council Directive of 17 May 1977, on the harmonisation of the laws of the Member States relating to turnover taxes.[57] The Spanish Government's evasive answer was that the Agreement of 1979 was a previous Spanish compromise, assumed before the incorporation to the European Communities in 1986, and ignoring that this incorporation forced the adaptation of the Spanish legal order to the European Law, because it was so established in article 5 of the Act of Accession of Spain to the European Communities.[58]

After several negotiations between the Spanish Government and the Holy See, the Catholic Church renounced on December 2006, these benefits before mentioned in the VAT, because they were in conflict with the European Community regulation on fiscal harmonisation on this tax. The *gentlemen's agreement* included a compensation consisting in an increase of the percentage in the Personal Income Tax Assignment from 0.5239% to 0.7%, the revenues will grow up from 144,000,000 EUR in 2006, to 242,101,605 EUR in 2007.

With the abolition of this Catholic Church privilege, religious communities enjoy only the general regime of tax benefits and exemptions on VAT that are foreseen in the general legislation of this tax.

VI. The Taxation of Religious Ministers

Article XX of the Spanish Concordat with the Holy See of 1953 established the fiscal immunity in the Personal and Corporate Income Tax of the money that the State gave every year to the Catholic Church through the *Financial Endowment* for the Catholic Church in the Spanish Budget Act, recognised in article XIX of this Concordat. Nowadays, the old privileges of article XIX and XX of the Concordat of 1953 were abolished, by article VII of the Agreement about Economic Affairs with the Holy See of 1979.

[55] Official Bulletin of the State of 12 March 1988.

[56] Official Bulletin of the State of 23 March 1988.

[57] Https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1977L0388:20060101:EN:PDF

[58] Official Bulletin of the State of 1 January 1986.

Any other solution would be unconstitutional, because it would be against article 14 (principle of equality and *non-discrimination*), article 16 (principle of separation) and article 31 (general contribution of all citizens to public expenses) of the Spanish Constitution.

VII. Church Tax

1. Historical Introduction

Two biggest decisions, in the first half of the XIX century in Spain, put at serious risk the wealthy economy of the Catholic Church: the *disentailment* with the approval of several Royal Decrees between 1835–1837, through the strong stimulus of Mendizabal, Minister of Finance, and the supression of tithes (with definitive character in 1841). The consequence was that the Catholic Church was directly financed from the Public Budget. This commitment was already recognised by the Spanish Constitution of 1837. In 1850, the *Financial Endowment* for the Catholic Church recognised in the Spanish Budget Act was more that 12% of the total public budget.[59] The Concordat of 1851 ratified this *statu quo* through this International Treaty.

With occasion of the proclamation of the Spanish Second Republic, on 14 April 1931, the Spanish Constitution of 9 December 1931 established *the full extinction, in a maximum period of 2 years,* of the public *Financial Endowment* for the Catholic Church. Even if the constitutional provisions were clear enough, the ordinary legislation was in a different direction, because the Act of passive assets of the clergy,[60] of 6 April 1934,[61] established that all the catholic priests in charge on 11 December 1931 would receive from 1934 a payment equivalent to two-thirds of their annual income in 1931.[62]

After the civil war, the *Financial Endowment* for the Catholic Church was guaranteed by the new authorities. This privilege was safeguarded by article XIX of the new Concordat of 1953.[63]

2. The New Framework for the Catholic Church

The article II.1 of the Agreement about Economic Affairs with the Holy See of 1979,[64] established the State's commitment *to collaborate with the Catholic Church*

[59] Act of 10 February 1850, of Spanish Public Budget, *Colección Legislativa de España.* First Quarter of 1850, vol. XLIX. Imprenta Nacional, Madrid, 1850, pp. 391–392.

[60] In Spanish: *Ley de haberes pasivos del clero*, sic.

[61] Gaceta de Madrid of 10 April 1934*,* and *Boletín Jurídico - Administrativo. Anuario de Legislación y Jurisprudencia. "Marcelino Martínez Alcubilla",* Appendix of 1934, Madrid, 1934, pp. 257–258.

[62] He was born in 1863 and died in 1950.

[63] Particularly interesting is the academic work: Sebastián, Mariano, "El Concordato y la Hacienda Estatal", in: *El Concordato de 1953* (Madrid: Gráficas González, 1956), pp. 274–276.

[64] https://www.religlaw.org/content/religlaw/documents/agrsphs1976.htm

in the obtention of adequate economic support, absolutely respecting the principle of religious freedom.

The final paragraph 5 of this article II finished with this commitment assumed by the Catholic Church, (40 years ago), declaring *its intention of obtaining sufficient resources for its needs of its own accord.*

From 1988, each taxpayer could destine the 0.5239 of his/her Income Taxes for the general maintenance of the Catholic Church, or for activities of general interest determined by the State. In case of silence, 100% of the taxes will be freely administrated by the public authorities.

AMOUNT OF PUBLIC MONEY PERCEIVED BY THE CATHOLIC CHURCH FROM 1987–2006 (QUANTITIES EXPRESSED IN EURO).

Year of income	% Taxpayer declaration in favour of the Catholic Church	Collected by the State through the Tax Income declarations	Perceived by the Catholic Church	Difference
1987	35.11	41,677,652.64	79,998,091.00	-38,320,438.36
1988	39.08	44,854,96.03	83,198,015.46	-38,343,047.43
1989	38.24	54,788,764.89	85,693,956.92	-30,905,192.03
1990	39.70	70,187,976.43	91,714,447.13	-21,526,470.69
1991	40.92	80,773,720.27	91,714,447.13	-10,940,726.86
1992	42.29	85,429,539.13	91,714,447.13	-6,284,907.99
1993	42.73	91,287,368.33	91,714,447.13	-427,078.80
1994	38.31	90,001,093.33	109,985,215.10	-19,984,121.77
1995	36.58	93,876,542.50	113,807,652.09	-19,931,109.59
1996	33.36	91,738,823.17	117,774,332.98	-26,035,508.80
1997	36.92	101,081,717.00	120,875,554.43	-19,793,837.44
1998	36.62	107,141,045.08	123,399,805.27	-16,258,760.19
1999	39.69	97,681,592.39	125,621,002.77	-27,939,409.37
2000	39.12	107,289,392.36	128,133,425.69	-20,844,032.33
2001	33.28	106,038,636.12	130,696,116.26	-24,657,480.14
2002	34.32	116,158,283.50	133,310,039.56	-17,151,755.06
2003	33.46	116,484,271.23	135,976,236.00	-19,491,964.77
2004	33.60	128,682,326.41	138,695,760.00	-10,013,433.59
2005	33.36	144,974,150.81	144,242,905.00	+731,245.81
2006	33.38	173,827,522.21	144,242,905.00	+29,584,617.21

In fact, it was not a real system of *Income Time Assignment,* because it was a case of a *hidden* model of *Financial Endowment* by the State. This started to be even clearer during the conservative government of José María Aznar, when the Act of General State's Budget for 2000 established a *minimum* amount of money guaranteed to the Catholic Church, during 2000, 2001 and to 2002, regardless of the final collection of money by the State through the Income Tax declarations. This system was renovated again by the conservatives for 2003, 2004 and 2005, and by the socialist José Luis Rodríguez Zapatero, in 2006.

In 2006, two problems were on the *bargaining table* on economic matters with the Catholic Church: the previously mentioned problem with VAT, and the redefinition of the financial system. The final agreement consisted in the renouncement by the Catholic Church of the VAT exemptions (calculated by Giménez Barriocanal[65] as an amount of between 20 and 30 million EUR), and the renouncement by the Catholic Church of the previous fixed amount of money reserved each year by the Act of General State's Budget. From 1st January 2007, the Catholic Church will receive only the effective quantity collected by the State. In compensation, the State granted an increase of the percentage that the taxpayers may allocate to the Church, from the 0.5239% to 0.7%. The Catholic Church received from 2007 around 250 million EUR from the Public Budget through the new percentage of 0.7% of the Income Tax of the taxpayers that marked the cross for the Catholic Church in their declarations.[66] The Religious Groups which signed the Agreements of 1992 (Protestants, Jews and Muslims) do not enjoy this privilege.

[65] Giménez Barriocanal, Fernando, "Una exposición de la financiación del 0,7% desde la perspectiva de la Iglesia", in: *La financiación de la libertad religiosa. Actas del VIII Simposio Internacional de Derecho Concordatario,* Garcimartín, Carmen, (Ed.) (Granada: Editorial Comares, 2017), p. 41.

[66] This privilege conceded, (only), to the Catholic Church, finds a very difficult justification from a constitutional perspective, because according to article 16.3 of the Spanish Constitution, *there shall be no State religion*, it is not possible to identify Church and State.

INCOME TAX ASSIGNMENT – CATHOLIC CHURCH[67]

Year	% of declarations for the Church	Amount of EUR
2007	34.38	242,101,605
2008	34.31	253,423,689
2009	34.75	249,983,345
2010	35.71	248,600,716
2011	34.83	247,935,801
2012	34.87	248,521,593
2013	34.88	246,911,425
2014	34.76	252,287,369
2015	34.93	249,162,060
2016	33.54	256,208,146
2017	33.30	268,048,006
2018	32.32	285,115,797
2019	32.15	301,076,846
2020	31.57	295,498,495

The religious minorities with an Agreement of Cooperation with the State receive from 2005 a certain amount of money from the Public Budget, through the Public Foundation "Pluralismo y Convivencia".[68]

The Royal Decree 1158/2021 of 28 December 2021[69] foresees a direct grant of 1,170,623 EUR for the three minoritarian religious groups with an Agreement of Cooperation:

DIRECT GRANT FOR RELIGIOUS GROUPS IN 2021.[70]

Religious Group	Amount of EUR
Evangelical Federation (FEREDE)	526,780.35
Jewish Federation (FCJE)	210,712.14
Islamic Commission, (CIE)	433,130.51

[67] Giménez Barriocanal, Fernando, "Una exposición de la financiación del 0,7% desde la perspectiva de la Iglesia", in Garcimartín, Carmen, *La financiación de la libertad religiosa. Actas del VIII Simposio Internacional de Derecho Concordatario* (Granada: Comares, 2017), p. 40.

See also: http://www.transparenciaconferenciaepiscopal.es/procedimiento.html

[68] This name may be translated into English as: "Pluralism and Coexistence".

[69] Official Bulletin of the State of 29 December 2021.

[70] Royal Decree 1158/2021, of 28 December 2021.

There are two main differences with the Catholic Church's status: the amount of money is quantitatively smaller, and these minoritarian religious groups have more restrictions over the final use of this money.

The remaining religious groups, without an Agreement of Cooperation with the State, do not receive any direct public financial support.

VIII. Critique

In economic matters, we may distinguish three different statuses of religious groups in Spain:

1. The Catholic Church, with a privileged system of direct financial support through the *Income Tax Assignment* (and a former long tradition of *Financial Endowment* through the General State's Budget), and a generous system of tax benefits (some of them exclusive, like the specific VAT exemptions for the purchases of objects intended for worship until 2007), or the full exemption [71] in the tax on construction, installations and building works (ICIO). [72]
2. The religious minorities which subscribed the Agreements of 1992 (Evangelicals, Jews and Muslims) with a very limited direct financial support through the public Foundation "Pluralismo y Convivencia", [73] and a slightly more limited number of tax exemptions.
3. The remaining religious minorities without Agreement of Cooperation which do not have any direct financial support and any tax benefit as a religious group.

We cannot disregard the high content of guarantees of the Spanish regulation about the recognition and protection of religious minorities, and we must recognise the huge step that the Agreements of 1992 (with Evangelicals, Muslims and Jews) involved. But we cannot forget the situation of religious minorities without an Agreement with the State. [74]

Many important religious minorities, such as the Orthodox community, one of the biggest religious groups in Spain after the recent and important immigration movements, are outside of this system of *agreements*. The *mere* recognition of *notorious presence* is only a *previous requirement* for a *hypothetical* agreement of cooperation, but it is almost empty of real content, if there is not any political wish, it has no economic effect. That situation is particularly harmful for religious minorities, as for instance the Orthodox community, Jehovah Witnesses, the Church of Christ of

[71] Recognised at Article IV.1.B) of the Agreement between the Spanish State and the Holy See on Economic Matters.

[72] ICIO means in Spanish: *Impuesto sobre Construcciones, Instalaciones y Obras*, sic.

[73] This name may be translated into English as: "Pluralism and Coexistence".

[74] Leturia Navaroa, Ana, *Laicidad y diálogo interreligioso en sociedades plurales*, in: *Libertad de conciencia, Laicidad y Derecho. Liber discipulorum* (Madrid: Civitas, 2014), pp. 547–569.

Latter Day Saints, or Buddhists, if we take into account the economic consequences of this lack of tax benefits, especially in the case of property tax over places of worship. All these religious communities (and in general, every religious groups without agreement of cooperation with the Spanish state), must pay the property tax for every church or place of worship, and it is not fair.

It would be convenient a calm reflection on our legislation on freedom of conscience, at least in a double direction:

1. The first will be focused on a neutral analysis over the real neutrality of the ordinary legislation that develops the constitutional principles. In this sense, it would be convenient to propose *de lege ferenda,* the adoption of a model of "common legislation", for all the religious groups. The best solution is not the recognition of a wide margin of appreciation, as the ECHR did in the cases *Alujer Fernández and Caballero García v Spain* (ECHR, 14 June 2001), and *Spampinato v Italy* (ECHR, 29 March 2007).

We think that it is not fair at all to make a strong distinction between groups with an Agreement of Cooperation with the State, and those without. The lack of political intention in subscribing new agreements with the new religious groups (some of them, such as for instance the Orthodox church, has demonstrated a clear interest on it, and the public authorities didn't pay any attention), has intensified this treatment's difference which it is not justified at all.

This common model should be fully respectful of the constitutional principles of freedom of conscience, and public neutrality.

2. Our society will be more plural, and it will be convenient to be ready for the new challenges that this pluralism will carry.

Some tax benefits are questioned:

1. The exemption on the payment of the Real Property Tax,[75] of the residences of Catholic, Protestant and Moslem priests,[76] is a privilege that even the vast majority of public servants do not enjoy.
2. The exemption in the Property Tax of the orchards and religious gardens of those groups which have signed an agreement with the State[77] hasn't any connection with the development of any religious activity.
3. Only the Catholic Church has the full exemption[78] in the tax on construction, installations and building works, (ICIO[79]). This tax benefit includes buildings

[75] The Spanish *I.B.I.*: *Impuesto sobre Bienes Inmuebles*.

[76] The Agreement of 1992 with the Jews communities does not say anything about it.

[77] The rest, the merely registered groups, do not enjoy this benefit.

[78] Article IV.1.B) of the Agreement between the Spanish State and the Holy See on Economic Matters of 3 January 1979.

[79] ICIO means in Spanish: *Impuesto sobre Construcciones, Instalaciones y Obras*, sic.

> where economic activities are developed, and it may disturb the commercial competition, and the European Legislation on State aid, as was analysed by the Court of Justice of the European Union in the case *Congregación de Escuelas Pías Provincia Betania v Ayuntamiento de Getafe,* [80] on 27 June 2017.

An additional reflection should be focused on who must pay for the financing of religious groups, especially the Catholic Church. Must be the State, with a reduction in its tax incomes? Or must be the believers? If we divided 300 million EUR per year between 10 million churchgoers, each of them should pay 30 EUR per year, or 60 cents each of them, every Sunday Mass, a not too *disproportionate* burden, principally if we think that these 30 EUR are deductible in a 80% in their Income Tax Declaration. Are some Catholic believers *tight-fisted*?

ZALBIDEA, [81] in one of the best recent monographes published on transparency in recent years in Spain, says that a transparent attitude may increase in a 30% the contribution of believers to the Catholic Church. The Catholic NPO, *Caritas*, a clear case of transparency and credibility, didn't suffer the effects of the last economic crisis in the contributions collected. In many Autonomous Communities, such as Navarra, Caritas play a parallel role of a regional *Ministry of Social Affairs*, collecting more than 5 million euros per year in this very small region. [82] Transparency of religious groups, and congruence of the faithful are solutions for this problem, in a State such as ours, where Church and State are separated (at least that's what is written in article 16.3 of the Spanish Constitution).

[80] *Congregación de Escuelas Pías Provincia Betania v. Ayuntamiento de Getafe*, Court of Justice of the European Union, CJEU, § 82.

See: http://curia.europa.eu/juris/document/document.jsf?text=&docid=192143&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5582995

[81] Zalbidea, Diego, *La rendición de cuentas en el ordenamiento canónico: transparencia y misión* (Pamplona: Instituto Martín de Azpilcueta - EUNSA, 2018), pp. 90–92.

[82] Torres Gutiérrez, Alejandro, "El sistema de servicios sociales en la Comunidad Foral de Navarra: Un estudio desde una perspectiva multicultural", in: *Asistencia social, participación y reconocimiento de la diversidad: Un estudio comparado entre comunidades autónomas*, Castro Jover, Adoración, (Dir.) (Pamplona: Thomson Reuters Aranzadi, 2016), pp. 377–406.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. SWEDEN

Lars Friedner

I. Income Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

In Sweden, the same income tax provisions apply to churches and other religious communities as to philosophical and non-confessional organisations. In fact, those provisions are valid also for all "idealistic associations", which includes for example, sport clubs, political parties, labour unions, and teetotalers' associations.[1] According to these provisions, the churches and associations are only due to pay income tax for incomes from capital and business activities.

It could, of course, be discussed what a business activity of a church (or another religious community) might be. There is no case law on the matter regarding churches, but the meaning of business activity is repeatedly judged by the tax authorities regarding other sectors of the society. The concept has then been seen as an activity of duration with the goal of earning a profit. With this definition, the churches have been free to uphold small coffee shops or a limited selling of books or booklets without being seen as performing business activities. The membership fees to the churches or associations have never been regarded as a part of any business activities. On the other hand, there is the Lutheran Church of Sweden, the former state-church, when selling timber from its forests, nowadays seen as conducting business activities, and the forests (and the incomes from them) are legally separated from the church, its dioceses, and parishes and handled by special foundations.[2] Contributions from these foundations to the parishes – or any kind of contributions – do not, however, trigger any income tax.

[1] 7:3 Income Tax Act (Sw. *Inkomstskattelagen [1999:1229]).*

[2] During ten years after the separation of State and Church in Sweden, the incomes from the forests were still free from income tax, but since the year 2010, normal tax provisions apply.

There are, however, some provisions which limit the churches (and other religious communities, as well as idealistic associations in common) when it comes to freedom from income taxes. One is the requirement for "openness", which means that a church (or any association) does not have a right to deny a person who wishes to become a member, unless there are "special reasons regarding the art or the extent of the churches' etc. activities, goal, or otherwise".[3] Another requirement regards that the church etc. has to use its assets for fulfilling its goal.[4] This means that the church cannot to any considerable extent save its money, but has to use it for its purposes. There is a possibility, though, for the church etc. to get an exception, decided by the tax authorities, if it intends to buy real estate property or to renovate such property within five years.[5] There is no case law regarding these matters, so you cannot know exactly how the courts would look upon openness and using of money. On the other hand, it seems as if the provisions have caused no problems so far.

As for any subject, there is tax secrecy for the churches etc.[6] The decisions of the tax authorities are, however, not secret.[7] There are also provisions on secrecy for banks regarding churches etc. as for all customers.[8] But these provisions do not hinder the banks to forward some information about their customers to for example, the tax authorities.[9]

There are no special income tax provisions regarding the relations between different churches, religious communities or other associations. However, the Administrative Court of Appeal in Stockholm has recently decided on the matter on income tax and value added tax (VAT), regarding the Church of Sweden on a national level "selling" some administrative services to its parishes. The decision was that this operation triggers neither income tax nor VAT (which the tax authorities had argued for).[10] It is yet too early to say whether this judgement will have any implications on the whole religious sector (or all associations) or if it has to be seen as just an *in casu* decision. The decision may also be claimed, by the tax authorities, to the Supreme Administrative Court.

There are no known examples of tax evasion in the church sector.

3 7:10 Income Tax Act.
4 7:6.
5 7:8.
6 27:1 Publicity and Secrecy Act (Sw. *offentlighets- och sekretesslagen [2009:400])*.
7 27:6.
8 1:10 Bank and Financing Business Act (Sw. *lag (2004:297) om bank- och finanseringsrörelse*)
9 For example, 17:3 Tax Procedure Act (Sw. *skatteförfarandelagen [2011:1244])*.
10 Case 7871 and 7872-17.

II. Real Estate Tax of Religious Organisations and for Philosophical and Non-Confessional Organisations

Sweden has two different systems of real estate property tax: a system of State tax[11] and a system of real estate property fees to the municipalities.[12] As an owner of real estate property, you pay the municipality fee for property used for housing but the State tax for all other real estate property. There is no difference between owners, so all follow the same provisions. This means that there is no special treatment of churches, other religious communities, or other organisations.

The real estate property tax as well as the fee are paid in percentage of the worth of the property.[13] The actual worth of real estate property, for tax purposes, is decided annually for each estate by the tax authorities (with a possibility of claims to the administrative courts).[14]

According to the act, some real estate property is regarded as "special buildings" and – as a category within this group – as "ecclesiastical buildings". These buildings are defined as "churches or other buildings, used for religious purposes" as well as crematories and other buildings used for burial activities. Other examples of "special buildings" are railway stations, hospitals, and water plants.[15]

As a matter of fact, all "special buildings" are exempted from being rated.[16] This means that the worth of such buildings, including churches and "other buildings used for religious purposes", is set to zero. Thus, neither real estate taxes nor real estate fees are paid for such property. It could be guessed that the reason for this tax treatment of for example, church buildings is the fact that such real estate property normally cannot be sold on the real estate market and thus is of no economic value for the owner.

It should be remarked, however, that real estate property, used by a philosophical and non-confessional organisation in its activities, is not free from real estate tax in the same way as church buildings are.

III. Taxation of Monastic Communities/Orders

Monastic communities and orders are very rare in Sweden. In fact, they were – as a part of the church reformation in Sweden – forbidden from the 16th century until the

[11] State Real Estate Property Tax Act (Sw. *lagen (1984:1052) om statlig fastighetsskatt)*.

[12] Municipality Real Estate Property Fee Act (Sw. *lagen (2007:1398) om kommunal fastighetsavgift)*.

[13] For example, 3 § State Real Estate Property Act and 3 § Community Real Estate Property Fee Act.

[14] Real Estate Property Rating Act (Sw. *fastighetstaxeringslagen [1979:1152]*).

[15] 2:2 Real Estate Property Rating Act.

[16] 3:2.

year 1952, when monastic communities and orders were allowed, after governmental approval for each community[17] (full freedom of starting monastic communities and orders came in 1977).[18]

The concept of monastic communities and orders is mostly linked to the Roman-Catholic and Orthodox traditions, although there are communities of similar art in the Protestant tradition, even though they are not – at least not earlier – named monastic orders.

Those monastic communities, nowadays existing in Sweden, do not recognise any special legal form; they might legally be for example, associations, foundations, or registered religious communities. As regard taxes, they follow the provisions valid for the legal form chosen. This means that some monastic communities in tax matters are regarded as churches, other as religious communities, and idealistic associations. Others have legal forms that lead to taxes as business companies.

Nor is there any special tax law regarding the members of the monastic communities. Formally, they are supposed to pay taxes for their incomes, in money as well as in kind. The tax authorities have, however, come to a solution with a special treatment of members in monastic communities. Thus, a member of a monastic community is not supposed to pay income tax for food and lodging, provided by the community.[19]

With for example, this statement as a background, members of the Jehovah's Witnesses have argued for tax exemption. The reason that those persons have presented to the court is that they are earning no money but are given food and lodging, just as members of monastic communities. The court has anyway concluded that there will be no tax exemption for these members of Jehovah's Witnesses. They are not regarded as members of monastic communities.[20]

IV. Taxation of Social Institutions, run by Churches, Religious Communities, or Philosophical and Non-Confessional Organisations

Social institutions, for example, hospitals, schools, or homes for the elderly, in Sweden are mostly run by the regions or the municipalities. There are, however, some social institutions run by churches or other religious communities as well as by private companies.

The social institutions run by churches and other religious communities are, regarding taxes, treated in the same way as the institutions run by private companies.

[17] 5 § Religion Freedom Act (Sw. *religionsfrihetslagen [1951:680]*).

[18] Act on Amending Religion Freedom Act (Sw. *lagen (1976:1004) om ändring i religionsfrihetslagen*).

[19] Administrative Court of Appeal decision December 10, 1957 no 355.

[20] For example, Administrative Court of Appeal in Gothenburg judgment March 12, 2013 in cases no 8379 – 8384 – 12.

Often, the churches (and religious communities) running social institutions have created private companies for the matter. But it might also happen that a church parish runs, for example, a pre-school in its own legal form. In such a case, the parish risks that the tax authorities will look upon it as a company and thus regard all incomes as a tax base. The parish will in that position lose its status as a tax privileged subject. There is, however, no case law on the matter.

So far, no philosophical and non-confessional organisation has started a social institution. The social institutions enjoy the same tax and bank secrecy as do the churches and other religious communities themselves.

V. Taxation of Religious Ministers and Leaders of Philosophical and Non-Confessional Organisations

In Sweden, the same tax provisions apply to religious ministers and leaders of philosophical and non-confessional organisations as to anyone else. The ministers etc. have to pay, for example, income taxes for their salaries.

The tax authorities have, however, made a statement regarding ministers who live in a rectory. Such a minister is supposed to pay a rent to the parish. And this rent has to be according to the housing market, otherwise the gain for the minister of a lower rent will have to lead to an income tax for the reduced rent. But as some rectories are fairly big, the tax authorities have concluded that it is enough if the minister pays a rent for a house of 100 square metres. If the rectory's area is bigger, and the minister does not pay a rent for this, it will not affect the minister's income tax.

VI. Church Tax

In Sweden, there are no taxes to the benefit of churches, other religious communities or philosophical and non-confessional organisations. However, the tax system contains the possibility for registered religious communities to use the tax system for collecting their membership fees. The Church of Sweden is entitled to use the tax system already through the parliamentary act; other churches and religious communities need governmental approval.[21] This means that not every religious community is allowed to use the tax system. On the other hand, it does not seem as if any community which has applied for using the tax system so far has been denied. It should be remarked, though, that non-confessional organisations are not allowed, according to the parliamentary acts.

It has been repeatedly discussed whether a tax reduction should be entitled to those inhabitants who pay for charity. With effect from July 1, 2019, such a reduction

[21] 16 § Religious Communities Act (Sw. *lagen (1998:1593) om trossamfund*); Act on Levies to Registered Religious Communities (Sw. *lagen (1999:291) om avgift till registrerat trossamfund*).

exists again.[22] Thus, Swedes could receive a tax reduction if they have paid a contribution to, for example, a religious community for charity regarding help in social matters. The receiver has to be approved by the tax authorities.[23]

VII. Miscellaneous

As mentioned, the matter of tax reduction for charity is often discussed. Other tax matters regarding churches etc. are rarely a subject of interest in the media or elsewhere. Some years ago, the question of churches using the tax system for their membership fees was discussed in Parliament.[24] No interest seems to exist from churches etc. for changing the present tax system.

Regarding VAT, churches etc. are entitled to pay (and receive) VAT if they perform business activities. As mentioned in the section about income tax, there has been a lawsuit regarding, for example, VAT within the Church of Sweden, but the final outcome, at the time of writing, is unclear.

[22] 67:20 Income Tax Act.

[23] Act on Approval of Gift Receiver at Tax Reduction for Gifts (Sw. *lag (2019:453) om godkännande av gåvomottagare vid skattereduktion för gåva*).

[24] For example, private bill 2014/15:2540.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. UNITED KINGDOM

Mark Herbert KC*

I. Introduction

It struck the present writer while attending the conference in Luxembourg that the status of churches in Britain, and indeed in Ireland, is significantly different from that of churches on the continent. There are no doubt historical reasons for this. British and Irish churches do not belong to the state, and their ministers are not employed by the state. Instead, state support takes the form only of reliefs and exemptions from taxes which are enjoyed by religious institutions, without discrimination between religions and in common with other charitable institutions. It is striking also that, in England at least, religion and education are *separately* entitled to the charitable status on which their all-important reliefs and exemptions are based, while in some continental countries the link between religion and education is often more explicit.

At the same time it was striking how much, in practice and despite the differences just mentioned, the attitudes of different states towards religious institutions showed remarkable similarities.

The text of this contribution has been re-organised somewhat, but without its basic content being altered. This has involved moving the section describing the constitution of the Church of England and the section on obtaining charitable status to separate appendices at the end of the main text. Some material has also been added on exemption from a locally collected property tax.[1]

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[1] See paras 25(6), 26, 27 and 29(7) below.

II. Income Tax of Religious Organizations and for Philosophical and Non-Confessional Organisations

2.1. The Legal Framework of Religious Bodies in the United Kingdom

Constitutional Law

1. It is well-known that the United Kingdom has no comprehensive written text of its constitution or of its constitutional law. Religious organisations are established under the ordinary rules relating to companies (normally, in this context, 'guarantee companies' meaning companies with liability limited by guarantee) or unincorporated associations. The property of an unincorporated association is generally held by trustees in trust for the members of the association or, if the association qualifies as a charity,[2] in trust to promote the objects of the association. A rider to this is that some of the office-holders in the Church of England are so-called 'corporations sole', so that, for example, the Bishop of London acting in her official capacity is regarded as a corporation distinct from her own personality.
2. As with religious bodies themselves, ecclesiastical law is drawn from the normal combination of the common law (meaning judge-made law) and statute. In this context the common law was historically derived from the pre-Reformation canon law of papal Rome, but in practice ecclesiastical law today depends almost exclusively on post-Reformation common-law and statute, as does the law generally in the United Kingdom.
3. The Church of England has a special status which is described in Appendix A below. England, Wales, Scotland and Northern Ireland have other Christian (but non-Roman-Catholic) denominations, including : the Methodist, Baptist and Pentecostal Churches; the Church in Wales;[3] the Scottish Episcopal Church, the Church of Scotland, the Free Church of Scotland and the United Presbyterian Church of Scotland; the Church of Ireland (organised on an all-Ireland basis), the Presbyterian Church in Ireland and the Free Presbyterian Church of Ulster.
4. The Roman Catholic Church is, like the Church of England, divided into dioceses, each having an archbishop or bishop, and each divided into numerous parishes, each with a parish priest. The Roman Catholic Church no longer has

[2] A trust for purposes (as opposed to a trust for human beneficiaries or other legal persons such as companies) is void unless the trusts are exclusively charitable.

[3] The Church in Wales was disestablished by statute in 1920 : Welsh Church Act 1914 s 1, Welsh Church (Temporalities) Act 1919 s 2. But bishops of the Church in Wales are eligible to become archbishops of the Church of England (as, for the first time, did the immediately preceding Archbishop of Canterbury, Rowan now Lord Williams of Oystermouth, formerly Bishop of Monmouth and Archbishop of Wales).

archdeacons by that name but instead has Vicars General who have the same position between a diocese's bishop and its parishes.

5. Other religious bodies enjoy their own systems of organisation. The Jewish faith has synagogues with their own rabbis, Islam has its own mosques, Sikhs have their own gurdwaras, Hindus, Buddhists, Jains and other groups have their own temples. All such religious organisations, whether Christian or not, may exist or be created in the same way as any other group or body of persons, either as companies or unincorporated associations. The organisation's property may be held by the company in question or it may be vested in trustees in trust for the members of the organisation from time to time or for the charitable purposes professed by the organisation.

Civil Law

6. A religious (or non-religious) organisation operates under the ordinary law so far as its obligations and rights under the law are concerned. The detail depends on whether the organisation is a corporation (a company) or an unincorporated association. The property of an unincorporated organisation will be held by trustees in trust for the organisation or its members. The following summary applies equally to religious organisations : —
   a. A corporation is legally a person. As such it is liable under ordinary contract law for breaches of its contractual obligations and can enforce its contractual rights (such as rights and obligations as landlord or tenant under a lease of property, under an employment contract and under banking and borrowing laws).
   b. The liability of a registered corporation for its debts is limited under the ordinary law, normally (in the case of a religious organisation) by its being incorporated as a guarantee company.
   c. An unincorporated association is not normally capable of suing or being sued in the courts in the name of the organisation. It sues and is sued in the names of its trustees. Trustees are equally liable for breaches of their contractual obligations and can enforce contractual rights. Trustees may themselves be companies or individuals.
   d. Trustees who are individuals are in principle liable for debts without limitation. But it is open to trustees under English and Scots law expressly to limit their liability for contractual obligations, for example by declaring expressly in the agreed terms of the contract that they are contracting 'only as trustee'. But this limitation depends on the agreement of the other party to the inclusion of that declaration in the contract.
   e. Companies and trustees are liable for civil wrongs (statutory and common-law torts), including negligence and (in regard to their occupation of

land) nuisance, committed by them in the performance of their functions. Companies and trustees may be liable vicariously for torts committed by their employees in the course of their employment.

f. Unless they were acting improperly (in breach of trust) trustees will be entitled to an indemnity from the assets and income of the trust in respect of tortious, contractual or other statutory liability (including liability for taxes) incurred in the performance of their trusteeship.

Case Law

7. As mentioned in Appendix A below, there are three ways in which the Church of England is subject to specialist courts : —
   a. Each diocese has a consistory court, chaired by the diocesan chancellor, dealing with applications for faculties.[4]
   b. The Court of Ecclesiastical Causes Reserved deals with clergy discipline in regard to doctrine, ritual and ceremonial.[5]
   c. Bishops tribunals have a criminal jurisdiction over the clergy.[6]
8. In other respects the Church of England is subject to no special privileges in regard to litigation, and in this it is in the same position as other religious bodies, whether the religion is 'known' or 'non-recognized', and the same as philosophical and non-confessional organisations. However, as will appear below, most religious organisations are charities, the effect of which is mentioned in the following section.

Taxation of Religious Charitable Organisations

9. In general the tax law of the United Kingdom does not impose specific liabilities or grant special exemptions, reliefs or privileges to religious organisations as such. There are however a few exceptions mentioned below. In addition, importantly, the advancement of religion is one of the principal pillars of charity under English law. As charities, therefore, nearly all religious bodies enjoy the privileges of charity in regard to taxation.[7] Appendix B therefore describes the qualifying characteristics of a charitable organisation, with special reference to a religious organisation.

[4] See Appendix A paragraph (1)(c) to (f).

[5] Ibid sub-paragraph (g).

[6] Ibid sub-paragraph (h).

[7] There are exceptions to that generality, namely a small category of religious bodies which do not qualify as charities : see Appendix B paragraph (8).

Income Tax

10. In principle all charities are entitled to exemption from income tax. However, the detailed provisions which provide exemption vary somewhat depending on the type of income which may otherwise be taxable.
11. Income from covenanted donations (in practice from companies) and 'gift aid' is exempt from income tax.[8] Gift aid is an exemption for gifts to charities made out of the taxed income of individuals, and this gives the recipient charity the right to claim from Her Majesty's Revenue and Customs ('HMRC') the basic-rate tax on the grossed-up amount of the gift (currently 25 per cent of the net amount). In practice gift aid is widely used by religious organisations in order to obtain a tax refund on collections received from the congregation during religious services, as well as from other donations.
12. Rent from freehold or leasehold property belonging to charities is also exempt from income tax or corporation tax.[9]
13. The profits of a trade carried on by a charity may be exempt from tax, provided the trade is carried in the furtherance of its charitable objects.[10] There is controversy concerning charities which do conduct their own trading activities, because trading for profit is thought in some contexts to be inconsistent with charitable status. Many charities avoid such controversy by establishing a company to carry on the associated trading activity and arranging for that company to covenant its profits to the charity itself. If managed efficiently, this practice preserves the exemption from corporation tax on those profits for the benefit of the charity.

Capital Gains Tax

14. Any gain realised on the disposal of a chargeable asset is exempt from capital gains tax if the gain is applicable and applied for charitable purposes only.[11] The same exemption applies for corporation tax. The requirement that the gain must be 'applied' as well as 'applicable' for charitable purposes means that not only must the objects or purposes of the body be charitable (as they will be) but that the amount of the actual gain in question is in fact used to further those objects or purposes. Investing the money will not qualify, for example, and there are elaborate statutory provisions defining what other forms of expenditure do not qualify.

8 Income Tax Act 2007 sections 413ff.
9 Income Tax Act 2007 section 531(2); Corporation Tax Act 2010 section 485.
10 Income Tax Act 2007 section 524; Corporation Tax Act 2010 section 478.
11 Taxation of Chargeable Gains Act 1992 section 256(1).

Inheritance Tax

15. Inheritance tax is a tax on gifts made during an individual's lifetime or treated as made on his or her death. In each case there is an unlimited exemption for gifts, legacies and other testamentary provisions made in favour of one or more charities or on trust for charitable purposes only.[12] In principle a charity qualifies for this purpose only if it is established in the United Kingdom. There have been claims, however, based on the European-law principles of the free movement of capital and freedom of establishment, that a gift qualifies for exemption or relief from tax in one EU member state if made to a charity established in another member state.[13]

Value-Added Tax

16. Charities as such do not enjoy a general privilege in regard to value-added tax. Some supplies of goods to charities are zero-rated, but this provision is aimed chiefly at healthcare charities acquiring clinical equipment and similar goods. A similar provision applies to the repair and maintenance of such goods, if paid for by the charity or from voluntary contributions. But this is unlikely to be of relevance to a religious charity.
17. The supply of goods and services by a charity in connection with fund-raising is exempt, meaning that the charity is not permitted to deduct or claim input tax on its own expenditure on goods and services in that connection. This represents a disadvantage of charitable status.

Stamp Duty

18. There is no exemption from stamp duty in regard to charities or religious organisations.

Tax Avoidance

19. Charities have from time to time been used in attempts to avoid tax, though religious charities are probably not the most obvious vehicles for such adventures.
20. The best-known recent example of such an attempt, not involving religion at all, concerned a standard-form grant-giving charity called the Cup Trust (for the benefit of unspecified charitable purposes to be chosen by the trustees), seeking to exploit (1) the exemption from capital gains tax for all

[12] Inheritance Tax Act 1984 section 23.
[13] This has become irrelevant to the United Kingdom now that it has left the EU.

taxpayers of gains on the disposal of government securities (gilts) and (2) gift aid (see above). The main feature of the scheme involved the charity trustees selling gilts to a high-income taxpayer at a gross undervalue on condition that the taxpayer made an equivalent cash gift to the charity. In the event the tax exemptions and reliefs were all refused, but not until the Charity Commission and HMRC had had to undertake an extensive and expensive five-year inquiry.[14]

21. The authorities claim that such schemes have always failed. But almost by definition a successful tax-avoidance scheme, if there were one, would have gone undetected, so that complacency is not justified.

Are Religious Institutions and Philosophical and Non-Confessional Organisations Covered by Tax and/or Bank Secrecy?

22. There are no provisions relating to tax or bank secrecy specific to such institutions.

What Is the Tax Treatment of Transactions between Religious Institutions, and between Philosophical and Non-Confessional Organisations?

23. Each institution has the same tax liabilities in regard to transactions as any other legal person, except for those already mentioned : rent received by a charity is exempt from income tax (or corporation tax); capital gains are exempt if accruing to charities and applicable and applied for charitable purposes only.

II. Real Estate Tax of Religious Organizations and for Philosophical and Non-Confessional Organisations

24. The taxation of religious organisations applies to immovable property in virtually the same way as to movable property (see above).
25. If the organisation is a charity, its tax position is this :
    a. Income tax : Rent belonging to a charity is exempt from income tax and corporation tax.
    b. Capital gains tax : Gains realised by a charity on the disposal of immovable property are exempt if applicable and applied for charitable purposes only. As with gains realised on the disposal of movable property,

[14] https://www.gov.uk/government/publications/the-cup-trust-charity-commission-inquiry-results [accessed 22 February 2022].

the exemption is restricted if the gain is applied by way of investment or other non-qualifying expenditure.

c. Inheritance tax : Lifetime and testamentary gifts of immovable property to a charity are exempt.

d. Stamp duty land tax : The acquisition of immovable property by a charity is not exempt.

e. Value added tax : The construction of a building for residential purposes or relevant charitable purposes is in some cases zero-rated. This would apply to the construction of a building for use as a monastery or nunnery, or the construction of a village hall or recreational facility for a local community. The supply of goods and services by a charity in connection with fund-raising is exempt, meaning that the charity cannot deduct or claim the benefit of input tax on its own expenditure on goods and services in that connection.

f. Business rates : Most non-domestic buildings are liable for annual business rates payable to the local authority by reference to the rateable value of the property. There is an exemption for buildings registered for public religious worship or church halls. This is one of the few exemptions specifically provided for religious organisations as such.

26. In the context of business rates, the Mormon Church has been held to be too exclusive for its places of worship to qualify for exemption as places of 'public religious worship' under section 7(2)(a) of the Rating and Valuation (Miscellaneous Provisions) Act 1955. In *Church of Jesus Christ of Latter-Day Saints v Henning*[15] the evidence was that only 'Mormons in good standing', meaning those who were approved by the bishop, endorsed by the president, and holding a 'recommend' valid for one year only, were admitted to the Mormon Temple at Godstone. On that basis it was held by the House of Lords that the temple was not a place of public religious worship and therefore not entitled to the exemption.

27. The statutory provision was later replaced by Schedule 5 paragraph 11 to the Local Government Finance Act 1988, and another attempt was made to secure exemption for a Mormon temple. It was argued that refusal of the exemption would infringe articles 9 and 14 of the European Convention on Human Rights, but the attempt failed.[16] Paying business rates, it was said, did not prevent Mormons from manifesting their religion.

[15] [1964] A.C. 420.

[16] *Gallagher v Church of Jesus Christ of Latter-Day Saints* [2008] UKHL 56 [2008] 1 W.L.R. 1852. A further appeal to Strasbourg also failed : (2014) 59 EHRR 18 [2014] 3 WLUK 70. Denial of the exemption applied to any religion which excludes the public from the place of worship in question.

III. Taxation of Monastic Communities/Orders

28. As with other religious organisations, there is no specific tax policy for monastic communities and orders as such. The important question is whether the organisation is a charity. As explained in Appendix B, religious organisations generally do qualify as charities, provided they also satisfy the test of public benefit, and in this regard there is no difference between the Church of England and other religions (including known and non-recognised religions). The only point of difference in regard to monastic communities and orders is that the more closed orders may find it more difficult to satisfy the test of public benefit.[17]

29. If the organisation is a charity, its tax position is as outlined above. To repeat :

    a. Income tax : Gifts to the order can qualify for 'gift aid' relief. Rent belonging to a charity is exempt from income tax and corporation tax. Profits of a trade carried out in furtherance of the charitable objects of the order can be exempt, and controversy in this context can be avoided by arranging for a company to carry on the trade and to covenant its profits to the charity.

    b. Capital gains tax : Gains realised by a charity on the disposal of immovable property are exempt if applicable and applied for charitable purposes only. As with gains realised on the disposal of movable property, the exemption is restricted if the gain is applied by way of investment or other non-qualifying expenditure.

    c. Inheritance tax : Lifetime and testamentary gifts of immovable property to a charity are exempt.

    d. Stamp duty land tax : The acquisition of immovable property by a charity is not exempt.

    e. Stamp duty : For movable property the purchase of assets by a charity is not exempt.

    f. Value added tax : As mentioned above, the construction of a building for residential or relevant charitable purposes is in some cases zero-rated. This could apply to the construction of a building for use as a monastery or nunnery. The supply of goods and services by a charity in connection with fund-raising is exempt, meaning that the charity cannot deduct or claim the benefit of input tax on its own expenditure on goods and services in that connection.

[17] See Appendix B para (8)(a).

g. Business rates : As mentioned above, there is an exemption for buildings registered for public religious worship or church halls. If the monastery is not registered for public worship, it may still qualify for relief at 80 per cent if it is a charity. This would depend (again) on its satisfying the requirement of public benefit (which on this hypothesis may be difficult though possible). [18]

IV. Taxation of Religious Social Institutions and for Philosophical and Non-Confessional Organisations (Charity, Educational &C)

30. There is no special tax status for religious organisations as such. The important question is whether the organisation is a charity. As mentioned above, religious organisations generally do qualify as charities, provided they also satisfy the test of public benefit, and in this regard there is no difference between the Church of England and other religions (including known and non-recognised religions).
31. Philosophical and non-confessional organisations can qualify as charities for the advancement of education if their objects are satisfactorily expressed for that purpose. Universities and schools are examples, with the status of so-called 'public schools' (meaning independent private schools) being politically controversial.

V. Taxation of Religious Ministers and for Leaders of Philosophical and Non-Confessional Organisations

32. Ministers of religion and leaders of philosophical and non-confessional organisations are subject to income tax, capital gains tax, inheritance tax and value added tax in the same way as other individuals.
33. Ministers of religion may be liable for council tax, which can be regarded as the domestic equivalent of business rates depending partly on the assessed value of the residential property in which they live, though in some circumstances the person liable is the religious organisation rather than the individual minister. But if the minister is liable for the tax personally and the employing organisation pays the tax on behalf of the minister (or reimburses the minister), that payment is exempt from income tax. [19] This is another of the few provisions of the tax legislation providing for religious

[18] It was noted by the European Court of Human Rights in *Gallagher v Church of Jesus Christ of Latter-Day Saints* (2014) EHRR 56 at [34] that the temple qualified for the 80 per cent relief even though it did not qualify for exemption.

[19] Income Tax (Earnings and Pensions) Act 2003 section 290.

organisations and ministers as such. It applies to all religions but not to non-confessional organisations (which may, however, have claims under the principle of non-discrimination).

VI. Church and Philosophical and Non-Confessional Organisations Tax

34. There is no special tax provision in favour of religious organisations as such, or of philosophical or non-confessional organisations.

25. Exceptionally, there is a small category of land, forming part of a parish's so-called 'glebe land', which previously belonged to the rector of a parish and which then, on a sale, became burdened with an obligation to contribute towards repairs to the chancel of the parish church. The obligation originated from the rector's historic entitlement to tithes (10 per cent of the parish's produce), or from a condition attached to the grant of land to a rector in lieu of tithes, and is now statutory.[20] It has been held that the enforcement of the obligation cannot be resisted by reliance on article 14 of, and article 1 of the First Protocol to, the European Convention for the Protection of Human Rights and Fundamental Freedoms.[21]

[20] Chancel Repairs Act 1932.

[21] *Aston Cantlow and Willmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37 [2004] 1 A.C. 546, reversing the decision of the Court of Appeal, who had held that the obligation was a discriminatory form of taxation : [2001] EWCA Civ 713 [2002] Ch. 51.

APPENDIX A

The Church of England

1. The Church of England is regarded as the 'established church' in England, and this is specific to England.[22] In terms of its constitution the Church of England enjoys certain specific features or privileges : —
   a. Since the Reformation in the sixteenth century the Monarch is the head of the Church of England.
   b. Twenty-six bishops and archbishops are entitled to sit in the House of Lords, but they are not peers or peeresses, meaning that they are not entitled to vote on resolutions of the House. Some bishops have been appointed peers on their retirement.
   c. Each diocese has a Consistory Court, except that the equivalent court in Canterbury is called the Commissary Court. Consistory courts were first established shortly after the Norman conquest in 1066.
   d. Each consistory court is presided over by its chancellor. Chancellors are qualified barristers or solicitors who are also communicant members of the Church of England.
   e. The normal rules of town and country planning do not apply to church buildings and churchyards in England. Instead alterations to a church building or its contents or the churchyard, including the upkeep and contents of gravestones and including also dis-interments and re-burials, need to be authorised by a special permit called a 'faculty' issued by the diocesan chancellor. Cases of dispute are heard in the same way as other contested hearings, with parties sometimes represented by solicitors and barristers, sometimes in the body of the relevant church itself.
   f. Appeals from a consistory court are made to the Court of Arches or (in the province of York) to the Chancery Court of York. These are three-judge appeal courts made up of experienced diocesan chancellors.
   g. Originally consistory courts also had a criminal jurisdiction over the clergy. But in 1963 the Court of Ecclesiastical Causes Reserved was established.[23] The jurisdiction of this court is now limited to cases involving questions of doctrine, ritual or ceremonial.

[22] For other Christian denominations and other parts of the United Kingdom, please see paras 3 and 4 of the main text.

[23] Ecclesiastical Jurisdiction Measure 1963.

h. In 2003 the remainder of the consistory courts' criminal jurisdiction over clergy was transferred to 'bishops tribunals', which apply modern tribunal procedure and impose a statutory system of penalties. [24]

2. The Church of England has a complicated and mature pyramidal system of provinces, dioceses, archdeaconries, areas and parishes. There are two provinces, Canterbury and York, each with an archbishop. Each province is divided into a number of dioceses, each with a diocesan bishop and a dean. Many dioceses are divided into smaller areas, each with a suffragan or area bishop. All archbishops, bishops and deans are appointed from the ranks of ordained priests. They are appointed formally by the Monarch personally, as head of the Church (see above), but the government has a significant role in those appointments.
3. Each diocese, if sufficiently large, will have a number of archdeaconries, and each archdeaconry is divided into a number of parishes, each with an 'incumbent' or, during a temporary interregnum between incumbents, a priest in charge. An incumbent is an ordained priest who may be a rector or a vicar, appointed by the bishop, and may be assisted by one or more curates, who are also ordained priests or deacons, and other unordained assistants. Each parish has churchwardens and a parochial church council, who are democratically elected each year by the registered congregants of the parish. Especially in rural areas a rector or vicar may be responsible for several parishes in a locality. The ecclesiastical property of each parish, consisting of the church and its fittings, and the churchyard, is vested in the vicar and churchwardens.
4. Such matters as doctrine in the Church of England are decided by the General Synod, having 'houses' of bishops, clergy and laity. A majority in each house is required for a change to be made. Each diocese has its own synod, again with the three houses. Members of the House of Laity are elected democratically. When the decision was made to allow women to be ordained as priests, the House of Laity was the third and last of the houses to arrive at a majority in favour of the change. The Church in Wales has its own Governing Body (taking the place of a general synod), again including bishops, clergy and laity.

[24] Clergy Discipline Measure 2003.

APPENDIX B

Charitable Status

1. In order for a body to be charitable it must satisfy two criteria : —
   a. Its objects must fall exclusively within one or more of the categories specified in section 3(1) of the Charities Act 2011.[25] The first three of these (the relief of poverty, the advancement of education and the advancement of religion) and indeed some of the rest were identified by judge-made law and are derived indirectly from the preamble to a statute of 1601 (now known as the Charitable Uses Act 1601).[26] Several other specific objects were added in 2006. The original 'fourth head' of charity ('other purposes beneficial to the community') is now defined more closely : existing recreational charities, purposes analogous to those listed in the subsection, purposes analogous to those professed by charities previously accepted under the fourth head.
   b. It must exist for the benefit of the community or a sufficient section of the community. The inhabitants of a parish, for example, comprise a sufficient section of the community for the purpose of a religious charity. This requirement of public benefit was not mentioned in the 1601 preamble and was instead derived from judge-made law. It is now contained in section 4 of the 2011 Act but expressly adopting the understanding of the term for the purposes of previous English charity law (meaning pre-2006 judge-made law).
2. So far as the first requirement is concerned, English law does not now discriminate between one religion and another. Following the emancipation of religions other than the Church of England, beginning in the nineteenth century, English law is today neutral as between one religion and another, while normally accepting that any religion is better than none. This inclusive approach can be detected in the definitions of religion and belief in the legislation dealing with discrimination :

[25] This 2011 Act consolidates provisions enacted originally by the Charities Act 2006.

[26] The advancement of religion was not in fact mentioned in the preamble to the 1601 Act (apart from a reference to the repair of chancels), but it has been accepted as one of the four pillars of charity at least since the decision of the House of Lords in *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531. In general the activities listed in the preamble, or most of them, were activities carried out or funded by the Church before the dissolution of the monasteries under King Henry VIII, so that the link between religion and charity would have been discernible from the outset. It was no doubt an act of deliberate tact that, by not explicitly including the advancement of religion, the preamble avoided the need to state which precise form of religion was intended, though originally there would have been no question of non-Christian religions being included.

'(1) *Religion* means any religion and a reference to religion includes a reference to a lack of religion.

'(2) *Belief* means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.'[27]

3. For an organisation to qualify as a charity for the advancement of religion, its belief-system must qualify as a religion. As a result of this requirement atheism, humanism and theosophy were all, before 2006, denied charitable status. Then the traditional view was that 'two of the essential attributes of religion are faith and worship; faith in a god and worship of that god'.[28] But in practice some established religions already qualified for charitable status despite belief in a god not being required by the religion in question, Buddhism and Jainism being examples. This is now confirmed by statute : section 3(2) of the 2011 Act provides that 'religion' includes a religion which involves belief in more than one god and also one which does not involve a belief in god.
4. And yet, for an organisation to qualify as a charity for the advancement of religion, it remains a requirement that its belief-system amounts to a religion. And the provisions of section 3(2) of the 2011 Act (and indeed the legislation relating to unlawful discrimination) do not significantly affect the judge-made definition mentioned in paragraph (3) above. To take the example of atheism, it is no doubt unlawful to discriminate against an individual who professes it. But atheism does not itself involve worship, in which case an organisation established to promote atheism is still thought not to qualify as a charity established for the advancement of religion.
5. Be that as it may, some philosophical and non-confessional organisations may qualify as charities if their objects fall within the concept of the advancement of *education*.
6. The second condition for achieving charitable status is that the organisation in question exists for the benefit of the public. Until recently it was loosely thought that, once an organisation's objects were seen to qualify as the advancement of religion (or the advancement of education or, a fortiori, the relief of poverty), the second condition was equally satisfied. This was sometimes described as a 'presumption' of public benefit. After all,

[27] Equality Act 2010 s 10. This has enabled a person to rely on his 'ethical veganism' in the context of a tribunal claim against his employer for unlawful discrimination, but his claim failed and there does not appear to have been an appeal against the tribunal's decision.

[28] *Re South Place Ethical Society* [1980] 1 W.L.R. 1565, 1571. The objects of the society in question did not meet that requirement, being the 'study and dissemination of ethical principles and the cultivation of rational religious sentiment'.

the original fourth category of charity (other purposes beneficial to the community) implied that the first three categories were themselves beneficial.

7. But section 4 of the Charities Act 2011 (repeating a provision from the equivalent Act of 2006) states not only that the requirement of public benefit applies to all charities but also that there is no presumption that it will be satisfied. This has led to litigation (in regard to educational and poverty charities), and the analysis is now clarified.[29] The object of advancing education or the relief of poverty—the advancement of religion will be the same—is itself recognised as beneficial, but any given organisation is nevertheless required to show that it, by pursuing that object in its own way, is providing a benefit to the public. This is a question of fact to be demonstrated by evidence.

8. Any given religious charity must, therefore, if challenged, be able to demonstrate by evidence that its work is of practical benefit to the community or a sufficient section of the community. Most religious organisations have no difficulty satisfying this requirement. But there is a small minority which does not :

   a. In 1949 the House of Lords decided that a particular closed order of nuns was not entitled to charitable status, on the ground that there was no evidence to demonstrate that the order's silent prayer was for the benefit of the public.[30]

   b. Another controversial case is that of the Church of Scientology. This church is recognised as professing a 'religion' for certain purposes. For example the Home Office accepted in 1996 that Scientology was a bona fide religion for purposes of immigration. And in 2013 it was held that a building belonging to the church qualified as a 'place of meeting for religious worship', within the meaning of section 2 of the Places of Religious Worship Registration Act 1855, so that it could conduct lawful marriages on its premises.[31] However, in 1999 the Charity Commissioners rejected the church's application for status as a charity on the ground that there was no public benefit arising out of the practice of Scientology. The church appears to have chosen not to challenge that decision.

[29] *R (on the application of the Independent Schools Council) v Charity Commission for England and Wales* [2011] UKUT 421 (TCC) [2012] Ch. 214; *Attorney-General v Charity Commission for England and* Wales [2012] UKUT 420 [2012] W.T.L.R. 977.

[30] *Gilmour v Coats* [1949] A.C. 426.

[31] *R (on the application of Hodkin) v Registrar General of Births, Deaths and Marriages* [2013] UKSC 77 [2014] P.T.S.R. 1.

9. Under section 10 of the Charities Act 2011 most provisions of the Act do not apply to ecclesiastical corporations, diocesan boards of finance and trusts of consecrated property. Otherwise an organisation which qualifies as a charity is required to register as a charity. The register is maintained by a statutory body now called the Charity Commission. The register is public, and each charity is required annually to provide information about itself, its governance and its finances, the degree of detail depending on its size, measured in annual income. These provisions apply, for example, to the many parochial and other religious charities which do not fall within the exclusions in section 10.

10. In order to be registered, the charity needs to demonstrate, not only to the Charity Commission but also to HMRC, that it satisfies the qualifying conditions. HMRC are involved because of the tax privileges available to all charities (as described in paragraphs 9 to 18 and 25 of the main text). In practice this can be a detailed and demanding process. Once achieved, however, registration is conclusive evidence of the organisation's charitable status. Appeals against refusal of charitable status (and indeed challenges to grants of charitable status) are made to a specialised First-tier Tribunal. Appeals from that tribunal are made to an Upper Tribunal, which is normally a two-judge or three-judge court including a High Court judge.

TAX LAW, RELIGION, PHILOSOPHICAL AND NON-CONFESSIONAL ORGANISATIONS IN EUROPE. THE EU REPORT

Michał Rynkowski

I. Preliminary Remarks

This year's topic of the annual conference of the European Consortium for Church-State Research is a challenging one for the EU rapporteur. Most of the questions relate to direct taxation, such as income tax or real estate tax. While the EU has achieved a significant level of harmonisation in the area of indirect taxation (in particular VAT)[1] and in the area of the Customs Union,[2] the EU has very limited competences in the field of direct taxation.[3] This results from the principles anchored in Article 5 (1) and (2) of the Treaty on the European Union (TEU: limits of competences, principle of conferral) and in Article 5 (3) TEU: subsidiarity principle.[4] On the other hand, pursuant to Article 115 of the Treaty on the Functioning of the European Union (TFEU), a handful of direct taxation directives were adopted aimed at functioning of the Internal Market: parent-subsidiary directive,[5] merger directive[6] and interest and royalty directive 2003/49.[7] Article 115 TFUE requires unanimity of the

[1] Y. Bernaerts, *La jurisprudence de la Cour de Justice europenne*, Limal 2015.

[2] T. Walsh, *European Union Customs Code*, Aalphen an de Rhijn 2015.

[3] M. Isenbaert, *EC Law and the Sovereignty of the Member States in Direct Taxation,* IBFD, 2010. Also: M. Lang, P. Pistone, J. Schuch, C. Staringer (eds.), *Introduction to European Tax Law on Direct Taxation*, Vienna 2012, p. 20.

[4] F. Haase, *Internationales und Europäisches Steuerrecht*, 5 ed., Heidelberg 2017, p. 363.

[5] Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, OJ L 345, 29.12.2011, p. 8.

[6] Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States, OJ L 310, 25.11.2009, p. 34.

[7] Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003, p. 49.

Member States in the area of direct taxation, which makes the process of legislation difficult. Also, there is no single EU regulation dedicated entirely to direct taxes.[8] The most significant EU input in this area are principles established by the Court of Justice of the EU in the preliminary rulings.[9] These rulings usually perceive taxes as a potential impediment and potential limitation of the freedoms of the internal market, for "direct taxation is capable in its own way of distorting the internal market".[10] Also, it is worth underlining that the ECJ has never challenged the competence of the Member States in the field of direct taxation.[11]

Having said that, it is important to keep in mind that churches and religious communities are registered as legal persons in the vast majority of the Member States and they exercise various social and economic activities, partly commercial, like running schools, hospitals, owning media, cemeteries or even banks (in Germany). In this respect they operate according to the legal rules laid down by national legislation, even if certain exemptions and privileges are partly granted (please see national reports). According to Article 17 of the TFUE, the EU respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The EU does not differentiate between state/traditional/recognised Churches and religious communities versus other/smaller/new Churches and religious communities. The same applies to the philosophical and non-confessional organisations. As mentioned above, the EU is interested in the national legislation only if some provisions would constitute an impediment to the functioning of the Internal Market. This could happen in the following hypothetical situation: where a church or religious community registered in one Member State could not enjoy all the privileges of similar churches or religious communities registered in the other Member States. This hypothesis is unlikely: for example, the Catholic Church is registered and operates in every Member State separately, so there is no need for a legal entity in a State A to operate in a State B, as State B has its own structures (and entities) of the Catholic Church. The same applies to most of the Protestant Churches, Jewish and Muslim communities. The presented hypothetical situation concerning discrimination could only relate to ecclesiastical bodies closely linked to another state: like for example, parishes of the Church of England or of the Danish National Church, operating outside of the respective Member States. However, there are probably very few such legal entities which could illustrate such a hypothesis.

[8] Ł. Adamczyk, *The Sources of EU Law Relevant for Direct Taxation*; in: M. Lang, P. Pistone, J. Schuch. C. Staringer (eds.), *Introduction*, *op. cit.,* p. 20.

[9] R. Barents, *Directory of EC Case Law on Direct Taxation*, Wolters Kluwer, 2009.

[10] D. Edward, R. Lane, *EU Law*, Cheltenham 2013, p. 648. The European Commission regularly publishes a list of important judgments, for example: https://ec.europa.eu/taxation_customs/sites/taxation/files/20171116_court_cases_direct_taxation_en.pdf, accessed on 17.10.2019.

[11] K. Lenaerts, *Die direkte Besteuerung in der EU*, Baden-Baden, 2007, p. 5.

Last but not least, the Court of Justice of the EU developed in the field of taxation a concept of "abuse of law", according to which "a national measure restricting [a fundamental freedom] may be justified where it specifically relates to wholly artificial arrangements aimed at circumventing the application of the legislation of the Member States concerned".[12] The Court issued a couple of judgements, however none of them seems to be relevant for churches or religious communities.
These preliminary remarks impose a framework for this year EU report.

II. The EU Law (Tax/Customs) Provisions Relating Directly to Churches And Religious Communities

There are very few directives in the field of taxation and customs which actually mention explicitly religious institutions or religious events.[13] For example, the Council Directive 2009/132/EC of 19 October 2009[14] reads in Article 67 that printed materials and other articles supplied free of charge to advertise goods displayed at an event for religious reasons or for reasons of worship shall be exempt [from duty] on admission.[15] Similarly, Article 80 (Tourist information literature) of the same directive stipulates that the following shall be exempt on admission: (a) **documentation** (leaflets, brochures, books, magazines, guidebooks, posters, whether or not framed,

[12] Case C-264/96 ICI, EU:C:1998 :370, para. 26. See: K. Lenaerts, *The concept of "abuse of law" in the case law of the European Court of Justice on direct taxation*, in: 22 MJ 3 (2015), s. 329.

[13] G. Czermak calls it "indirektes Religionsrecht", G. Czermak, *Religions- und Weltanschauungsrecht*, Heidelberg 2008, para. 20, Rn 510. These provisions are collected and updated by Professor Gerhard Robbers and his team at the University in Trier, available in various languages at: https://www.uni-trier.de/index.php?id=7526&L=0.

[14] Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods, OJ L 292, 10.11.2009, p. 5.

[15] "Chapter 3. Goods used or consumed at a trade fair or similar event. Article 67
1. Subject to Articles 68, 69, 70 and 71, the following shall be exempt on admission:
a. small representative samples of goods intended for a trade fair or similar event;
b. goods imported solely in order to be demonstrated or in order to demonstrate machines and apparatus displayed at a trade fair or similar event;
c. various materials of little value, such as paints, varnishes and wallpaper, which are to be used in the building, fitting-out and decoration of temporary stands at a trade fair or similar event, which are destroyed by being used;
d. printed matter, catalogues, prospectuses, price lists, advertising posters, calendars, whether or not illustrated, unframed photographs and other articles supplied free of charge in order to advertise goods displayed at a trade fair or similar event.
2. For the purposes of paragraph 1, 'trade fair or similar event' means: […]
c) exhibitions and events held mainly for scientific, technical, handicraft, artistic, educational or cultural or sporting reasons, **for religious reasons or for reasons of worship**, trade union activity or tourism, or in order to promote international understanding; […]".

unframed photographs and photographic enlargements, maps, whether or not illustrated, window transparencies, and illustrated calendars) **intended to be distributed free of charge** and the principal purpose of which is to encourage the public to visit foreign countries, in particular in order to attend cultural, tourist, sporting**, religious or trade or professional meetings or events**, provided that such literature contains not more than 25% of private commercial advertising and that the general nature of its promotional aims is evident [bold added].

III. The EU (Tax and Customs) Law Indirectly Referring to the Churches and Religious Communities

From the perspective of this year topic, the following points may be highlighted:

1. None of the judgments (preliminary rulings) of the CJEU related directly to churches or religious communities in the context of taxation. However, two cases may be of interest: Persche (C-318/07, EU:C:2009:33, donation to a charity located in another MS) and Schwarz (C-76/05, ECLI:EU:C:2007:492, tax relief on school fees if the school is based in another MS). Some other cases, although fundamental for the charities and NGOs, seem to be of limited importance to churches and religious communities, for example, Stauffer C-386/04, Missionswerk Werner Haukelbach, C-25/10.
2. An infringement case against France: limited tax relief on donations exclusively to organisations based in the Member States which concluded a bilateral agreement with France declared a violation of the EU law, (C-485/14, ECLI:EU:C:2015:506).
3. VAT. The EU law indirectly influenced Portugal to change the Concordat with the Holy See in order to adjust the Portuguese VAT regime to the EU.
4. Polish accession to the EU from the ecclesiastical point of view required an adaptation of the Customs Code: the rules concerning customs and printing machines.

Ad 3.1. A German tax adviser, Mr H. Persche, donated certain goods (in kind) to a Portuguese institution recognised as a charity. He claimed a respective tax relief in Germany with the Finanzamt in Lüdenscheid.[16] Under Paragraph 10b(1) of the German Law on Income Tax (Einkommensteuergesetz; 'the EStG'), taxpayers may deduct, from the total amount of their income, as exceptional deductible expenses up to certain limits, expenditure which promotes benevolent, church, religious or scientific charitable purposes, and purposes recognised as particularly worthy of support.

[16] A. Yevgenyeva, The Taxation of Non-profit Organisations after Stauffer, in: W. Haslehner, G. Kofler, A. Rust (eds.), Landmark Decisions of the ECJ in Direct Taxation, Alphen an den Rijn 2015, p. 211.

Under Paragraph 10(b)(3) of the EStG, such right to deduct applies also to donations in kind. According to the German tax authorities and financial courts (Finanzgerichte), Mr Persche would be allowed to do so only as regards a donation done in favour of a charity organisation based in Germany. The supreme finance court, the Bundesfinanzhof decided to submit this question to the CJ of the EU for preliminary ruling:[17]

In response, the Court of Justice of the EU (as a Grand Chamber) ruled:

«1. Where a taxpayer claims, in a Member State, the deduction for tax purposes of gifts to bodies established and recognised as charitable in another Member State, such gifts come within the compass of the provisions of the EC Treaty relating to the free movement of capital, even if they are made in kind in the form of everyday consumer goods.

2. Article 56 EC precludes legislation of a Member State by virtue of which, as regards gifts made to bodies recognised as having charitable status, the benefit of a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefi».

The Persche judgment can be regarded from two angles: from one side, it is beneficial to charities (religiously run or not), as their donors may deduct the donated amount from their tax declaration, irrespective of where they live and where the charity is based. On the other side, the Court of Justice tacitly confirmed that it is only interested in a flow of capital and payments. It was only in the van Roosmalen case[18] in the 80s, where the ECJ ruled in favour of a missionary who spent his life in Africa, stating that he was self-employed within the meaning of the EC law. This statement was actually difficult to justify in legal terms, but allowed Mr Roosmalen to keep his pension rights. Later, the judgments of the CJEU were clearly business

[17] In those circumstances, the Bundesfinanzhof decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Do donations [in kind] of everyday [consumer] goods by a national of a Member State to bodies which have their seat in a different Member State and, under the law of that Member State, are recognised as charitable, fall within the scope of the principle of free movement of capital (Article 56 EC)?

2. If question 1 is answered in the affirmative:

Having regard to the obligation of tax authorities to verify statements made by taxable persons and to the principle of proportionality (third paragraph of Article 5 EC), is it incompatible with the principle of free movement of capital (Article 56 EC) for the law of a Member State to confer a tax benefit on donations to charitable bodies only if the latter are resident in that Member State? [the following question referred to the burden of proof concerning such a donation: whether it is on a taxpayer or whether the other Member State should provide proofs].'

[18] Judgment of the Court (second Chamber) of 23.10.1986, A. J. M. van Roosmalen v Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen, ECLI:EU:C:1986:402.

oriented, the most famous among them being: The Society for the Protection of Unborn Children Ireland Ltd v Grogan,[19] Jany vs Staatssecretaris van Justitie (Czech and Polish prostitutes in the NL),[20] R v Henn and Darby,[21] Conegate.[22]

The judgment concerning the school fees (Schwarz) may be important for churches and religious communities from another point of view: parents are allowed to deduct the fees they paid for a school located in another Member State. Mr and Mrs Schwarz (German taxpayers) sent two of their children to schools in Scotland and wanted to claim the tax relief, which is available for German taxpayers sending their children to schools in Germany. The German government opposed such a possibility, however, the Court in Luxembourg disagreed and gave right to the parents. In a very interesting judgment, the Court discussed two options: school as remunerated services or not as services, see the respective parts quoted in full in the footnote.[23] This judgment can be of importance for religious schools: the parents who are ardent believers and who would like to send their children to a religious school in another Member State (on the other side of the national border or further), may do so without hesitation, as school fees of their children will be deducted in the MS where their income is taxable. Looking at how simple this case actually was, it is interesting to notice that this preliminary ruling was addressed to the ECJ only in 2005.

Ad 3.2. An infringement case against France concerned limited tax relief on donations exclusively to organisations based in the Member States which concluded a bilateral agreement with France (C-485/14, ECLI:EU:C:2015:506). In its judgment of 16 July 2015, the Court decided that France violated its EU obligation, stemming

[19] Judgment of 4.10.1991, C-159/90, ECLI:EU:C:1991:378.

[20] Judgment of 20.11.2001, C -268/99, ECLI:EU:C:2001:616.

[21] Judgment of 14.12.1979, case 34/79, ECLI:EU:C:1979:295 (import of pornographic goods).

[22] Judgment of 11.3.1986, Conegate Ltd vs HM Customs&Excise, case 121/85, ECLI:EU:C:1986:114 (inflatable dolls).

[23] "1. Where taxpayers of a Member State send their children to a school situated in another Member State the financing of which is essentially from private funds, Article 49 EC must be interpreted as precluding legislation of a Member State which allows taxpayers to claim as special expenses conferring a right to a reduction in income tax the payment of school fees to certain private schools established in national territory, but generally excludes that possibility in relation to school fees paid to a private school established in another Member State,

2. Where taxpayers of a Member State send their children to a school established in another Member State, the services of which are not covered by Article 49 EC, Article 18 EC precludes legislation which allows taxpayers to claim as special expenses conferring a right to a reduction in income tax the payment of school fees to certain private schools established in national territory, but generally excludes that possibility in relation to school fees paid to a private school established in another Member State (…)".

from the Article 63 of the TFUE.[24] This judgment, although issued in an infringement procedure, is coherent with the preliminary ruling Persche, discussed above.

Ad 3.3. VAT: The current fundamental rules are laid down in the directive 2006/112,[25] which provides in Article 132 exemptions for certain activities in the public interest. Among them there are transactions linked to health care, and to:

> "(g) the supply of services and of goods closely linked to welfare and social security work, including those supplied by old people's homes, by bodies governed by public law or by other bodies recognised by the Member State concerned as being devoted to social wellbeing".

While churches and religious communities are not expressly mentioned, they are indirectly interested in the matter.

Additionally, pursuantto Article 146, the Member States shall exempt from VAT:

(c) the supply of goods to approved bodies which export them out of the Community [Union] as part of their humanitarian, charitable or teaching activities outside the Community [Union]

Interestingly (but also logically), this exemption refers merely to the goods being exported from the EU, but there is no mirror exemption for goods imported to the EU. The philosophy behind this seems to be that the EU (and the organisations/institutions on its territory) are a donor rather than a recipient of the humanitarian/charity aid.

Finally, an interesting historic aspect of VAT and the influence of the EU law. The 1940 Concordat between Portugal and the Holy See was for decades a base of the Church-State relations. Based on that, a principle of no-financial flow between the State and the (Catholic) Church was developed. Pursuant to these rules, the State (officially) did not offer (Catholic) religious bodies any financial support; to mirror this, the Church did not pay any taxes, not even VAT, see Article VIII of the 1940 Concordate.[26] This provision was deemed to violate the Portuguese Constitution, but such a general exemption was not in accordance with the EU law either. The new concordat, signed by the Prime Minister J. M. Barroso in 2004,[27] changed this rule

[24] La République française, en exonérant des droits de mutation à titre gratuit les dons et legs consentis à des organismes publics ou d'utilité publique exclusivement lorsque lesdits organismes sont établis en France ou dans un autre État membre de l'Union européenne ou dans un autre État partie à l'accord sur l'Espace économique européen, du 2 mai 1992, ayant conclu avec elle une convention bilatérale, a manqué aux obligations qui lui incombent en vertu de l'article 63 TFUE et de l'article 40 de l'accord sur l'Espace économique européen.

[25] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, OJ L 347 11.12.2006, p. 1.

[26] V. Canas, *Church and State in Portugal*, in: G. Robbers (ed.), *Church and State in the EU*, 1st ed., Baden-Baden 1995, p. 289.

[27] V. Canas, *Church and State in Portugal*, in: G. Robbers (ed.), *Church and State in the EU*, 2nd ed., Baden-Baden 2005, p. 488.

slightly: while there is still a good number of exceptions, churches are no longer exempted from VAT as a matter of principle.

Ad 3.4. The Polish law on religious freedom of 1989[28] laid down in its original Article 13 para. 7 the rule that various machines and products needed for publishing purposes as well as vehicles, except for personal cars, could have been imported duty free (implicitly: from all over the world). The Polish accession to the EU triggered a change: while this duty-free import is still allowed, it is limited to the states being the members of the Customs Union, thus 27/28 MS of the EU, Andorra, San Marino and Turkey. The EU rules concerning duty-free imports from outside of the Customs Union are quite limited: they include posters and leaflets, but not the machines. The potential loss concerns mainly potential donations in kind from the Polish parishes/ organisations based in the USA and Canada. The respective change in the Polish law was done through a customs law, adopted on 19 March 2004,[29] a few weeks before the accession to the EU.

[28] http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20040680623/O/D20040623.pdf

[29] Dz. U. (Polish Official Journal) 2004, No. 68, item 622.