
Profit Taxation and the Public Sector:

A Comparative Study within the EU and the US



13 countries, 2 continents,
4 sectors: healthcare, education,
social housing and public
transport.

Different solutions per sector,
distortion of competition,
challenging opportunities.

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Introduction

PwC Netherlands, together with Tilburg University, took the initiative to survey the tax treatment of organisations entrusted with services in the general (economic) interest.

We have written this high-level report, more precisely 'research paper', with the help of many colleagues at PwC member firms. The report has a descriptive character and covers the tax systems in the following countries: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Italy, Netherlands, Portugal, Sweden and the United Kingdom. We decided to include the United States as well. The information is based on the tax legislation and case law as of January 2014.

We have tried to look as closely as possible at the tax treatment of specific activities, but due to the complexity of the structure of the public sector in the various participating states and the applicable tax rules, readers should be cautious when interpreting the results. One of the reasons to be cautious relates to the possible presence of special mitigating measures based on soft law (decrees).

We hope that the report will form a starting point for further research on this subject and micro-comparison of the tax position of public bodies and non-profit organisations.

Last but not least, we wish to emphasise that every effort has been made to prepare an accurate and conscientious report. However, readers should bear in mind that every study is the result of knowledge that is fallible. We would welcome any comments and suggested improvements because we realise that this report is not without its limitations. In that sense, this document should be viewed as a living document.

We hope this report will provide you with as much pleasure and inspiration as it gave us in preparing it.

For PwC NL's Public Sector Tax Group and Tilburg University,

Joop Kluit

Stan Stevens

Profit Taxation and the Public Sector:

A Comparative Study within the EU
and the US

A. Introduction

In the summer of 2013, PwC NL's Public Sector Tax Group initiated a comparative study of the treatment of Public Sector Entities (PSEs) for profit taxation purposes in a number of EU Member States and the US. In broad terms, the study was accelerated by three developments:

- EU PSEs have become increasingly active in the economic arena of the EU¹;
- since around 1986, the EC² has challenged EU Member States on the compatibility of their PSE systems with the "level playing field framework (LPFW) of the EU"³, and with the state aid section of this framework⁴ in particular; and
- in May 2013⁵, the EC took formal steps requesting the Netherlands to bring its legislation on profit taxation of PSEs in line with the EU LPFW referred to above.

Together, these developments triggered the question of whether a topical comparative analysis of the respective profit taxation systems of PSE within the EU was available. To the best of our knowledge this was not the case⁶, although such an overview could provide significant guidance, especially for stakeholders involved in EU-driven legislative adjustments such as the one at hand in the Netherlands.

Above all we would like to underline that this report is written from a Dutch point of view. That means that other interpretations from different perspectives may be reasonable in their own way as well.

B. Structure of the report

Part C outlines the terminology, scope and methodology of our research. Part D provides a comparative description of the profit taxation systems in the selected countries from two perspectives: firstly from that of an entity and secondly from an activity perspective. Part E synthesizes the findings of Part D on a comparative basis and Part F contains a summary of our observations.

1 See States of Liberalization: Redefining the Public Sector in Integrated Europe, Mitchell P. Smith, p. 57.

2 Empowered by the 1986 Single European Act, see also Mitchell, id p.57.

3 The related legislative basis is found in the Articles 101-109 of the TFEU.

4 Articles 107 to 109 of the TFEU.

5 See Letter of the EC of 2 May 2013 (EC Letter).

6 In 2010, a report of the OECD became available that applies a competition perspective: State Owned Enterprises and the Principle of Competition Neutrality, DAF/COMP (2009)37.

C. Terminology, scope and methodology

Terminology

In order to be able to make justified and meaningful comparisons, sufficiently well-defined and distinctive terminology is essential. In our view, this is the case for any comparative legal research but especially⁷ for research encompassing the public sector of EU Member States and their profit taxation systems. This element in particular constituted a challenge for our research. Therefore, we have chosen to use terms that primarily find their origin and interpretation in the tax/legal system from which they originate, supplemented by a relatively small set of specific terms and definitions, as follows⁸:

1. In view of the expected diversity in structure and activities of public sectors in the selected countries, we have decided to define PSEs as:
 - a. entities that not necessarily qualify as a legal person;
 - b. entities that perform activities that, at least to some extent, serve a public interest.
2. Unless stated otherwise we will use a generic term for the tax that is levied on profits of PSEs, i.e. corporate income tax, acronym: CIT. We will use the term “business” or “enterprise” for those activities of PSEs that qualify as being liable to CIT.
3. Where possible, we have described the position of PSEs in the respective profit tax systems using the following terms:

Scope

This report has been written from a profit taxation perspective. Other areas of taxation, such as VAT, have not been taken into consideration.

We have looked at the systems of tax treatment of activities performed by PSEs:

1. governed by public law (Government PSEs); and
2. governed by private law but owned and/or controlled¹⁰ by a Government PSE (Government-Controlled PSE); and
3. governed by private law and not controlled and/or owned by a Government PSE. This group of entities will be referred to as Non-Profit Organisations (NPOs).

We have considered the following countries:

Austria	Italy
Belgium	Netherlands
Czech Republic	Portugal
Denmark	Sweden
Finland	UK
France	US
Germany	

Term	Definition	Comment
(Not) Liable To Tax ⁹	PSE is (not) a taxable entity	Tax refers to CIT.
Not Effectively Subject To Tax	PSE is liable to tax but effectively not taxed	All taxable income is effectively not taxed, e.g. as a result of a subjective exemption.
Effectively Subject To Tax	PSE is effectively paying tax	Tax is due but the effective tax rate can be reduced based on mitigating provisions compatible with the statutory tax system.

⁷ For reasons of sovereignty

⁸ We wish to emphasise that we have not been able to reach a point where all the terms are sufficiently defined and distinctive. Where we are aware of them, we will try to make such ambiguities explicit.

⁹ We believe that these definition is essentially in line with the OECD's interpretations stated in its commentary on Article 4(1) of its model convention. See A. de Graaf and F. Pötgens, *Intertax*, Volume 39, Issue 4, pp. 172 and 173 in particular. In the EC Letter (English version) the EC applies a different definition since it uses 'subject to tax' (where we apply 'liable to tax').

¹⁰ The terms “owned” and “controlled” are typical examples of terms that are of great importance for our research, have an open character, are primarily defined at the level of individual countries and therefore cannot easily be made comparable. We will discuss this issue in greater detail in Part C of this paper.

This selection is predominantly based on EU membership. Our aim is also to look at a sufficiently diverse group of countries. This was one of the key reasons for including the US.

We have looked specifically at the profit taxation principles for the following PSE activities:

Healthcare

Education

Social Housing

Transport

The selection of activities is based on the fact that, from a Dutch perspective, they contain one or more elements that qualify as Services of General Economic Interest (SGEI)^{11,12}.

Methodology¹³

This report is predominately descriptive rather than prescriptive in nature. Although our aim has been to do this as objectively as possible our Dutch backgrounds (perspective) will have influenced our observations.

In the interest of readability, we have chosen to apply certain systematising structures in Part D. These should not be qualified as interpretative, since interpretation is intended to be only one element of our comparative synthesis in Part D.

The LPFW does not play any structuring and/or normative role in this paper. As our sources, we used information derived from a questionnaire (Annex 1).

11 The EC Letter explicitly states in its footnote 5 that its Decision at this stage only encompasses the taxation of Government PSEs and Government Controlled PSEs on basis of the article 2 of the CIT Act. Also the EC underlines in this note that it does not encompass the exemptions laid down in the articles 5 and 6 of the CIT Act. For purposes of our research, we decided to include as much as possible also the 'tax neutrality' of these articles.

12 During our research we have also looked at the position of broadcasting entities/activities. At the moment of publication of this report the results were insufficiently clear to be included. Perhaps this will be done at a later moment.

13 For reasons of understanding the decision has been made to elaborate on certain backgrounds of our methodology in part E.

D. Description

1. Introduction

In this section, we will first discuss the taxation principles for PSEs in the various countries (subsection 2) and subsequently elaborate on the taxation principles in those countries with respect to specific activities (subsection 3).

2. Taxation of Government PSEs

2.1 Introduction

We will discuss the following topics below:

- structure of the public sector (2.2);
- profit taxation system for Government PSEs: Liable To Tax (2.3);
- specific observations regarding the taxation systems for PSEs: (Not) Effectively Subject To Tax (2.4);
- taxation of Government-Controlled PSEs (2.5);
- taxation of NPOs (2.6);
- tax consequences of changes in tax position of PSEs (2.7);
- policy debates and EU developments (2.8).

As a rule, we have summarised the position of the various countries in alphabetical order unless there is a reason for deviating from this principle. Overall, our discussion of each country foregrounds one of the topics listed above¹⁴.

2.2 Structure of the public sector

In most countries, PSEs can and do engage in economic activities. For instance, in Denmark, these activities include the supply and cleaning of water¹⁵. In Finland, NPOs and public bodies perform such economic activities as well.

In Portugal, economic activities are carried out via public corporations (entidades públicas empresarias or EPEs). They provide goods and services of general interest through hospitals, schools, theatres and transport corporations, for example. NPOs can carry out economic activities as well, but generally should not have a profit generating aim.

German public bodies can provide services of general economic interest, such as water and energy, public transport (seaports and airports), social housing and healthcare.

In the Netherlands, economic activities are carried out via PSEs (the state, municipal authorities, provincial authorities, partnerships between municipal and/or provincial authorities, other public bodies created by a separate law) and private entities fully controlled by a public body. Activities include public transport, education, healthcare, research and cultural initiatives.

In Sweden economic activities are conducted via PSEs (the State, municipalities, counties, associations between them) and private entities owned or financed by a public body. Activities include among others: education, healthcare, social care, and cultural activities etc. NPO activities are conducted via foundations and non-profit associations. NPOs can sometimes also carry out business activities.

2.3 Profit taxation system for Government PSEs

2.3.1 Can a Government PSE be Liable To Tax?

The first question addressed here is whether a Government PSE as such can be liable to CIT.

The selected countries apply different approaches to define taxable entities. In most of them a Government PSE can, in principle, be Liable To Tax, but as we will see later this need not mean that they are also Effectively Subject To Tax. As the next section will demonstrate, the profit tax systems in different countries dictate different tax measures.

¹⁴ And where justified, we will describe the possible relevance of other topics as well.

¹⁵ In Denmark, partnerships and companies owned by municipalities supply and purify water.

In a limited number of cases, e.g. Germany and the Netherlands, a Government PSE is not regarded as a taxable entity as such. As far as the UK is considered, we hold the view that effectively the UK system treats Government PSEs also as not Liable To Tax¹⁶.

In Belgium, different tax regimes apply especially to Government (Controlled) PSEs on the one hand and private (commercial) corporations on the other.

The profit tax systems in Germany and the Netherlands do not qualify public bodies as taxable entities.

2.3.2 Government PSEs are Liable To Tax

In quite a few of the selected countries, the profit tax systems do not seem to make a basic distinction between the tax liability of Government PSEs and that of Government-Controlled PSEs (and/or of NPOs).

The Czech Republic imposes CIT on all legal persons, including Government PSEs, however excluding some of their income from CIT under certain conditions.

Danish tax law mentions a specific number of public bodies as taxable: these include the Danish State Railways (DSB), power companies and municipally operated power supply companies, water supply companies, and waste water and sewage companies.

In France, PSEs ('organismes publics') are in principle also Liable To Tax. Liable To Tax are "public establishments, financially independent government bodies, counties and municipal bodies, as well as any other legal persons if engaged in for-profit activities and transactions" (Section 206 GTC). According to Section 1654 of the GTC public bodies, commercial and industrial productions of the state and regional or local authorities are taxed in the same way as private firms engaged in the same types of transactions.

In Italy, public and private bodies (other than companies), with or without legal personality are liable to tax, as are trusts regardless of whether or not their sole or main purpose is the exercise of business activities. Public bodies and NPOs are therefore Liable To Tax in principle, but exemptions apply¹⁷. The same holds true for Finland, where the state and its institutions, municipalities and the federation of municipalities are mentioned as taxable entities¹⁸.

In Portuguese tax law, no distinction is made between entities governed by public and private law. As a general rule therefore, public entities (public companies and collective persons of public law) are liable to CIT¹⁹. In the majority of cases, public entities are governed by public law. In Portugal, public entities are liable to CIT on their worldwide income, whether this is derived from an economic activity or not.

2.3.3 Government PSEs are not Liable To Tax

Austria, Germany and the Netherlands

In Austria, Germany and the Netherlands, public bodies as such do not qualify as taxable entities.

Sweden

In the Swedish CIT Act, Government PSEs are not Liable To Tax. If a Government PSE is involved in commercial activities, those activities are carried on by a separate entity (a Government-Controlled PSE).

UK

In the UK, CIT is only raised against companies and a company is specifically defined for the purposes of that tax. A company means any body, or a corporate or unincorporated association, but does not refer to a partnership, a local authority or a local authority association. The state, local authorities and local authority associations are therefore not subject to CIT. Other bodies, such as charitable organisations, may benefit from an exemption (see CTA 2010, S1121).

US

The Code provides general tax rules applicable to individuals, corporations and other entities. Within this set of rules, some rules are applicable to certain entities only. In the US, the federal government is itself Not Liable To US federal income tax. This treatment encompasses all agencies and parts of the federal government. In a limited number of instances, the federal government charters a quasi-governmental entity as an instrumentality of the US government that may be treated as exempt under Section 501c (1) of the Internal Revenue Code.

States and their local political subdivisions (counties, cities, towns, villages, etc.) do not qualify as taxable entities for US federal income tax purposes, primarily because the US has chosen to not effectively subject them to federal income tax. The basis for the exemption is not clearly defined. Questions often arise

¹⁶ Based on an interpretation of the term 'company' the CIT Act formally stipulates a Government PSEs as Liable To Tax (See article 984 CIT Act).

¹⁷ Public and private entities other than companies are a separate category of taxable entities. Public entities include associative entities, representative entities and institutional entities. Private entities include associations, foundations and committees (committees are founded with the aim of raising donations from the public).

¹⁸ Section 3 ITL.

¹⁹ Section 2(1)(a).

regarding the US federal income tax treatment of state and local government authorities, units, or entities created by state or local legislation. In general, the tax treatment of such “organisations” depends on whether they are described in one of the following:

- 1) Section 115 of the Internal Revenue Code, which excludes from US federal taxable income the gross income from the exercise of an essential governmental function that accrues to a state or any political subdivision thereof. The Internal Revenue Service generally takes the position that an entity must be separately incorporated under state law in order for it to be described within Section 115, and that Section 115 does not apply to an “entity” that is a part of the state or local government. This section is generally limited to traditional governmental functions conducted by a separate corporate entity where all of the income from the activity is distributed to a state or local government.
- 2) Integral part - an entity may be treated as exempt from US federal income tax if it is viewed as an integral part of a state or political subdivision of a state. This generally requires that the entity be controlled by a state or political subdivision of a state, through majority control of the governing body of the entity, and that the state or political subdivision makes a significant financial commitment to the entity (such as by initially funding the entity through government appropriations). There is no bright line test to determine whether a financial commitment is significant - it is facts and circumstances. It generally includes government subsidies, but again there is no bright line rule.

The Internal Revenue Service takes the position that Section 115 and the integral part doctrine are mutually exclusive. Other corporate or joint venture entities that are formed by a state or local government generally are effectively subject to US federal income tax as corporations or joint ventures.

This means that federal, state and local government public bodies generally are exempt from income tax, with a limited number of exceptions. An entity that is an integral part of a state or local government is Not Effectively Subject To Tax on any of its income, as it is taxed the same as the state or local government of which it is a part. An entity that has income which is excludible under Section 115 generally is subject to income tax on income that is not excludible under Section 115. A college or university that is an instrumentality of a state or local government is subject to the unrelated business income tax (see Section

511(a)(2)(B)), as is a federally chartered entity that is exempt under section 501(c)(1).

2.3.4 Government PSEs are liable to other tax regimes than profit taxation

In Belgium, both private and public legal entities are in principle Effectively Subject To Tax²⁰. Under Section 180 WIB, however a number of entities including Government PSEs are exempted from CIT. These entities are Effectively Subject To a so called Legal Body Tax²¹, which more or less replaces the CIT liability.

2.3.5 Special CIT position for Government PSEs in Germany and the Netherlands

In Germany (and Austria), Government PSEs are not Liable To Tax. However, if Government PSEs carry out economic activities that qualify as business operations (“Betriebe gewerblicher Art”), this results in an unlimited tax liability, not for the Government PSE itself but for the business as such, as this is considered to be the taxable entity, although it has no legal personality itself. From an opposite perspective: the activities of a Government PSE are not Liable To Tax insofar as they qualify as public activities (“hoheitliche Tätigkeiten”) and/or portfolio investment activities.

The Dutch Corporate Income Tax Act 1969 (CIT Act) is basically comparable to the German system in the sense that Government PSEs themselves are not considered to be Liable To Tax. Only designated business operations carried on by such Government PSEs can qualify as being Liable To Tax and on an individual basis only.

2.4 Specific observations regarding the taxation systems for PSEs: (Not) Effectively Subject To Tax

We will discuss the following specific approaches regarding the taxation systems for Government PSEs:

1. a general exemption predominantly based on the qualification as Government PSEs (2.4.1);
2. specific exemptions for certain PSEs (2.4.2);
3. a substitute taxation regime for PSEs not Liable To Tax (2.4.3);
4. a Liable To Tax position of certain types of activities of PSEs (2.4.4);
5. specific measures predominantly based on the distinction between non-profit and for-profit activities (2.4.5);
6. a Liable To Tax position predominantly based on a competition criterion (2.4.6);
7. other mitigating tax measures (2.4.7).

²⁰ ‘Vennootschapsbelasting’ in Dutch.

²¹ ‘Rechtspersonenbelasting’ in Dutch.

In this section, we will focus on the question of whether and how a Government PSE is either Not Effectively Subject To Tax and/or Effectively Subject to Tax. We have categorised the various countries according to the approaches referred to above, but wish to emphasise that most of them apply a combination of several techniques. In that respect, our categorisation serves to take stock of a range of approaches without systematically shoehorning each country into one of them.

2.4.1 General exemption based on the qualification as Government PSEs: not Liable To Tax in principle

For the sake of completeness, we would stress that the UK and Sweden are not included in this section since Government PSEs are not Liable To Tax in those countries, as we have seen above.

Italy

In Italy, the law lists a number of entities that are tax-exempt. In the Italian system, a number of entities are exempt for all activities and other entities are exempt only for specific income. They are not Liable To Tax and as a consequence, in practice, Not Effectively Subject To Tax.

The following are Not Effectively Subject To Tax:

- state bodies and state subdivisions: the Presidency of the Republic, the Chamber of Deputies, the Senate, the Constitutional Court, the Presidency of the Council of Ministers, the Council of State, the Court of Auditors, the Council of Public Administration, the Legal Service of the State;
- municipalities, provinces, regions and mountain communities (Law 310/1990);
- consortia of local public entities (Law 449/1997). Resolution no. 92 of 18 June 2001 specifies, however, that consortia of local public entities can be divided into two categories: 1) “Special Enterprise Consortia” and 2) “Functional Consortia”. Only this latter category is not subject to CIT, since Special Enterprises exclusively or mainly perform relevant economic business activities;
- associations or entities entrusted with the management of state property²².

In addition to these entities qualifying for full exemption, certain activities of public entities do not qualify as commercial activities, and therefore do not generate taxable income. The following activities are not taxed if they are carried out by public entities:

- exercise of public powers: Section 74(2)(a) of the Italian Tax Code (ITC) stipulates that the exercise of state functions by public entities shall not constitute the exercise of a trade or business. Therefore, whenever it is recognised that an entity can be qualified as a “public entity” (subjective requirement) and that the activity performed falls within the meaning of “state functions” (objective requirement), an exemption from CIT applies. The cases in which the Italian tax authorities consider the subjective and objective requirements of Section 74(2)(a) ITC to be met include:
- teaching activities performed by state universities (see Circular Letter of the Revenue Agency n.37/E/94), and research and control activities performed by the National Health Institute (see Resolution of the Revenue Agency n.112/E/02);
- social security activities carried out by public entities (e.g. INPS, INAIL);
- activities performed by Local Health Units (ASLs);
- compulsory social security activities performed by private entities²³.

Finally, Government PSEs may also be tax-exempt (in cases falling outside the scope of Section 74(2)(a) ITC) if the activities performed do not qualify as “commercial” pursuant to Section 143(1) ITC, which provides for a general exemption for non-commercial entities²⁴ (both private and public entities)²⁵. The services exempted under this rule include the provision of services (other than those listed in Section 2195 of the Italian Civil Code) that simultaneously meet the following cumulative criteria:

- 1) absence of a business organisation;
- 2) consistency of the services provided with the institutional purposes of the entity;
- 3) the payment required as consideration for the performance of the activities does not exceed direct costs.

²² Section 74 ITC.

²³ See Article 74, paragraph 1.

²⁴ For entities other than companies, the “non-commercial” or “commercial” qualification must be assessed by reference to the main or exclusive activity they perform.

²⁵ Article 143, paragraph 1.

2.4.2 Specific exemptions for certain Government PSEs

Denmark

Section 1 of the Danish Tax Act states all bodies that are subject to full taxation. If the state or any of its institutions do not fall under Section 1, the entity is Not Effectively Subject To Tax. On the basis of this rule, the Danish Central Bank, the institutions of the state, the national TV broadcasting company TV2, municipalities, regional institutions, public hospitals, libraries and residential homes, for instance, are Liable To Tax, but not Effectively Subject To Tax.

Portugal

For CIT purposes, there is no clear distinction between Government PSEs and entities governed by private law. Pursuant to Section 9 of the CIT Act, the state, the autonomous regions, local authorities, their associations and federations, and social security institutions (pursuant to Section 9 of the CIT Act) are Liable To Tax only, but Not Effectively Subject To Tax. This exemption does not, however, cover any capital income generated by such entities (such as interest, dividends, royalties, etc.). An exemption applies, however, to capital income from swap and currency contracts.

2.4.3 A substitute regime: Belgium

Belgium

In Belgium, private and public entities are Liable To Tax in principle. However, under Section 180 WIB a number of entities are qualified as not Liable To Tax. Among these are intercommunales, a number of companies that run a port²⁶ and public transport companies²⁷. The Constitutional Court has decided that legal entities that have the same duties as intercommunales and do not enter into competition with private sector entities must be treated in the same way as Government PSEs that are tax-exempt on the basis of the principle of equality²⁸.

Government organisations such as the state, the communities, regions, provinces, agglomerates, municipalities and the public centre for social welfare²⁹ are effectively subject to the legal entities tax. This legal entities tax is not a corporate tax, but is part of the Belgian income tax.

Other legal entities are effectively subject to the legal entities tax if they do not conduct a business or have no other profitable activities or are exempt from CIT under Sections 181 and 182 WIB 92³⁰. If a legal entity is not liable to legal entities tax, it will be liable to CIT. The legal form is not decisive, but the nature of the activities is, e.g. a non-profit association (“Vereniging zonder winstoogmerk”) may be liable to CIT. The distinction is based on case law. Section 181 WIB 92 lists a number of activities of entities that are subject to legal entities tax (and therefore not to CIT). This list includes associations (verenigenen zonder winstoogmerk) and other NPOs :

- that exclusively or mainly study, protect or promote the professional or inter- professional interests of their members;
- that are a continuation of the entities mentioned under 1 and are exclusively or mainly engaged in the performance of obligations imposed by fiscal and or social legislation, or the employment of employees;
- that in the course of the performance of social legislation are engaged in the collection, centralisation, investment and distribution of funds according to social legislation;
- that are exclusively or mainly engaged in providing or supporting educational services;
- that exclusively or mainly organise trade fairs or exhibitions;
- that provide services for families and elderly persons and are recognised;
- that provide services in the fields of culture, war casualties, sheltered workshops, nature conservation, conservation of historic buildings, foreign development and casualties of large industrial calamities.

Entities mentioned in Section 180 WIB 92 are liable to legal entities tax. Entities not mentioned in the list are effectively subject to this tax if they do not conduct a business or have no profitable activities. If this is not the case, the entity is effectively subject to CIT. What qualifies as a business activity is defined in case law.

Liability to legal entities tax is not always advantageous. Entities that are liable to CIT may be able to credit withholding tax and deduct start-up losses. The profit status could be beneficial for VAT

26 Including the Port of Antwerp.

27 The Waalse Regionale Maatschappij voor Openbaar Personenvervoer and its affiliated operating companies and the Vlaamse Vervoersmaatschappij and the autonomous operating entities within the Maatschappij and the Maatschappij voor het Intercommunale Vervoer in Brussels.

28 Constitutional Court, 6 December 2012, no. 148/2012.

29 De openbare centra voor maatschappelijk welzijn.

30 Article 220(3) WIB92.

purposes (deduction of input VAT). On the other hand, non-profit organisations are sometimes exempt from withholding tax.

2.4.4 A Liable To Tax Position relating to activities of Government PSEs

There are several countries where the activities of Government PSEs qualify them as taxable entities.

Austria

Section 1 KStG 1988 lists classes of legal entities liable to CIT. Government PSEs are not Liable To Tax, in principle. Under Austrian law, Government PSEs can be divided into two categories: a sovereign category, which consists of exclusively public activities and is therefore not Liable To Tax, and an economic category, which consists of business activities that may be Liable To Tax.

In broad terms, the economic category, which is referred to as a “Betrieb gewerblicher Art” (hereinafter also called BgA), is a commercial activity established and owned by a Government PSE and is Liable To Tax. Although a BgA itself does not qualify as a legal person (it is a dependent administrative entity), it is deemed to be just that for CIT purposes. The commercial activity is the criterion that results in a qualification as a taxable entity, rather than the legal entity status. The criteria for qualifying as a BgA are roughly the following: an independent organisation whose activities completely or almost completely qualify as market activities, with an economically significant interest in generating income in economic terms other than land activities and/or forestry. To summarise: the Betrieb gewerblicher Art of a Government PSE is in principle Effectively Subject To Tax, for reasons of competition. If such legal persons provide services that could also be performed by private persons, they have to pay the same taxes as private persons.

The Austrian KStG also provides for a partial not Liable To Tax position of Government PSEs. The KStG stipulates in broad terms that such PSEs serving public benefit purposes, charitable purposes or religious purposes are Not Effectively Subject To Tax in principle. However, they can be taxed on certain forms of income such as capital income and income from the sale of real estate and also on income derived from operating a business, except a business that needs to be carried on to achieve the charitable causes of the organisation. An organisation’s status as a charitable organisation has no

bearing on the fact that it is a taxable entity for CIT purposes, but does affect the extent of taxable income. The exemption also applies to foreign organisations if they have their seat or effective management within the EU or the EEA, or if they pursue a public benefit, or a charitable or religious cause mainly within Austria. If requested by the tax authorities, the foreign organisation needs to demonstrate that all requirements for qualifying as a charitable organisation are met. The above exemption also applies to a BgA provided that the services provided are for the public benefit or a charitable cause.

Germany

The German system is comparable to the Austrian system to a considerable extent. The German CIT Act stipulates that a BgA of a Government PSE qualifies as Liable To Tax. German tax law stipulates the requirements that need to be met for activities to qualify as a BgA. Those requirements do not encompass an objective to generate profit but they do prescribe that the BgA must have an aim to generate income³¹. Activities that relate to agriculture and/or forestry cannot qualify as a BgA. In some circumstances, a BgA can claim an exemption as referred to in Section 5 of the German CIT Act.

Netherlands

In the Netherlands a Government PSE is Not Liable to Tax. However if a Government PSE carries out business activities such activities themselves can be Liable To Tax and potentially even Effectively Subject To Tax if they qualify as one of the taxable businesses as mentioned in the CIT Act³². The CIT Act stipulates explicitly and exhaustively as Liable To Tax:

- agricultural businesses (“landbouwbedrijven”);
- industrial businesses (“nijverheidsbedrijven”), with the exception of businesses supplying only or almost only water³³;
- mining businesses (“mijnbouwbedrijven”);
- trading businesses (“handelsbedrijven”), not dealing exclusively or almost exclusively in real estate or rights based upon real estate;
- transport businesses (“vervoersbedrijven”), with the exception of businesses dealing exclusively or almost exclusively with the transport of persons limited to the boundaries of a municipality;
- building societies (“bouwkassen”).

31 See Subsection 4(1) in particular for the requirements of a BgA.

32 We underline that strictly speaking not the Government PSE as such but the business is the taxable “entity”. This could for instance imply that within one Government PSE several businesses are Liable To Tax.

33 The term “industrial enterprise” also encompasses enterprises that produce, transport or deliver gas, electricity or warmth as well as enterprises that construct or manage networks for the transport of gas, electricity, energy or warmth.

These activities qualify as taxable business activities even if they do not aim to generate profit.³⁴

The Netherlands CIT does not impose CIT on services (“diensten”) performed by Government PSEs (this rule also by the way applies to Government Controlled PSEs).

2.4.5 An exemption predominantly based on the distinction between non-profit and profit Czech Republic

In the Czech Republic generally both private and public legal entities are Liable To Tax with some income being Not Effectively Subject To Tax, tax exempt or subject to additional reduction of a tax base in case of some PSEs.

A Government PSE is defined under the CIT Act as an entity performing as its main activity a non-business activity (according to its statutes, founding deeds or by law).

However, some entities are excluded by the CIT Act and although they may generally be considered as Government PSEs they are not regarded as Government PSEs for CIT Act purposes, these are:

- Business corporations;
- Czech Television, Czech Broadcast, and Czech Press Office
- Professional Chambers, or taxpayers established to defend and protect the interests of its members, whose member fees are not tax exempt, except for associations of employers;
- Health Insurance Companies;
- Associations of the unit owners;
- Foundations if founded to support or tending to support persons who are close to the founder.

These entities are consequently taxed on all their income under general tax rules applicable in the Czech Republic. Nevertheless, for some of them some of their income is not subject to tax (e.g. insurance payments received by health insurance companies etc.).

PSEs with a “broad tax base”

In the Czech Republic a strict division is not made between Government, public and private PSEs. However, some of the PSEs explicitly listed by the CIT Act are generally taxed in the same manner as ordinary tax payers except for their income derived from the investment subsidies which is not subject to tax (i.e. a “broad tax base”), these PSEs are:

- public Universities;Public Research Organisations;
- health Care Services Providers;

- publically Beneficial Organisations;
- institutions

PSEs with a “narrow tax base”

Other entities qualifying as PSEs under the CIT Act apart from those excluded above have a more beneficial tax treatment (i.e. a “narrow tax base”) under which the following types of income are regarded as not subject to tax:

- income from non-business activities provided that the related costs are higher,
- grants, subsidies and other support or supplies from the public budget;
- revenues from tax or other fees for a municipality etc.

Some PSEs may be subject to special accounting rules applicable for PSEs. Apart from that special accounting evidence is stipulated for PSEs with a “narrow tax base” for tax purposes. Following these rules, accounting books must be kept in a way which would easily differentiate all types of income into: taxable income, income exempt from the tax and non-taxable income. The relevant costs (expenses) must be accounted for in the same manner and matched to the relevant income. Breaching this rule may lead to losing the right to enjoy the tax benefits.

In case the revenues are not subject to taxation, related costs are treated as tax non-deductible. In addition, if an individual activity is performed within the scope of the same type of activity for both a price that entails that the generated income is lower than or equal to the related costs, as well as for a price that entails that the generated income is greater than the related costs, only income from individual activities performed for the price where the income is greater than the related expense is subject to tax. Whether this condition is met is reviewed for the whole tax period for each individual type of activity.

Income derived from commercial activities, membership fees, interest and lease of other than the state property is always subject to tax for all types of PSEs. In addition, some PSEs may decrease their tax base by a special allowance up to 30% of their tax base (see details under section 2.4.7 bellow) under certain conditions.

Finland

In Finland, Government PSEs are Liable To Tax in principle only in respect of business profits and income from real estate used for purposes other than the public benefit or non-profit motives. Pursuant to Section 21 of

³⁴ Noot 3 For Netherlands CIT purposes an “enterprise” (“onderneming”) is a business (“bedrijf”) with an aim to realise profit. The CIT Act by fiction defines the businesses mentioned in the list as “enterprises”.

the Finnish CIT Act, the state, municipalities and religious communities are liable to CIT only in respect of business profits. As these entities do not pay tax, the tax rate is accordingly lower (7%-9%). However, a municipality is not liable to CIT in respect of profits derived from a business conducted in its own area or in respect of real estate located in its area. This area exemption is not applied in taxation of federations of municipalities.

Pursuant to the Finnish CIT Act, income generated from carrying on a business or profession is considered business income. The tax legislation does not further define the meaning of carrying on a business or business activities. Hence, the situation has to be assessed on the basis of general prerequisites set out for business activities based on the Finnish case law and the Finnish Tax Administration's guidance (Guidance on taxation purposes for non-profit associations and foundations 30.4.2007, record number 384/349/2007). These prerequisites include: competition in the public market, risk exposure, ability to continue as a going concern (continuing and permanent), planning, use of employees, scope of the activities and an indirect connection with the non-profitable cause of the organisation.

2.4.6 Tax liability based on competition criterion³⁵

France

In France, a Government PSE 'organisme publique' can be Liable To Tax. Liable To Tax are "public establishments, financially independent government bodies, counties and municipal bodies, as well as any other legal persons engaged in for-profit activities and transactions (Section 206(1) GTC). According to Section 1654 of the GTC, public bodies, commercial and industrial productions of the state, regional or local authorities are taxable in the same way as private firms engaged in the same types of transactions. It is irrelevant how much Government PSEs earn, whether they are involved in a single transaction or a significant activity. What is relevant is the fact that it is in competition with for-profit entities. Even legal personality is not necessary for Government PSEs to be liable to CIT. What counts is that they are "financially independent".

Recent case law stipulates that a two-step test must be performed in order to establish whether a Government PSE undertakes a for-profit activity. Firstly, it has to be established whether the object of a Government PSE is

similar to that pursued by private entities. If so, it is necessary to consider whether the conditions under which the Government PSE carries on this activity are comparable to those faced by private entities.

Once it is established that a for-profit activity exists, Government PSEs are effectively subject to CIT only on the revenues from their for-profit activity; there are no tax consequences for their public service activity. Government PSEs will often keep separate records for their public service and for-profit activities.

Insofar as Government PSEs are Liable to Tax, they can claim a general exemption on the basis of 207 (6) provided they qualify as an entity mentioned in that section. In broad term this section applies to regions, departments and municipalities and (public) associations of the aforementioned entities. For certain Government PSEs specific exemptions apply e.g. urbanisme. Also certain Government PSEs can claim exemptions on basis of soft law.

2.4.7 Some mitigating measures

Austria/Germany

In some circumstances, BgAs in Germany can be taxed on a consolidated basis³⁶. Austria also allows BgAs to apply a type of consolidation for specific activities³⁷.

BgAs in Germany can also claim an extended option for setting off losses against profits between BgAs³⁸.

Czech Republic

In the Czech Republic, special accounting requirements apply to public bodies and non-profit organisations that could significantly influence the tax base. Under these requirements, income and expenses related to separate activities must be kept strictly separate in the accounting records.

Finland

Government PSEs are entitled to a reduced tax rate. The Netherlands

Government PSEs carrying on a taxable business as identified in the Dutch CIT Act are allowed to claim a notional interest deduction of (currently) 4% of the equity allocable to such a business at the beginning of a relevant financial year.

35 This section is based on the paper written by Polina Kouraleva-Cazals for the EALTP Congress 2013. See www.ealtp.org.

36 "Zusammenfassung" see Section 4(6) CIT Act.

37 See Section 2(3) CIT Act.

38 See, for instance, Section 8(7) CIT Act.

Portugal

No distinction is made for CIT purposes in principle between the activities performed by entities if they are liable to CIT. However, entities not carrying on an activity of a commercial, industrial or agricultural nature are taxed at a reduced rate of 21.5% (instead of the standard 23% CIT rate). For the purposes of Section 3(4) of the Portuguese CIT Act activities of a commercial, industrial or agricultural nature comprise all activities involving the performance of economic transactions of an entrepreneurial nature, including the provision of services.

2.5 Taxation of Government-Controlled PSEs

In the questionnaire, we asked whether a special regime applies to private entities that are controlled by a Government PSE. The responses to that question illustrate the variety of approaches chosen by the countries. A few countries exempt activities irrespective of the legal status (private or public) of the entity. Other countries apply different criteria, for instance an exemption that is related to the type of activities. Others relate exemptions to the level of control/interest a Government PSE holds in respect of the entity concerned.

2.5.1 Not Liable To Tax as a main rule

Netherlands

Private entities that are Government-Controlled PSEs are taxed in the same way as Government PSEs. This means that only a limited number of activities lead to such organisations being liable to CIT. For CIT purposes, 'controlled' means, in the case of a Dutch NV or BV (company with a capital divided into shares), that all shares are held by a public body. In the case of a foundation or association, a public body must be entitled to remove and appoint all board members and must be exclusively entitled to any liquidation proceeds.

If a Government-Controlled PSE does not qualify as 'controlled' for CIT purposes (e.g. because its shares are only held in part by a Government PSE), such an entity can still ultimately be only Liable To Tax but Not Effectively Subject To Tax since a Government-Controlled PSE could furthermore be eligible for a general exemption under the Dutch CIT Act although its scope in quantitative terms is very limited.

It should be noted that some Government-Controlled PSEs are explicitly designated as Effectively Subject To Tax in the CIT Act although their shares are currently

exclusively held by Government PSEs. Examples include: NV Airport Schiphol, ABN AMRO Group NV. This rule also applies to their subsidiaries.

2.5.2 Effectively Subject To Tax as a main rule

Denmark, Italy and Sweden

If business activities are conducted by a limited liability company, that company is Effectively Subject To Tax, even if all shares are held by Government PSEs. This is the case in Denmark, Italy and Sweden.

2.5.3 Exemption for certain activities

Austria

In Austria, private entities are taxed in principle, but certain exemptions apply such as monopolies held by the state, certain credit institutions and certain pension funds³⁹.

Germany

The German CIT Act provides for a limited but relatively extensive and rather detailed list of exemptions⁴⁰. A Government-Controlled PSE is taxed on a normal basis, unless one of these exemptions can be applied. Examples are the "Bundeseisenbahnvermögen", the "Deutsche Bundesbank" and certain pension funds. Furthermore, when a Government-Controlled PSE carries out commercial activities which generate profits and also performs some sort of public task which only generates losses ('Dauerverluste'), these losses can only be set off against the profits if an economic and technical connection between those activities exists.

Portugal

In Portugal, Government-Controlled PSEs can benefit from a tax exemption. This exemption also applies to public companies (empresas públicas or EPs). These are companies where the state or other public agencies – directly or indirectly – have a dominant position due to the fact that they retain the majority of the capital or the votes, or the right to elect or remove the majority of the Management or Supervisory Board members.

UK

In the UK, corporations owned by a Government PSE may benefit from exemptions. These exemptions refer to charitable organisations and charitable trades, small-scale trades, fund-raising events, lotteries and property income. Some research institutions are treated the same as a charity. Community amateur sports clubs undertaking eligible sports and that are amateur and open to the whole community are exempt in relation to UK trading income, UK property income, chargeable

³⁹ See Sections 5, 6,6a and 6b of the Austrian CIT Act.

⁴⁰ See Section 5 of the German CIT Act.

gains and interest/income from donors made under 'gift aid'.

US

In the US, entities that form an integral part of a state or political subdivision of a state may be tax-exempt. This generally requires that the entity be controlled by a state or political subdivision of a state, through majority control of the governing body of the entity, and that the state or political subdivision makes a significant financial commitment to the entity (such as by initially funding the entity through government appropriations). Other corporate or joint venture entities that are formed by a state or local government generally are effectively subject to US federal income tax as corporations or joint ventures.

2.5.4 Other tax-mitigating measures for Government-Controlled PSEs

Austria

In Austria Government Controlled PSEs are taxed like any other corporation, but there are some special profit calculation rules for public utility companies⁴¹.

2.6 Taxation of NPOs

This paper has focused so far on the tax treatment of Government PSEs and Government-Controlled PSEs. Without taking into consideration the tax treatment of NPOs, a comparative study would provide only an incomplete overview since Services of General Economic Interest (SGEIs) are carried out by Government (Controlled) PSEs and NPOs in many countries.

In our review we have found different approaches for the taxation of NPOs. In a number of countries, including Austria, Portugal, the UK and Sweden, the exempted income of NPOs also encompasses certain parts of their business income. This extended exemption is often limited to activities directly connected to the non-profit activities that such NPOs pursue.

Other countries such as Denmark, Italy, the Netherlands and the US only subject business activities of NPOs to taxation. In the case of the Netherlands, this approach in the CIT Act is primarily dependent on the legal form of the NPO. Belgian tax law distinguishes between entities that are Liable To Tax (CIT) and entities that are liable to legal entities tax. Typically, NPOs are liable to legal entities tax in Belgium.

In addition to these general approaches, specific tax-mitigating measures may sometimes also be in place.

2.6.1 Exemption of non-profit (business) activities

Austria

Entities within the meaning of Section 1(2) KStG, if serving the public benefit, or charitable or religious causes are Effectively Subject To Tax⁴². They are taxed on certain types of income such as capital income and income from the sale of real estate⁴³, as well as on income from operating a business, except a business that needs to be carried on to achieve the charitable causes of the organisation. The exemption also applies to foreign organisations if they have their seat or effective management within the EU or the EEA or if they pursue a public benefit, or a charitable or religious cause mainly within Austria⁴⁴. If requested by the tax authorities, the foreign organisation needs to demonstrate that all requirements for qualifying as a charitable organisation are met⁴⁵.

Finland

The legal form of a charitable organisation is generally a foundation or an ideological association. In certain cases, a limited liability company or a co-operative can also be a charitable organisation. An organisation is an NPO if:

- it acts exclusively or directly for the common good in a material, spiritual, ethical or social sense;
- its operations are not directed at limited groups or persons only;
- its operations do not generate financial benefits for the participants in the form of dividends or a share in the profits, or a higher salary or other compensation.

The non-profit motive is a relevant criterion in determining the NPO's liability to CIT. Under Section 23 of the Finnish CIT Act, an NPO is liable to CIT on its business income. Other income of an NPO is tax-exempt (excluding income from real estate, which is used for purposes other than general or non-profitable causes). Therefore, if a corporation is not considered an NPO, all its income will be subject to a CIT at a rate of 20%.

The Finnish CIT Act includes a separate list of income items that are not considered income from business operations. This list includes income received from

⁴¹ Section 2(4) KStG.

⁴² Section 5(6) KStG in conjunction with Sections 34-47 of the Austrian Fiscal Code.

⁴³ Section 21(2) and (3) KStG.

⁴⁴ Section 21(1) KStG.

⁴⁵ Section 34(1) of the Austrian Fiscal Code (Bundesabgabenordnung).

lotteries, fairs or sport events arranged by the organisations to finance their operations⁴⁶.

Even if an NPO engages in business operations, it is granted an exemption from CIT on business profits if certain criteria are met pursuant to the Finnish Act on Tax Reliefs of Certain Non-Profit Organisations.

If the activities are considered to be significant with respect to society as a whole and the exemption does not result in more than negligible harm to other entities operating in the same branch of activity, the Finnish tax authorities can grant an exemption from CIT upon application. The exemption from CIT can be granted for up to five years at a time.

However, the EU is currently investigating whether the Finnish tax regime regarding tax relief for certain NPOs constitutes unlawful state aid under EU legislation.

Portugal

Two exemptions are important for NPOs in Portugal. Section 10 of the Portuguese CIT Act provides an exemption for:

- collective persons of public utility;
- private institutions of social solidarity; and
- collective persons of mere public utility mainly or exclusively pursuing academic, cultural, charitable, social solidarity or environmental protection purposes (as per Section 10 of the CIT Act).

The CIT Act applicable to entities mentioned in the third bullet is subject to recognition by the Minister of State and Finance, upon request, by order published in the Official Gazette, defining the scope of the CIT exemption. Furthermore, the CIT exemption applicable to all entities listed above does not cover activities carried on outside the statutory objects of such entities, and is subject to:

- 1) effectively carrying on, exclusively or predominantly, of the activities that justified the recognition of public utility status or of the purposes that justified the recognition of the CIT exemption;
- 2) allocation to the purposes that justified the CIT exemption of at least 50% of total net income that would otherwise be subject to taxation, until the end of the fourth subsequent accounting period following that in which it was generated (except in the case of a justifiable impediment to compliance with that term of utilisation, duly notified to the Director-General for Taxes, together with written reasons for the delay, submitted by the last day of the first month following the expiry of that period);
- 3) the absence of any direct or indirect interest of members of statutory bodies, for themselves or

through intermediaries, in the results of the economic activities pursued by them.

Pursuant to Section 11 of the CIT Act, associations incorporated for the pursuit of cultural, recreational and sports activities are tax-exempt in respect of income from these activities, provided that:

- these entities do not distribute results under any circumstances, and members of their governing bodies have not, themselves or through or an intermediary, any direct or indirect interest in the financial results of the activities carried on;
- their accounting records cover all their activities and are made available to the tax authorities as evidence of compliance with the above requirement.

Sweden

NPO activities are conducted via foundations and non-profit associations. Note that these two different legal forms are subject to slightly different tax rules. There are also housing co-operatives that are economic associations with the main purpose of letting tenements to their members. As a principal rule, income from real estate does not qualify as taxable income for a housing co-operative.

The foundation and the non-profit association are only taxed for business activities, but not for interests, dividends, capital gains or losses if they meet the requirements set given by the legislator regarding the purpose, the level of activity and the level of attainment of the public benefit. The additional condition that it must be open for everyone to become a member applies to a non-profit association.

NPOs also benefit from a tax exemption in Sweden, but they are Effectively Subject To Tax for income from business activities. Business operations having a natural connection to the general benefit of society or that are time-honoured financing sources are Not Effectively Subject To Tax in these cases. This exception only applies to non-profit associations, not foundations. An assessment must be made in each individual case of whether the business operations are tax-exempt (Chapter 7(7) of the Swedish CIT Act). Examples are income from second-hand sales (sometimes they are Effectively Subject To Tax and sometimes not) or lottery income (always exempt from tax if the non-profit association fulfils the demands below). A business is defined as activities that are conducted professionally and independently. In addition, a certain duration is important and the activities must be performed for profit.

⁴⁶ Section 23(3) ITL.

Some legal entities are only liable to taxation on income from real estate. These entities include for example: student unions, academies, public education institutes and unemployment funds⁴⁷.

In order to benefit from the tax exemption, an NPO must meet the following four requirements:

- 1) the purpose requirement;
- 2) the transparency requirement;
- 3) the operational requirement;
- 4) the completion requirement.

Re 1

The non-profit organisation should have the purpose of public benefit. This means that the purpose of the organisation should be to promote one of the following: sporting, cultural, environmental management, care for children and youth, political, religious, health care, social ancillary activities, the Swedish national defense and emergency in co-operation with Swedish authorities, education, scientific research or an equivalent activity.

The organisation's purpose may not, however, be limited to the economic interests of certain families, organisation members or other specific individuals.

Re 2

The NPO may not deny entry or exclude anyone who shares the organisation's objectives and follows its articles of association. A non-acceptable restriction might be that one must have a letter of recommendation from someone in order to be able to become a member or that one is elected as a member of the organisation on the basis of a decision by the board.

An organisation that accepts members on the basis of arbitrary or discriminating grounds or allows only a very limited number of individuals to become members will not qualify for the tax privilege. A limitation on voting rights for certain members, implying a restriction of the right to information and the democratic right of decision in the organisation, would not comply with the transparency requirement.

Re 3

The activities of the organisation should exclusively, or almost exclusively (90%-95% of the operations that serve the purpose of the organisation) be aimed at fulfilling the requirement regarding its purpose. For example, if the organisation makes contributions of EUR 100, a minimum of EUR 90-95 must be used to serve the organisation's purpose.

Re 4

A reasonable portion of the net return should consistently be used to meet the purpose requirement. Capital gains are not included in the return and it may be possible to make deductions for management costs. In order to meet the completion requirement, at least some 80% of the net return – taken over a period of several years – should be used to meet the purpose requirement.

UK

If a NPO qualifies as a charitable organisation, the following are among the categories of income that are disregarded in calculating its total profits: the profits of a charitable trade carried on by the organisation⁴⁸, lottery income⁴⁹, property income⁵⁰ and investment income⁵¹.

The availability of these exemptions is subject to detailed conditions, one of which is that the income in question must be applied exclusively to charitable purposes⁵². Also, the trade must qualify as a charitable trade. This means it must be “exercised in the course of carrying out a primary purpose of the charity” or “the work in connection with the trade is mainly carried out by beneficiaries of the charity”⁵³. The charitable status of the organisation does not in itself remove the organisation from the scope of CIT. A charitable company is essentially a “body of persons (...) established for charitable purposes only”⁵⁴. In addition, in order to qualify as a charity, the organisation must be managed by “fit and proper persons to be managers of the body”⁵⁵, it must be within the jurisdiction of a UK court⁵⁶ or, if not, within that of a court of an EU Member State or other designated territory and it must be a registered charity or a foreign equivalent⁵⁷.

47 7 Chapters 16-17 §§ of the Swedish CIT Act.

48 CTA 2010, s 478.

49 CTA 2010, s 484.

50 CTA 2010, s 485.

51 CTA 2010, s 486.

52 IRC v Helen Slater Charitable Trust Ltd (1981) 55 TC 230 (CA).

53 CTA 2010, s 479(1).

54 Finance Act 2010, Schedule 6, para 1(1)(a), Charities Act 2001, s 2.

55 Finance Act 2010, Schedule 6, para 4(1).

56 Finance Act 2010, Schedule 6, para 2(1).

57 Finance Act 2010, Schedule 6, para (3)1.

The exemptions apply to charitable organisations⁵⁸ in relation to charitable trade, small-scale trade, fund-raising events, lotteries and property income.

The exemptions for charities also apply to certain entities, including the Trustees of the British Museum, The Historic Buildings and Monuments Commission for England, The National Endowment for Science, Technology and the Arts, the Trustees of the Natural History Museum and the Trustees of the National Heritage Memorial Fund⁵⁹. Qualifying research associations are also treated as if they were charitable organisations⁶⁰. Health service bodies (including the bodies created by the Health and Social Care Act 2012) are also tax-exempt.⁶¹

Co-operative housing associations and self-build societies are exempt for certain rents from members and gains on the sale of property.

In principle, trading income is Effectively Subject To Tax. ‘Trade’ is defined in CTA 2010 s1119 as including “any venture in the nature of a trade”. In practice, whether or not an entity is trading is a matter of fact and law, with the law being provided by case law. The Royal Commission on Taxation (1953-5) set out in a useful list of six indicators – which they called “badges of trade” – against which any given set of facts may be measured. These are:

1. subject matter of the transaction;
2. period of ownership of asset;
3. frequency of transactions;
4. supplementary work on property;
5. circumstances of realisation; and
6. motive for transaction.

If any one of these badges attaches to a transaction, it may indicate that it is a trading transaction and profits from it therefore may come within the scope of trade profits. An accumulation of two or more badges makes this more likely. The UK tax authorities, HM Revenue & Customs (HMRC), has produced a useful summary of the badges of trade. These include the profit-seeking motive, the number of transactions, the nature of the asset, existence of similar trading transactions or interests, changes to the asset, the way the sale was carried out, the source of finance and method of acquisition⁶².

US

Section 501 is the basis for exemption for the vast majority of NPOs that are exempt from federal income tax. All tax-exempt organisations, but not governmental units other than state-owned colleges and universities, are subject to the unrelated business income tax. Unrelated business taxable income includes the net income from any unrelated business the organisation regularly carries on and investment income the acquisition and holding of which the organisation finances with borrowed funds. A business is unrelated unless it furthers, other than through financial support, the specific exempt function of the organisation. For example, tuition income would be exempt function income for a university while income from the operation of a spaghetti factory would be unrelated business taxable income. The applicable tax rates are those that apply to corporations or trusts depending on the legal form.

2.6.2 Tax liability for business activities

Denmark

NPOs are Effectively Subject To Tax but only insofar as they conduct a business. A business activity is regarded as an activity to derive income from trade, real estate, renting and subcontracting. Non-business activities are defined as activities that do not involve the required level of profit appropriation. These activities are activities that are not aimed at generating profit.

In addition, non-profit organisations may deduct distributions for certain purposes if they are in line with the articles of association of the entity and if the purpose is in the public interest. Lastly, the law includes a long list of entities that are exempted from CIT. For example, the state and its institutions, recognised religious communities, certain harbours, schools, hospitals. What these bodies have in common is that profit cannot be distributed to founders and/or owners, but must be retained in order to benefit the organisation and its purpose. General criteria are that the purpose of these entities should relate to the general public interest and that they are open for the public. In addition, specific conditions apply to each specific exemption.

France⁶³

When an NPO performs for-profit activities, it will be Effectively Subject To Tax on income from those activities and possibly other activities. If the

58 Charities are defined in the Charities Act 2011.

59 CTA 2010, s 490(1).

60 CTA 2010, s 491.

61 CTA 2010, ss 985-6.

62 www.hmrc.gov.uk/manuals/bimmannual/BIM20205.htm.

63 This section is based on the paper written by Polina Kouraleva-Cazals for the EALTP Congress 2013. See www.ealtp.org.

organisation does not carry on for-profit activities, it is taxed for estate revenues only.

The rules regarding charities have been developed in case law. In order to qualify as a charity, an NPO must not pursue profits or create benefits for management. Profits must be reinvested in the activity. The NPO must have a social cause, meaning that its activities must be more beneficial to the public than similar activities carried out by for-profit entities. An activity that serves as an extension of the entity's members' economic activities is an example of a for-profit activity.

NPOs can conduct business activities and as a consequence compete with for-profit organisations. In order to deal with this issue, the French Council of State has introduced a three-step method in order to establish whether an NPO should be liable to CIT. The NPO is exempt only if its management is disinterested (does not pursue profits or benefit the management itself), and the performance of the activity of the NPO competes with the activities of for-profit entities. The conditions for engaging in the activity are the same for non-profit entities as for for-profit entities engaging in the same type of activity. The assessment of this similarity includes a comparison of products offered, the target audience, pricing and methods of commercialisation used by non-profit organisations. If these conditions are similar, non-profit organisations are considered to be engaged in a for-profit activity and are accordingly liable to CIT.

However, associations, unions, foundations of public benefit, firm's foundations, endowments and congregations are not liable to CIT as long as their management is not after its own gain, their main activities are not-for-profit and their operating income from for-profit activities does not exceed EUR 60,000 per calendar year. If this threshold is exceeded, the tax authorities allow the tax liability to be limited to that of the for-profit activity. Thus, CIT only applies to all income if the for-profit activity becomes the main activity or if the for-profit and not-for-profit activities are inseparable.

Netherlands

NPOs that take the legal form of a foundation or association are Liable To Tax only if they carry on a business or compete with particular companies. It is irrelevant whether the business activities are connected to the public causes pursued by an NPO or the public services it provides.

If an NPO is Liable To Tax, the Dutch CIT Act also provides for some exemptions for legal entities (governed by private or public law) conducting certain types of activities. For instance, the CIT Act subjectively exempts healthcare organisations and healthcare/life insurance companies, pension funds and libraries and similar institutions. These exemptions are based on the nature of the activities. In broad terms, the successful application of these exemptions requires that at least 90% of the activities are exempt. In some cases, an additional condition applies that allows the NPO involved to distribute profits to similar exempted NPOs only or entities serving a general economic interest.

In addition to these specific exemptions, the Dutch CIT Act allows all associations and foundations, irrespective of their activities an exemption provided their profits do not exceed the threshold of EUR 15,000 per year or EUR 75,000 over a period of five years.

Lastly, the CIT Act provides for the application of some additional tax-mitigated measures by NPOs that fulfil specific requirements.

One of these measures encompasses a deduction for income from fundraising activities (Section 9a CIT Act). However, this deduction only applies if 30% or more of the activities are performed by volunteers.

Another specific measure can be applied by some NPOs with a cultural objective and entities that pursue a social cause. They are entitled to form a provision for costs in connection with investments in fixed assets and project costs which they expect to incur over the next five years.

The activities of NPOs with which they pursue a social cause must predominantly (70%) be performed by volunteers. Provided that certain conditions are met, certain costs in connection with the labour provided by volunteers are exempt. One of the conditions is that the NPO's profit must be predominantly achieved because of the work of volunteers. NPOs that pursue cultural causes may opt for a full tax liability instead of a limited tax liability. This might be favourable if the non-business activities incur losses. Opting for a full tax liability makes it possible to offset losses of the non-business activities against profits from the taxable business activities. Without this option, the activities should be treated independently.

2.6.3 A different tax regime

Belgium

In Belgium, NPOs are Liable To Tax to the legal entities tax if they do not conduct a business or have no other profitable activities⁶⁴. The legal form of the NPO is not decisive; instead, the nature of its activities is.

The criteria for what constitutes a business or profitable activities are primarily based on case law.

Section 180 of the WIB 92 stipulates, however, that certain designated entities are liable to legal entities tax.

Entities that are not included in the list are liable to this tax if they do not conduct a business or have profitable activities. If this is not the case, the entity is liable to CIT.

Section 181 of the WIB 92 lists a number of activities that are subject to legal entities tax (and therefore not to CIT).

Italy

In Italy, a distinction is drawn between commercial and non-commercial entities. Commercial entities are subject to the same rules as corporations.

Non-commercial entities are subject to CIT on the basis of the different types of income earned (i.e. immovable property, financial and business income). Different criteria apply for the determination of each category (i.e. “income from land and buildings,” “income from capital,” “business income” and “other income”)⁶⁵. An entity qualifies as a commercial entity if it exclusively or mainly performs the following activities:

- commercial activities in strict sense: industrial activities aimed at the production of goods or the provision of services;
- activities of an intermediary nature in the transfer of property;
- activities connected with transportation by land, sea or air;
- banking and insurance activities; other activities auxiliary to those mentioned above;
- other activities or provision of services, if provided through business concerns;
- agricultural activities (where certain requirements are met);
- some specific activities related to soil and mining exploitation.

Under a decree⁶⁶, the corporate tax (IRES) for NPOs and charities is reduced by half for the following entities:

- 1) institutions and social welfare institutions, mutual societies, hospitals, aid and charity organisations;
- 2) institutes of education and institutes of study and research of general interest, non-profit-making, scientific bodies, academies, foundations, and historical, literary, academic associations, [for research and cultural purposes only];
- 3) institutions whose purpose is treated by law as serving charity or education;
- 4) autonomous institutions for social housing, whatever their designation, and their consortia.

In February 2011, the European Commission started a procedure in order to assess whether this reduction could constitute state aid.

A specific beneficial tax regime is provided for Non-Profit Organisations of Social Utility (ONLUS), which are considered to perform non-commercial activities (not generating taxable income) serving the execution of institutional activities that exclusively pursue social solidarity objectives. ITC provides for a special tax regime for associations of social utility⁶⁷.

2.7 Tax consequences of changes in tax position of PSEs

PSEs can be confronted with tax issues as a result of changes in their tax position within the tax system. The origins of such a change in position are in principle two-fold:

- 1) a change in facts and circumstances;
- 2) a change of rules.

In this section we will discuss some tax issues concerning a transition in which the status of a PSE changes from not Liable To Tax and/or Not Effectively Subject To Tax to Effectively Subject To Tax. Our study focused specifically on the question how this PSE should value its assets and liabilities in its opening balance sheet (first fiscal year) in connection with this transition.

2.7.1 Valuation at market value

In Austria and Denmark, the main rule is that all assets and liabilities are valued at fair market value (for example, in Denmark, water supply business).

⁶⁴ Section 220(3) WIB 92.

⁶⁵ Section 154(1) of the Italian CIT Act.

⁶⁶ Article 6 of Decree n. 601/1973.

⁶⁷ The ONLUS special tax regime is characterised mainly by the exclusion from taxation of both “institutional activities” having social-solidarity objectives and “related activities” that are considered to be commercial, but do not form part of taxable income due to an explicit provision in law.

Sometimes specific valuation rules need to be applied in relation to the termination of CIT exemptions.

2.7.2 No step-up to market value

If UK NPOs were to cease to be eligible for the tax exemptions they previously enjoyed, there are no related provisions to allow for a 'step-up' to market value of their assets (although any specific facts and circumstances would have to be considered to see if more general provisions potentially applicable to taxpayers might come into play).

In the UK, different routes have been taken to the 'privatisation' of UK public sector services by which the subsequent trade(s) carried on became subject to corporation tax. In the UK, privatisations have tended to involve the transfer of a business from a predecessor company to a successor company, so that the transfer is the key event. This has been the case whether the privatisation has involved a sale of the business to one or more successor commercial companies or a flotation of shares to the public (through a 'clean' company). Such a transfer between entities has typically involved specific statutory provisions that dictate that the successor takes over the tax 'position' of the predecessor so that, for example, the transferred trade is treated as a continuing trade by the successor and neither a gain, nor a loss accrues on the disposal of assets for the predecessor (as with the tax consequences of the privatisation of British Rail).⁶⁸

The Netherlands CIT Act (in broad terms) does not allow a Government PSE and/or a Government Controlled PSE that is Not Liable To Tax or Not Effectively Subject To Tax to reflect goodwill on its fiscal (opening) balance sheet when becoming Effectively Subject To Tax⁶⁹.

2.8 Policy debates and EU developments

The tax rules for Government and Government Controlled PSEs and NPOs are debated public and non-profit organisations are the subject of debate in a number of countries.

In Belgium, the exemption for intercommunales was considered to cover the deficit on a federal level. The EU has not challenged the existing tax regime.

Finland is discussing the justification of special tax regimes for certain public bodies. In particular, public sector corporations, i.e. state or municipal enterprises that are exempt from CIT or to which a reduced rate of income tax applies have been the subject of debate. The fact that they are not Effectively Subject to Tax or are Effectively Subject To Tax at a reduced rate gives them an significant competitive advantage over other corporate bodies operating in the same sector. However, many of the PSEs have been incorporated recently because of the guidelines and comments of EU.

All parties involved in the German tax practice are very much aware of and working on the state aid issue (Beihilfeverfahren)⁷⁰.

In Italy, the tax provisions for companies that perform SGEI are currently under review by the EC⁷¹. In Portugal, the tax exemptions applicable to certain foundations (private and public) that already benefit from public subsidies, as well as to certain public entities, mainly in light of the Portuguese economic situation, have also come under scrutiny. Nonetheless, although the revocation of the tax exemptions applicable to foundations was envisaged in the preliminary version of the State Budget for 2013, these exemptions were maintained in the final version of the document.

68 Cf. FA 1994, Sch.24 and for a more detailed discussion, <http://www.hmrc.gov.uk/manuals/cgmanual/cg45750.htm>

69 Article 33 of the CIT Act.

70 See for instance the report of the Oberdirektion Münster regarding the "Besteuerung der juristischen Personen des öffentlichen Rechts" of 1 March 2013.

71 ECJ, 7 September 2007, Case C-526/04 Boiron.

3. Comparison of specific activities

The tax position of PSEs and NPOs was discussed above primarily from an entity perspective. From a tax neutrality perspective, it is however also important to know how taxation occurs from an activity perspective.

This section summarises the findings of our review from such a perspective with respect to:

- 1) healthcare services (3.1);
- 2) education services (3.2);
- 3) social housing services (3.3);
- 4) public transport services (including sea and air ports) (3.4).

3.1 Healthcare services

Country	Tax treatment	Comments
Austria	Not Effectively Subject To Tax	<p>Healthcare organisations in the public sector can be run in the following ways:</p> <ul style="list-style-type: none"> • As part of a public body itself, i.e. as commercial enterprises (“BgA” – Section 2 of the Austrian CIT Act, subject to CIT under the conditions laid down in the general part of the questionnaire – answer to Question 6 above) – according to a special rule, public hospitals are regarded as CIT-exempt regardless of the intensity of their activities (sect. 46 of the Federal Fiscal Procedures Act). • Separated from the public body in a private legal form (e.g. a GmbH) and owned by the public body. • As a private entity run by a private non-profit organisation. <p>Due to a special rule, public hospitals (i.e. operated by a public body or a non-profit organization) are regarded as CIT-exempt even if they are aiming for profit (Section 46 of the Federal Fiscal Procedures Act).</p>
Belgium	Effectively Subject To CIT or Effectively Subject To Legal Entities Tax	<p>Dependent on the question whether the entity has a profit objective and is subject to the bill regarding hospitals (‘Wet op de ziekenhuizen’). In that case Legal Entities Tax applies to the hospitals. If this is not the case, the hospital is effectively subject to CIT, for it is not subject to the bill regarding hospitals and has a for-profit objective.</p>
Denmark	Public hospital are Not Effectively Subject To Tax	<p>Tax exemption also applies to other than public institutions but only insofar as these are run as independent institution from which all income is reinvested into the institution.</p>
Czech Republic	Effectively Subject To Tax and special tax mitigations apply.	<p>Organisations providing healthcare can either be set up as a private entity or as a public entity. A special permission for providing health (medical) services is required by a special law.</p> <p>Public organisations providing healthcare are set up by law by the Czech state and have no shareholder.</p> <p>Private organisations providing healthcare are regulated by a special law and there is no restriction on the shareholder.</p> <p>All revenues of an organisation providing healthcare (medical care) are Effectively Subject To Tax, exclusive of income from investments, transfers and subsidies for the acquisition and technical enhancement of fixed assets.</p>

Finland	In principle Not Effectively Subject To Tax, but Effectively Subject To Tax for business activities for services provided outside the borders of the municipality.	<p>In principle, the healthcare organisations in Finland are organised and owned by the public sector. Municipalities have, by law, the main responsibility for providing health and social services for their inhabitants. Therefore, most healthcare organisations, i.e. health centres and hospitals, are owned by municipalities or federations of municipalities. Specialised care funded by municipalities is mainly provided by hospitals maintained by the hospital districts. Each municipality must be a member of one hospital district. Each hospital district has a central hospital; some of them are university hospitals.</p> <p>In addition to health centres and hospitals, healthcare organisations can also comprise other healthcare institutions, such as nursing homes for elderly and disabled people.</p> <p>Pursuant to Section 21 of the Finnish Income Tax Act, the state, the municipalities and religious communities are each liable to CIT only in respect of business profits. However, a municipality is Not Effectively Subject To Tax in respect of profits derived from business conducted in its own area. A municipal hospital is Effectively Subject To Tax on profits derived from business conducted outside its own area. However, not all services are treated as business activities for tax purposes and are dictated by law.</p> <p>Healthcare organisations owned by the private sector (i.e. limited liability companies, private persons) generally operate in the form of a limited liability company. Privately-owned healthcare organisations in Finland consist of hospitals, various kinds of nursing homes and medical reception centres. These organisations are Effectively Subject To Tax according to the normal tax rules. However, if organisations are NPOs, they are Not Effectively Subject To Tax in principle. They are only Effectively Subject To Tax if the activities are considered to be business activities.</p>
France	In principle Not Effectively Subject To Tax insofar as healthcare does not compete with private healthcare.	<p>Public healthcare is tax-exempt, but in as much as it competes with private healthcare, it is Effectively Subject To Tax, e.g. commercial blood transfusion centres.</p> <p>Public health is either not liable to tax (établissement public locaux) or not effectively subject to tax (most of the cases).</p>
Germany	In principle Not Effectively Subject To Tax for healthcare services, but Effectively Subject To Tax for (other) business activities.	<p>There are Government (Controlled) PSEs and entities governed by private law. Some of them are linked to universities. Hospitals are tax-exempt for their services which are closely related to their core task, healthcare. Other activities (e.g. cafeteria) may be Effectively Subject To Tax. As far as taxable entities are concerned, there are possibilities for certain mitigating measures.</p>
Italy	Public Hospitals are Not Effectively Subject To Tax for income from healthcare. Other income is taxed, but there is a right to claim a 50% reduction.	<p>Entities operating in the healthcare sector can be either private entities (adopting various legal forms provided for by the legal system), or public entities. The public entities include:</p> <ul style="list-style-type: none"> ● Local Health Authorities (ASL); ● Hospitals; ● University hospitals; ● Institutes of hospitalisation and care (IRCCS); ● Public law foundations. <p>Private entities include:</p> <ul style="list-style-type: none"> ● “participation foundations,” which are hybrid structures, since they are partly funded by private entities and partly founded from public sources;

Italy	<p>Local Health Authorities are also Not Effectively Subject To Tax for income from healthcare services, but do not enjoy the aforementioned 50% reduction on their other income.</p> <p>NPOs are Effectively Subject To Tax in principle, but since the contributions that private NPO hospitals receive can be excluded from the tax base, such entities are normally Not Effectively Subject To Tax with regard to healthcare services.</p>	<p>private law entities duly authorised by public bodies (regulated by Decree-Law n. 502/92).</p> <p>Private entities wishing to perform healthcare services are subject, for the purpose of obtaining the necessary authorisation, to certain technical and organisational requirements. However, as individual Regions are entrusted with healthcare issues, each Region establishes its own regulations for the specific requirements to be met in order for the authorisation to be granted.</p> <p>Public entities operating in the healthcare sector fall under the provisions of Section 74(2)(b) of the ITC, whereby healthcare services carried out in the public interest by public bodies established by the state for this specific and exclusive purpose do not constitute commercial activities, and therefore do not generate taxable income for CIT purposes. The Revenue Agency has identified, over time, the specific institutional activities that enjoy this benefit, covering not only those activities of a strictly medical nature, but also ancillary activities deemed necessary to the achievement of institutional purposes. See, for instance, Ministerial Circular n. 26/11/562 of August 29, 1991, which provides the following examples:</p> <ul style="list-style-type: none"> ● Accommodation services for patients' family members; ● Canteen services for patients' family members; ● Phone/telecommunication services for patients and patients' family members; ● Copy services for medical records; ● Charges for TV connections. <p>Healthcare organisations are also subject to Regional Tax on Productive Activities (IRAP). Hospitals are entitled to the tax relief laid down in Article 6 of Presidential Decree n. 601/73, which provides for the application of a CIT tax rate reduced by half. This relief is applicable only to the income generated by public hospitals (for activities falling outside the scope of Article 74) and by eligible private hospital institutions that meet specific criteria set by law (Revenue Agency Resolution n. 179/E/2009). Local health authorities (ASL) do not enjoy this reduction, since their activity goes beyond hospital healthcare services (Revenue Agency Circular n. 78/E/2002).</p> <p>However, it should be noted that some decisions of Tax Tribunals have recognised the possibility for ASL to benefit from such reductions (see e.g. Provincial Tax Commission of Ascoli Piceno n. 387/2011).</p> <p>The contribution granted by public administrations to private non-commercial entities operating in the healthcare sector for the execution (by agreement or under an accreditation system pursuant to legislative decree n. 502/92) of activities having social objectives exercised in conformity with the institutional purposes of the same entities is excluded from the tax base for CIT purposes (Article 143 ITC).</p> <p>Socio-sanitary activities performed by healthcare institutions qualifying as ONLUS are considered to be non-commercial activities (not generating taxable income). This stems directly from the special tax regime for ONLUS entities, whereby both institutional activities having social-solidarity objectives (among which the law includes medical assistance activities) and related activities do not generate taxable income.</p>
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		<p>The following activities are included among those recognised as tax-exempt if performed by an ONLUS entity:</p> <ul style="list-style-type: none"> • social and medical assistance to elderly people suffering from severe diseases that make them non-self-sufficient (see Revenue Agency Resolution n. 146/E/06); • activities in nursing homes for the benefit of individuals in need (see Revenue Agency Circular letter n. 48/E/04); • scientific research financed by pharmaceutical firms, provided the ONLUS Remains the owner of the results of such research activity (see Revenue Agency Resolution n. 123/E/04). <p>In February 2011 the European Commission started a procedure in order to assess whether the 50% CIT reduction under Article 6 of Presidential Decree n. 601/73 could constitute state aid.</p>
The Netherlands	Not Effectively Subject To Tax	Hospitals, nursing homes, homes for the elderly, etc. are Not Effectively Subject To Tax provided that the entity is a Government PSE or, if that is not the case, such entity can only allocate its profits to another NPO, which can claim a comparable healthcare exemption in relation to a general public interest. In order to qualify for the exemption, 90% or more of the activities of these entities must consist of the services referred to above.
Portugal	In principle Effectively Subject To Tax, although public establishments with legal personality and financial autonomy are Not Effectively Subject To Tax.	<p>Hospitals in the network of entities providing healthcare services may have one of the following legal forms:</p> <ul style="list-style-type: none"> • public establishments with legal personality and financial autonomy, with or without autonomy of assets. These are tax- exempt; • public establishments with legal personality and financial autonomy, with autonomy of assets and a business nature/public corporations (Entidades Públicas Empresariais or EPEs – which may include Corporate Public Hospitals and Corporate Public Health Centres). Hospitals with the legal form of public establishments are generally owned by public entities. Public establishments are subject to CIT at the normal rate; • joint stock companies (sociedades anónimas) fully owned by the state or by public entities. These are subject to CIT at the normal rate; • private establishments, with or without a profit motive. These are subject to CIT at the normal rate. <p>Hospitals with the legal form of public corporations must be fully owned by the state. These are subject to CIT.</p> <p>Hospitals with the legal form of joint stock companies must be fully owned by the state or by state-owned companies. These are subject to CIT.</p> <p>No requirements regarding the quality of the shareholders apply to private establishments.</p>
Sweden	<p>Public hospitals are Not Effectively Subject To Tax.</p> <p>NPOs are Not Effectively Subject To Tax for income from healthcare services.</p> <p>Private commercial providers are normally taxed.</p>	<p>Public entities, public and private companies, foundations and non-profit organisations provide healthcare services. If the provider of healthcare is an NPO normally, only the income from business activities other than healthcare services is Liabile To Tax. Public entities providing healthcare are tax-exempt.</p> <p>A commercial healthcare organisation (corporation) is Effectively Subject To Tax.</p>

UK	Not Liable To Tax (Government PSEs). Companies are Effectively Subject To Tax.	Certain commercial activities are liable to tax by order of HM Treasury. Private hospitals are typically companies that are liable to corporation tax.
US	Public hospitals Not Effectively Subject To Tax. NPO hospital: income from healthcare services is Not Effectively Subject To Tax. For-profit hospital: Effectively Subject To Tax.	<p>The following summary describes the federal income tax treatment of “hospitals” within the United States. It does not address the many other types of healthcare organisations, such as physician clinics and practices, lab and diagnostic testing facilities, medical research companies, medical device companies, etc. The federal, state and local tax treatment of hospitals has been a subject of longstanding debate within the US for decades, primarily due to issues surrounding the extent of community benefits provided by the facilities and the competition of for-profit and non-profit hospitals in the sector.</p> <p>Federal government hospitals. There are a relatively small number of hospitals in the US operated and funded by the federal government. Most of these are operated to provide hospital services to the nation’s veterans. They are not subject to US federal income tax, as the US does not subject the federal government to US federal income tax.</p> <p>State-level government hospitals. A large percentage of hospitals within the US are owned and operated by local governments (cities, towns, municipalities, and counties are the most common) which are political subdivisions of state governments (e.g., New York or California). State and local government hospitals are not subject to US federal income tax because they are part of a state government, which is not subject to US federal income tax.</p> <p>Non-profit charitable hospitals. A large percentage of hospitals within the US are owned and operated by non-profit organisations formed under state non-profit corporation statutes, and recognised as exempt from US federal income tax as charitable organisations described within Section 501(c)(3) of the Internal Revenue Code. Such organisations are exempt from US federal income tax on the income derived from the performance of activities that are substantially related to their charitable exempt activities. The legal standard applicable to the determination of whether a non-profit hospital organisation is described within Section 501(c)(3) is the “community benefit” standard, set forth in IRS Revenue Ruling 69-545. In addition, Section 501(r) of the Internal Revenue Code, enacted in March 2010, imposes additional requirements on hospitals claiming exemption under Section 501(c)(3). Section 501(c)(3) hospitals are Effectively Subject To Tax with regard to federal income tax on their unrelated business taxable income, which generally is income derived from a trade or business that is regularly carried on by the organisation and which is not substantially related to its exempt purposes.</p> <p>For-profit hospitals. For-profit hospitals organised as corporations under state for-profit statutes are common in various regions of the US. They are treated as regular corporations for US federal income tax purposes, and are Effectively Subject To Tax with regard to corporate level income tax on their taxable income.</p>

3.2 Educational services

Country	Tax treatment	Comments
Austria	Effectively Subject To Tax	<p>Education and research organisations in the public sector can be run in the following ways:</p> <ul style="list-style-type: none"> As part of a public body itself, i.e. as commercial enterprises. In general, such a body is Effectively Subject To Tax, because it is a 'Betrieb gewerblicher Art' and therefore the results connected with the educational services are taxed. Separated from the public body in a private legal form (e.g. a GmbH) and owned by the public body. These entities are subject to CIT.
Belgium	Not Effectively Subject To Corporate Tax, but Effectively Subject to legal entities tax	<p>Educational services provided by NPOs (vereniging zonder winstoogmerk) or legal entities without profit motive are not liable to CIT (Section 181 WIB 92). However, these entities are subject to legal entities tax (rechtspersonenbelasting). In practice they are only subject to some withholding taxes (with many exceptions) and on some real estate related income (in specific cases).</p>
Czech Republic	Effectively Subject To Tax, with an exception for certain income items (mitigating measures)	<p>A public university is an organisation established under special law. The founder of this organisation is the Czech state and the organisation has no shareholder.</p> <p>A private university can be established both as a private entity and as a public entity. To qualify for the special CIT treatment, a private university has to be established as a non-profit organisation under special law. In the case of a private university, there is no limitation governing the shareholders.</p> <p>A public research institution is an organisation established under special law. The founder of this organisation is the Czech state or a local self-government unit. A public research institution as the entity established under the public law has no shareholder.</p> <p>A public research institution is an organisation established under special law. The founder of this organisation is the Czech state or a local self-government unit. A public research institution as the entity established under the public law has no shareholder.</p> <p>In compliance with the Czech CIT Act, all revenues of public universities or public research institutions are Effectively Subject To Tax, with the exception of income from investment transfers.</p> <p>General tax incentives for non-profit organisation apply for public universities, public research organisations and newly established private universities.</p>
Denmark	Not Effectively Subject To Tax	<p>Educational services are normally provided by state institutions and therefore Not Effectively Subject To Tax.</p> <p>Tax exemption may also apply for other than public institutions but only to the extent the institution is run as an independent entity and all income is reinvested into the institution.</p>

Finland	Not Effectively Subject To Tax, with the exception of business income	<p>Institutions of higher education are designated as universities by Finnish legislation, mainly the University Act. In addition to universities, Finland has another, separate system of tertiary education (ammattikorkeakoulu), which is variously translated as polytechnic or as a University of Applied Sciences.</p> <p>Universities are considered to be independent public corporations. Polytechnics are owned by municipalities, federations of municipalities or can be privately owned, in which case they are organised in the form of limited liability company.</p> <p>According to Section 21a of the Finnish Income Tax Act, universities are Effectively Subject To Tax for their business income. Income generated in connection with conducting certain basic functions of the university (such as degree education and publicly available research) is not regarded as business income. Business income could be consulting services or commissioned research or education, etc. However, universities are required to pay income tax to municipalities and the church on income originating from real estate or a part thereof that is not used for public purposes. The details of a polytechnic's taxation depend on whether it is run by a municipality or an NPO.</p>
France	In principle Not Effectively Subject To Tax	Education is Not Effectively Subject To Tax in France if it does not compete with private education.
Germany	Government PSEs and NPOs are in principle Not Effectively Subject To Tax. Sometimes mitigating measures are applicable.	<p>Not Effectively Subject To Tax, but only if the entity is a public body which is typically the case with universities and other institutes of higher education. Certain private entities are also exempt if they can qualify as public interest company (gemeinnützige Gesellschaft).</p> <p>Certain research entities can claim a specific exemption. Although the current tax position for CIT purposes is not expected to change, there is some concern that the intensified discussion that apparently is developing in the VAT practice will also affect the CIT realm. Also, the institutes of higher education are now starting to account separately for their economic and non-economic activities in terms of the LPFW, upon the instigation of the EC.</p>
Italy	Government PSEs are Not Effectively Subject To Tax.	<p>The entities involved in education and research activities are the entities listed by the Decree-Law n. 70/2011, i.e.:</p> <ul style="list-style-type: none"> ● (state and non-state) university institutions and legally recognised universities; ● public research entities; ● ASI (Italian Space Agency); ● university hospitals and care institutions; ● other (public and private) research organisations recognised by the European Union, as defined in the Community guidelines on State Aid for Research, Development and Innovation (Communication 2006/C 323/01);

	<p>Private schools, universities and research institutions are Effectively Subject To Tax, but the tax rate is reduced to 50%.</p>	<ul style="list-style-type: none"> ● public institutes and schools of all levels and public and private educational institutions regulated by Legislative Decree n. 297/1994; ● inter-university research consortia, established pursuant to Presidential Decree no. 382/80, and research foundations established pursuant to Presidential Decree n. 254/2001; ● Legislative Decree 297/1994 provides that schools and educational institutions can be run by private persons (upon the granting of prior authorisation by a public body), provided that certain requirements of a subjective nature are met (e.g. “necessary professional and moral requirements”); ● Legislative Decree n. 29/93 qualifies institutions and schools of all levels and educational institutions and universities as public administrations. <p>Given this status as a Government PSE:</p> <ul style="list-style-type: none"> ● public schools fall within the scope of Article 74(1) and are therefore Not Effectively Subject To Tax (Res. 204/E/2003); ● public universities are non-commercial entities (see Ministerial Resolution 09/08/76, n. 10/1187) and fall within the scope of Article 74(2)(a), and, therefore, the activities that qualify as an exercise of state functions are not subject to CIT (see Ministerial Circular letter 05/02/94, n. 37/E); <p>institutes and schools of all levels and educational institutions and institutions of higher education are subject to IRAP (see Revenue Agency Circular letter n. 61/E/2007).</p> <p>Private schools, public and private universities, and public and private research institutes are entitled to the tax relief laid down in Article 6 of Presidential Decree 601/73, which provides for the application of a CIT tax rate reduced by half, and can benefit from the tax relief provided by Article 6 of Decree n. 601/1973, whereby corporate taxation is reduced by half.</p> <p>The Revenue Agency has decided, over time, to qualify activities carried out by universities as non-commercial, so that they do not generate taxable business income (e.g. (i) the promotion and development of placement services, (ii) the experimentation of assisted job-support, and (iii) promotion of apprenticeships). See Ministerial Resolution 79/E/10.</p> <p>Research foundations qualifying as “ONLUS” are considered to perform non-commercial activities (not generating taxable income) for the execution of institutional activities that exclusively pursue social-solidarity objectives.</p> <p>In February 2011, the European Commission started a procedure in order to assess whether the 50% corporate tax reduction under Article 6 of Presidential Decree N. 601/73 could constitute state aid.</p>
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The Netherlands	<p>Government PSEs in education (e.g. primary education, research and universities) are Not Effectively Subject To Tax.</p> <p>NPOs are in practice often Effectively Not Subjected To Tax.</p> <p>Non-NPOs are Effectively Subject To Tax.</p>	<p>In the Netherlands, education is provided via public and private schools. Both are financed and regulated by the government. Private schools are open to everyone but they have an independent board and very often take the legal form of a foundation or association. This applies to primary and secondary education, technical and vocational training, higher education and universities.</p> <p>Government PSEs are Not Effectively Subject To Tax, because the provision of educational services is not taxable for purposes of the Dutch CIT Act. This rule does not apply to NPOs.</p> <p>There are, however, a number of private schools that are taxed at the normal rate (Effectively Subject To Tax).</p> <p>Research institutions are not Effectively Subject To Tax if they are a Government PSE or a Government-Controlled PSE (e.g. TNO Netherlands Organisation for Applied Scientific Research). The research activities of Government PSE universities are Not Effectively Subject To Tax. Research activities of other universities are in general effectively not subject to tax but the CIT Act does not provide for an explicit exemption. Income is taxed if the research activities can be regarded as a business activity. This might be the case if research is conducted at the request of and paid by (commercial) third parties.</p>
Portugal	<p>Public education is Not Effectively Subject To Tax.</p> <p>Non-public entities are normally taxed.</p>	<p>Decree Law no. 62/2007, of 10 September, establishes the legal framework for institutes of higher education (Regime Jurídico das Instituições de Ensino Superior or RJIESs).</p> <ul style="list-style-type: none"> ● The Portuguese education and research sector comprises the following types of organisations/corporations : ● Public collective persons; ● Public foundations; ● Private institutions. <p>Public education and research institutions governed by public law are part of the Portuguese state's indirect administration and should be owned by the state or by public entities. These entities are Not Effectively Subject to Tax.</p> <p>There are no special requirements with respect to the quality of the shareholder of private education and research institutions. Other private institutions providing education or research that qualify as a NPO or not are Effectively Subject To Tax.</p>
Sweden	<p>Public entities are Not Effectively Subject To Tax on their educational activities.</p>	<p>Educational services are provided by public entities, public and private companies, foundations and NPOs.</p> <p>Public entities are tax-exempt, as are entities that provide public education works (except for property income).</p> <p>If the provider of educational services qualifies as an NPO, the income connected with these activities may not be taxed. Other income can be taxed.</p> <p>Commercial private companies are Effectively Subject To Tax.</p>

UK	<p>Government PSEs (public education) are not liable to tax.</p> <p>Other education providers are Not Effectively Subject To Tax if a general tax exemption for charities applies.</p>	<p>Educational services are partly provided by central government or local authorities and partly by the private sector. When a local authority controls a school (or college or polytechnic), its income is covered by the local authorities' exemption. Many secondary education (for children aged 11+) establishments have historically been controlled by local authorities in the same way as primary schools (for children aged 5-11), although there have for a long time been a number of independent schools in the private sector (somewhat oddly often called 'public schools') which rely on the general tax exemptions for charities. More recently, many secondary schools have converted from pure public ownership to academy status – which means among other things that they are typically constituted as companies limited by guarantee, receive part of their funding from central government rather than the relevant local authority and rely in part on the charities exemptions. Most universities are largely publicly funded corporate bodies, instituted by Royal Charter or Act of Parliament, although more recently they have been able to charge fees to students; they typically rely on the general tax exemptions for charities.</p>
US	<p>Kindergartens and higher education are Not Effectively Subject To Tax, but not insofar as they generate unrelated business income.</p>	<p>The following summary describes the general US federal income tax treatment of institutions of education (generally described as “schools,” “colleges” or “universities”). It does not address numerous other types of organisations involved in education and research, such as management companies, research companies, testing organisations, accreditation organisations, etc.</p> <p>Kindergarten through grade 12. Most of these schools in the US are either public schools operated by state and local governments, or private schools operated by a charter school or through a religious affiliation. Public schools are not subject to US federal income tax because they are part of the state and local government. Private schools operated by religious affiliation are generally not subject to US federal income tax because they are described within Section 501(c)(3) of the Internal Revenue Code as a charitable, educational or religious organisation. Charter schools may seek exemption as an organisation described within Section 501(c)(3) as an educational organisation. Institutions of higher education (generally colleges and universities). Although there are some for-profit colleges and universities within the US that are subject to US federal income tax as taxable corporations, the vast majority are either educational organisations described within Section 501(c)(3) of the Internal Revenue Code or state (public) institutions. Colleges and universities described within Section 501(c)(3) of the Internal Revenue Code are not subject to US federal income tax other than on their income derived from a trade or business that is regularly carried on and that is not substantially related to its exempt educational purposes. State (public) colleges and universities are exempt from US federal income tax as part of a state or local government, but under a special statutory provision for state colleges and universities, are subject to US federal income tax on their unrelated business income.</p>

3.3 Social housing services

Country	Tax treatment	Comments
Austria	<p>Government PSEs and Government- Controlled PSEs are Effectively Subject To Tax.</p> <p>Some NPOs are Not Effectively Subject To Tax.</p>	<p>Social housing corporations in the public sector can be run in the following ways:</p> <ul style="list-style-type: none"> • As part of a public body itself, i.e. as commercial enterprises (“BgA” – Sect 2 of the Austrian CIT Act, Effectively Subject To Tax). The activities of social housing corporations, i.e. the building and letting of houses, are regarded to be a Betrieb gewerblicher Art and therefore Effectively Subject To Tax. • Separated from the public body in a private legal form (e.g. a GmbH) and owned by the public body. These entities are Effectively Subject To Tax. • The Austrian CIT law provides an exemption for private entities falling under the scope of the Austrian Act on housing finance, regardless if they are owned by the government or private persons (gemeinnütziger Wohnbauträger).
Belgium	<p>Government PSE's are not subject to corporate income tax and therefore not effectively taxed on their net income.</p> <p>Government-Controlled PSE's such as social housing companies recognized by the regional governments are subject to corporate income tax, be it at a reduced rate of 5.15%</p>	<p>Recognized social housing companies also benefit from reduced VAT rates on their constructions and from reduced (regional) property tax rates.</p>
Czech Republic	Not relevant	There are no public social housing corporations.
Denmark	Not Effectively Subject To Tax	Social housing corporations approved by the public authorities are Not Effectively Subject To Tax.
Finland	<p>Government PSEs are Not Effectively Subject To Tax, assuming the properties owned are located within the relevant region of the Government PSE.</p> <p>Otherwise, NPOs and other companies are Effectively Subject To Tax.</p>	<p>There are around 800,000 rented flats in Finland, of which about half were built using finance from the national ARAVA loan scheme or interest subsidy loans. These flats are owned by local authorities, usually municipalities, or non-profit organisations. Tenants are eligible for state-subsidised rented accommodation according to their need, their income and their financial circumstances.</p> <p>Pursuant to Section 21 of the Finnish Income Tax Act, the state, the municipalities and religious communities are Effectively Subject To Tax only in respect of their business profits. However, a municipality is Not Effectively Subject To Tax and profits derived from business activities conducted in its own area do not qualify as a business.</p> <p>There are also flats or estates owned by the private sector (i.e. limited liability companies, private persons, non-profit organisations) used for social purposes. These organisations, including NPOs, are Effectively Subject To Tax in connection with letting the flats. Insofar as the organisation involved qualifies as a NPO, it is in principle Effectively Subject To Tax on income from real estate.</p>

France	Not Effectively Subject To Tax.	Social housing corporations are Not Effectively Subject To Tax if at least 50% of the shares in the legal person are held by a Government PSE ('collective').
Germany	Effectively Subject To Tax, unless application of a transition measure.	Taxable in principle, but certain social housing entities have been able to claim an exemption on the basis of a transition measure under Section 34(16) of the German CIT Act, the application of which had to be claimed by 30 September 2008 at the latest. No other specific exceptions or provisions apply, nor are such specific measures expected. No investigation pending or expected from the EC.
Italy	<p>Effectively Subject To Tax, but mitigating measures apply.</p> <p>(Tax rate is reduced by 50%. Only 85% of rental income is taxed.)</p>	<p>Italian law expressly identifies entities entrusted with the construction and management of social housing. Act no. 560 of 24 December 1993 provides that "social housing facilities are (...) those acquired, built or restored (...) by the state, local public bodies, as well as by autonomous institutes for public housing (Istituti Autonomi per le Case Popolari or IACPs and their consortia, whatever their designation, and governed by Regional law." The above IACPs have been replaced by Territorial Enterprises for Public Housing (Aziende Territoriali per l'Edilizia Residenziale or ATERs). The transition from IACPs (public bodies) to ATERs (economic public bodies) is still ongoing and both entities coexist in the Italian legal system. Both IACPs and ATERs are created by law and control over them is exercised by public bodies.</p> <p>No exemption from Corporate Income Tax ("IRES") is provided for IACPs. The activities performed qualify as commercial activities and therefore they are subject to CIT as confirmed by Resolution 09/07/1975, n. 11/906, of the Ministry of Finance.</p> <p>ATERs fall under the same regime, as confirmed by Revenue Agency Resolution 16/11/2007, n. 333/E, and by the Decision of the Provincial Tax Commission of Pescara 20/05/2010, n. 821. IACPs and ATERs are also subject to Regional Tax on Productive Activities (IRAP).</p> <p>IACPs and ATERs enjoy specific tax relief:</p> <ul style="list-style-type: none"> ● IACPs and ATERs are entitled to the tax relief laid down in Article 6 of Presidential Decree n.601/73, which provides for the application of a CIT tax rate reduced by half. ● As a derogation from the standard regime, income from the buildings leased for social housing purposes is set at an amount equal to the rent, reduced by 15%, regardless of the costs actually incurred (Article 185 of the Italian CIT Act). <p>The Conference of the Regions and Autonomous Provinces issued an opinion on 13 June 2013, by which amendments to regulations on social housing and taxation of IACPs (and ATERs) have been proposed. The changes concerning tax rules relate to the method of determining income (Articles 185 and 90 ITC), as well as the method of determining the impairment of receivables for tax purposes (Article 106 ITC). Additional amendments have been proposed.</p> <p>In February 2011, the European Commission started a procedure in order to assess whether the 50% corporate tax reduction under Article 6 of Presidential Decree n. 601/73 could constitute state aid.</p>

The Netherlands	Effectively Subject To Tax	Social housing corporations are Effectively Subject To Tax on all their income. That is a deviation from the general rule that foundations and associations are normally only taxed on business income. In addition, social housing corporations are subject to a special tax imposed on rental income from social housing.
Portugal	Not Effectively Subject To Tax	Pursuant to Act no. 159/99 as amended by Act no. 67-A/2007, actions, decisions and initiatives on the social housing sector are the preserve of municipal bodies (e.g. municipal assemblies, municipal councils). The state and municipalities are Not Effectively Subject To Tax, according to Section 9(1)(a) of the CIT Act). However, this exemption does not cover capital income derived by such entities. Rental income is not regarded as capital income and is therefore tax-exempt.
Sweden	Not relevant	No social housing corporations.
UK	Effectively Subject To Tax	Co-operative housing associations (NPO) are tax-exempt for certain rents from members and gains on sale of property. Self-build societies. Exemptions include certain rents from members and gains on sale of property.
US	Not relevant	No public social housing corporations.

3.4 Public transport services (including seaports and airports)

Country	Tax treatment	Comments
Austria	Effectively Subject To Tax and mitigating measures	<p>Public transport organisations in the public sector can be run in the following ways:</p> <ul style="list-style-type: none"> As part of a public body itself, i.e. as commercial enterprises (“BgA” – Section 2 of the Austrian CIT Act, subject to CIT under the conditions laid down in the general part of the questionnaire – answer to Question 6. above). Separated from a public body in a private legal form (e.g. a GmbH) and owned by the public body. The public body (federation, province, municipality, etc.) must hold all of the shares. <p>The public transport activities are in principle Effectively Subject To Tax in both cases. The Austrian CIT Act does not provide exemptions in this connection. However, commercial enterprises of a public body acting in public transport, for instance, can be concentrated under centralised management and thus set off losses between them (Section 2(3) of the Austrian CIT Act).</p>
Belgium	Not Effectively Subject To Tax but to Legal entities tax	<p>A number of companies that provide public transport and port services are not liable to CIT, but to legal entities tax including: NV Waterwegen en Zeekanaal, NV De Scheepvaart, CVBA Autonome Haven “du Centre et de l’Ouest”, Maatschappij der Brugse Zeevaartinrichtingen, Haven van Brussel, the municipal autonomous ports of Antwerp, Oostende and Ghent and the autonomous ports of Liège, Charleroi and Namur, Waalse Regionale Maatschappij voor Openbaar Personenvervoer and the operating companies associated with it, Vlaamse Vervoermaatschappij and the autonomous operating entities within that company, de naamloze vennootschap van publiek recht Infrabel, the Belgian rail road infrastructure company, and Maatschappij voor het Intercommunaal Vervoer in Brussels.</p> <p>In practice, submission to legal entities tax implies in this case that they are only subject to withholding taxes (with many exceptions).</p>
Czech Republic	Not relevant	No special regime.
Denmark	Public transport tax-exempt Transport of goods taxed	<p>Airports and ports are not subject to CIT if they are open for public transportation and profit is not distributed to the owners. Operators of public transport (buses, trains) are generally Liable To Tax.</p> <p>Transport and transshipment of goods by ports is a taxable activity.</p>
Finland	Effectively Subject To Tax, plus important mitigating measures.	<p>Some ports are public corporations, i.e. state enterprises, while others have already been incorporated as a result of impending amendments to municipal legislation and because of EU law.</p> <p>Passenger transport on railways is subject to a monopoly of VR Group, which is owned by the state (passenger transport monopoly until 2024, extended in 2013 from 2019 to 2024).</p> <p>Most airports are managed by the state-owned corporation, Finavia Corporation, which maintains the airport network and the navigation system. The two airports that are not managed by Finavia are owned by a foundation and a municipality.</p>

		<p>For other public transport, the municipality is required to provide the services by deploying buses or trams. However, the municipality is not required to provide the service itself as it can buy the service directly from a third party. For example, HSL (Helsinki Regional Transport Authority) is a federation of municipalities that provides public transport in the Greater Helsinki Area for its member municipalities.</p> <p>Pursuant to Section 21 of the Finnish Income Tax Act, the state, municipalities and religious communities are Effectively Subject To Tax in respect of business profits only. The state has tax concessions if specific transportation is carried on for the purposes of state institutions. A municipality is Not Effectively Subject To Tax in respect of profits derived from business conducted in its own area.</p>
France	Government PSEs are Not Effectively Subject To Tax. Other entities are Effectively Subject To Tax, but substantial mitigating measures are applicable under circumstances.	<p>Ports ('ports autonomes') are tax-exempt for their port activities. In broad terms they are, however, Effectively Subject To Tax for activities that are not closely related to their port activities, e.g. education.</p> <p>The larger airports (Paris and Nice) are Effectively Subject to Tax. Smaller (local) airports are not Effectively Subject To Tax if they are operated as a Government PSE.</p> <p>If a public transport company (buses, trains) is held as a legal person, it is Effectively Subject To Tax, but if it is held as a 'régie' it is Not Effectively Subject To Tax.</p>
Germany	Government PSEs are not liable to tax for their public activities (safety/security). Other entities are Effectively Subject To Tax.	<p>There are no specific provisions for transport, etc. This sector is constantly monitored for state aid. Several investigations are under way, for instance with respect to certain airports. No specific changes are expected in the German CIT Act.</p> <p>In so far Government PSEs conduct the activities, they are only Liable To Tax in so far they qualify as a business (BgA). This is typically not the case with respect to activities which for instance aim to secure the safety of transportation (public service). When it is governed by private law, they are Effectively Subject To Tax.</p>
Italy	Effectively Subject To Tax, but specific beneficial provisions apply.	<p>Entities operating in the field of public transport and infrastructures (ports and airports) are different in type and legal structure depending on the specific sector, such as:</p> <ul style="list-style-type: none"> ● Ports: ports are managed by Port Authorities. Port Authorities are considered to be public non-commercial entities aimed at pursuing specific functions of public interest (see Council of State, Opinion of 9 July 2002, no. 1641 and Revenue Agency Resolution n. 40/E of 16 March 2004). ● Airports: the land and buildings of airports are owned by the state, which makes them available (free of charge) to a public body (ENAC) which, in turn, grants the use of the land and airport property to private management companies, for an annual fee. ● Public transport: local authorities can issue new concessions for public services of economic relevance employing the following entities: <ul style="list-style-type: none"> — private companies, selected by means of public and open tendering procedures; — jointly publicly/privately owned (hybrid) companies; wholly publicly owned companies.

	<p>In jointly public/private hybrid companies:</p> <ul style="list-style-type: none"> ● the selection of the private shareholders is made by means of competitive procedures; ● the public entity owns a quota of share capital no smaller than one-fifth; <p>in public/private hybrid companies, there is a possibility for the public shareholder to acquire a “golden share” that allows for the exercise of special powers provided by law.</p> <p>Incentives provided by the tax law includes the following:</p> <ul style="list-style-type: none"> ● transfers of movable and immovable property performed by municipalities, provinces and consortia of such institutions in favour of public/private hybrid companies performing local public services are exempt from any other tax or charge of any kind or nature (Legislative Decree of 18 August 2000, n. 267). It is maintained that such exemption operates in respect of all applicable taxes, including CIT and VAT, as indirectly confirmed by the Revenue Agency in Resolution n. 375/E/2008 and relevant literature. ● Article 33(1) of Decree Law 179/2012, in order to facilitate the construction of new infrastructures, awards, on an experimental basis, to holders of Public Private Partnership (PPP) contracts, including public/private project companies, a tax credit for IRES and IRAP purposes in relation to the construction and management of the work. The tax credit is established for each project to the extent necessary to achieve the balance of the financial plan and within the maximum limit of 50% of the cost of the investment. ● Generally, land is not subject to depreciation (and therefore no cost is deductible for IRES purposes), since its useful life is not limited in time, except for cases in which, because of its particular use, the land itself is subject to effective decay (see Ministerial Decree of 31 December 1988). This is the case, for instance, for: <ul style="list-style-type: none"> 1) runways of airports (1% rate); 2) land used for railways (1% rate); 3) land used for motorways (1% rate). ● Companies providing public transport services are not subject to the Italian dummy company rules. ● Contributions provided by public entities to companies performing public transport services in order to cover operating deficits are Not Effectively Subject To Tax (see also the Resolution of the Ministry of Finance of 8 October 1997, n. 202/E). However, those contributions are subject to IRAP (see Supreme Court judgment n. 19610 of 16 September 2010). <p>In February 2011, the European Commission started a procedure in order to assess whether the 50% corporate tax reduction under Article 6 of Presidential Decree n. 601/73 could constitute aid.</p>
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The Netherlands	<p>Liabile To Tax in so as far as Government PSEs and Government Controlled PSEs are involved with the exception of public transportation of persons within the boundaries of a municipality which are Not Liabile To Tax.</p> <p>Other entities than the entities mentioned above are Effectively Subject To Tax.</p>	<p>Public transport provided by Government PSEs (via rails or buses) or Government Controlled PSEs (holding 100% of the shares) are Liabile To Tax. An exception applies with regard to the provision of public transport of persons inside the boundaries of a municipality (the CIT Act states that its activities should almost completely encompass (in Dutch; "uitsluitend of nagenoeg uitsluitend") such activities). The Dutch Railways are Effectively Subject To Tax, since their activities cover the whole of the Netherlands.</p> <p>Public transport provided by private companies (not a Government Controlled PSE) is Effectively Subject To Tax.</p> <p>Ports (air and sea) are not liable to tax provided the activities are conducted by a Government PSE or a Government Controlled PSE. However, the national airport (Luchthaven Schiphol N.V.) is Effectively Subject To Tax on basis of a specific stipulation in the CITA.</p>
Portugal	Effectively Subject To Tax	<p>Portuguese public transport (bus, metro and train) is provided by companies owned, either directly or indirectly, by the Portuguese state, qualifying as public corporations and private companies.</p> <p>Public corporations are owned by the state.</p> <p>No restrictions apply to the quality of the shareholders of private companies.</p> <p>Both the public corporations and private companies that provide public transport are subject to CIT.</p> <p>According to recent news releases of the Portuguese Government (Ministry of Transport), the Portuguese state is considering the privatisation of a bus public transport company in Lisbon (Carris – Companhia Carris de Ferro de Lisboa), the Lisbon and Porto underground (Metropolitano de Lisboa EPE and Metro do Porto SA) and Portuguese airline TAP Portugal.</p> <p>(Airport and seaport infrastructures are generally managed by joint stock companies, which are Effectively Subject To Tax.</p>
Sweden	Effectively Subject To Tax	Most providers of public transport etc. are Effectively Subject To Tax.
UK	Government PSEs are not liable to tax. Government Controlled PSEs and other entities are Effectively Subject To Tax.	<p>Where public transport services are provided by local authority bodies (e.g. Transport for London or TfL) those bodies are exempt from corporation tax but their subsidiaries are assessable individually for tax in the same way as other companies which provide public transport services. TfL has three direct subsidiaries, for example, one of which – Transport Trading Ltd – has more than 20 subsidiaries of its own. TfL is partly funded by the Transport Grant paid by the Department for Transport to the Greater London Authority, which in turn pays the grant to the organisation. The provision of transport services has been broadened by privatisation and joint public/private partnership initiatives.</p>
US	Not relevant	No special regime.

E. Comparative synthesis

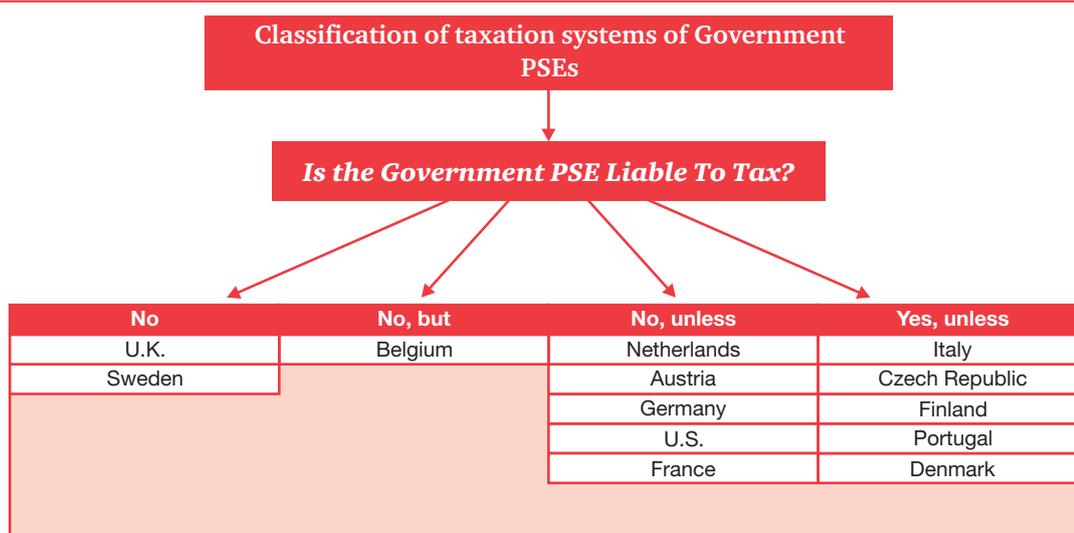
In this paragraph we compare the different tax systems of Government PSEs, Government-Controlled PSEs and NPOs.

With respect to each of the mentioned groups we have created a synthesis based on dominant characteristics. The use of these characteristics here is to function as ‘guiding principle’ only and certainly not as a representation of undisputable views. If only since such an interpretation bears the risk of focussing on

differences and underestimates the possible existence of for instance common end results in terms of effective tax rates. Yet we find such an approach defensible in view of the introductory character of our research.

We look at the different tax systems primarily from a Dutch perspective. From another point of view (another country) facts may be interpreted differently. We encourage this variation in approaches and interpretations.

1. Government PSEs



The table categorises the countries involved based on four dominant characteristics:

- 1) **Not Liable** To Tax or **‘No’**;
- 2) **Not liable** to CIT but effectively subject to another federal tax or **‘No, but’**;
- 3) **Not Liable** To Tax **unless** Liable To Tax or **‘No, unless’**;
- 4) **Effectively Subject** To Tax unless **unless** at least Not Effectively Subject To Tax or **‘Yes, unless’**.

The table shows that within the selected group of countries the diversity based on the identified characteristics is not unsubstantial.

Although at first sight the position of the Netherlands does not appear to be less exceptional than that of Belgium, Sweden and the UK⁷², this observation is in our view at least to some extent illusory.

In Sweden a Government PSE is never Liable To Tax if it conducts business activities. If a Government PSE is involved in commercial activities, those activities are

⁷² The tax position of Government PSEs in the UK is presented with ‘No’. If our comprehension of the UK system is correct, the scope of the term ‘company’ in the CIT Act is that much wide that it potentially also encompasses Government PSEs. At the ‘same time’ the CIT Act explicitly stipulates that for instance local authorities are Not Liable To Tax. Therefore we thought it reasonable to characterize the UK taxation system for Government PSEs with ‘No’.

carried on by a separate entity (a Government-Controlled PSE).

As far as the UK is concerned, our impression is that the role and activities of Government PSEs are much more restricted to statutory functions and non-business activities. In other words much stronger than for instance in the Netherlands. Business or competition-distorting activities are more dominantly carried on via the market and/or via separate entities and as a consequence they qualify as normal 'chargeable' companies for UK CIT purposes.

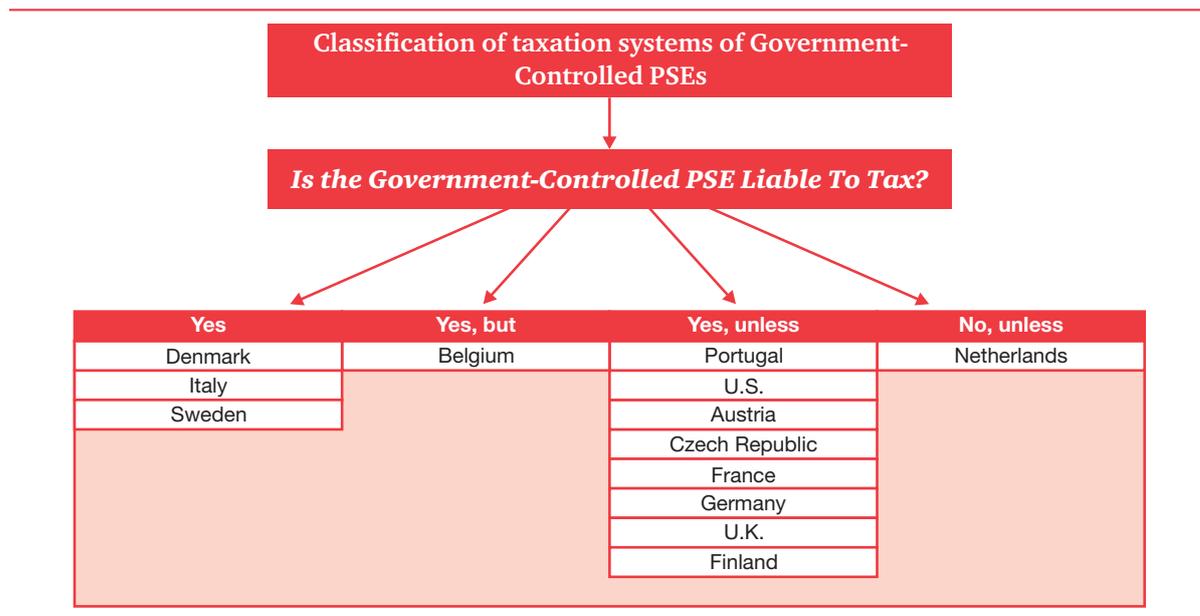
The special position of Belgium relates not so much to the fact that Government PSEs are not liable to CIT but rather to the fact that its CIT Act forces them at the

same time into a Liable and Effectively Subject To Tax position for its legal entities tax.

The position of the Netherlands in the 'No, unless - group' but also in comparison to the other countries is rather solitary. A key reason for this observation is in the first place that the CIT liability for Government PSEs does not encompass 'services' but only activities which qualify as 'non services'. A second reason relates to the fact that the list of 'CIT liable 'non service' activities' encompasses a: 1) limitative list which is 2) really relatively small in reach.

We have found it interesting that in Finland municipalities are not effectively subjected to CIT in so far they are active within their own region. The EC, however, is now reviewing at least parts of this system as we understand.

2. Government Controlled PSEs



The table categorises the countries involved based on four dominant characteristics:

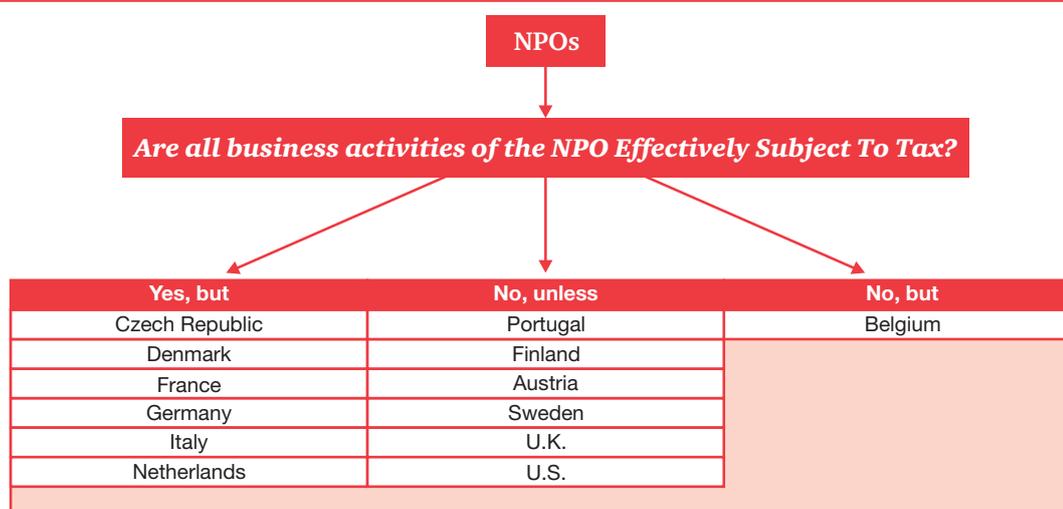
- 1) **Liable** To Tax or '**Yes**';
- 2) **Effectively subject** to another federal tax but not to CIT or '**Yes, but**';
- 3) **Effectively Subject** To Tax unless exemptions and/or mitigating measures apply or '**Yes, unless**';
- 4) **Not Effectively Subject** To Tax unless, at least Effectively Subject To Tax or '**No, unless**'.

The selected group of countries shows considerable diversity although the dominant system seems to be 'Yes, unless'. It should be beared in mind, however, that within the latter group quite different criteria are

applied to exclude under circumstances Government-Controlled PSEs from effectively being subjected to CIT. Criteria which are used are for instance the dominance of the shareholding position (Portugal), explicit exemptions (Germany, Austria) and applicability on basis of a NPO analogy (U.K).

Here the position of the Netherlands seems particularly exceptional since none of the other countries we have reviewed excludes Government-Controlled PSEs from liability to profit taxation based on an analogy with the tax treatment of Government PSEs.

3. NPOs



The NPO table categorises the countries based on three dominant characteristics:

- 1) **Effectively Subject To Tax** but exemptions and/or mitigating measures can be applied under circumstances or **'Yes, but'**;
- 2) **Not Effectively Subject To Tax** unless the business income is insufficiently related/supportive to/of the objective(s) of the NPOs or **'No, unless'**;
- 3) Not effectively liable to CIT but effectively to another federal tax or **'No, but'**.

The table shows less diversity between the countries in comparison to the differences we have seen regarding the taxation of Government and Government-Controlled PSEs⁷³.

The Dutch NPO taxation system does not deviate in its character from the other countries.

4. Taxation of specific activities

As far as the taxation of specific activities is concerned our research shows a quite diverse picture. Annex 2 provides a summarizing overview.

Public health care, for instance, is in quite a few countries Not Effectively Subjected To Tax. In Portugal, healthcare is in principle Effectively Subject To Tax, although public establishments with legal personality and financial autonomy are Not Effectively Subject To Tax. In Italy, income generated from non-healthcare related services is taxed at a reduced rate. Private healthcare is taxable in most countries.

In transport, a diverse picture emerges not only with respect to public transport in general but also with respect to ports. Although the systems are diverse in their approach, it appears that overall they are not that different in their effects in some cases.

Public education and research are not effectively subjected to tax in quite a few countries.

5. Overall synthesis

In a lot of the countries an important criterion relates to the fact whether a PSE conducts a business. In principle every country applies its own definition of a business. To each of them also apply other idiosyncratic criteria which effectively can result in a reduction of the tax burden. At the same time each of such criteria bear considerable resemblance in them such as for instance the qualification 'for-profit' and 'commercial' and 'non-profit' and 'non-commercial'.

Below we will elaborate on some specific criteria which we have come across in our review around the terms:

- 1) Profit;
- 2) Competition; and
- 3) State subsidies.

73 As far as Germany is concerned, the observation was made that in principle the system of the CIT Act exempts NPOs.

Re 1 Profit

Special tax provisions for PSEs may be justified because the organisation cannot distribute profits to shareholders.

In many countries the limitation of profit distribution and/or profit aim is an important criterion to apply an exemption or special provision. In Austria a market activity with an economically significant interest to generate income is taxable. In Italy realising a profit is one of the criteria for a commercial activity. The same holds for Germany. In the Netherlands the profit criterion is not very important for public bodies, because the business activities in a legal sense are in principle always taxable. With respect to NPOs, pursuing a profit is an independent criterion, but in practice this is overruled by the principle that if an organisation enters into competition, it will be taxable irrespective of its non-profit motive.

In Portugal an exemption is only granted if the organisation cannot distribute any profits. With regard to the exemption for NPOs the law requires that at least 50% of the net income that is tax-exempt within 4 book years is employed for the exempt purpose.

Re 2 Competition

In a number of countries, entering into competition is a criterion for liability to CIT. In Austria the *Betrieb gewerblicher Art* (BgA) is taxable because it enters into competition. In Finland the competition criterion is one of the elements that can lead to the existence of a (taxable) business. In Austria a NPO conducting a business in connection with its charitable purpose is tax-exempt provided that no distortion of competition occurs.

In Finland, competing in the public market is one of the conditions of a business activity. In France, the competition element plays a very important role in order to establish whether a Government PSE is Effectively Subject To Tax. The competition criterion is met if the entity conducts similar activities as for-profit entities.

In the Netherlands, the competition criterion does not play an independent role in respect to the tax treatment of Government PSEs. Indirectly, it played an important role when the list and the criteria in the CIT Act were created regarding the taxation of Government and Government-Controlled PSE. With regard to the taxation of NPOs the competition criterion is important if a foundation or association is assumed to conduct a taxable business with which it (also potentially can) compete(s) with activities of for-profit entities.

Re 3 State subsidies

PSEs very often receive subsidies in order to finance their activities. In some countries e.g. the Czech Republic these subsidies are not considered as taxable income.

In the Netherlands, government subsidies are treated as taxable income. Under certain conditions a NPO that is financed predominantly via subsidies is considered to have a non-profit purpose, but can still be taxed if the entity enters into competition with certain private entities. The conditions prescribe in broad terms that the subsidy must be repaid to the government or cannot be otherwise employed than in the course of the entity's activities. Moreover, the entity may not receive other income than subsidies or payments from the people for with the entity provides services and the entity receives subsidies from the government.

F. Summary of observations

- 1) In most of the countries reviewed Government PSEs and NPOs are/can be involved in commercial activities.
- 2) Governments PSEs, Government-Controlled PSEs and NPOs can enjoy reductions in tax burden via exemptions and/or other tax mitigating measures in most countries.
- 3) The underlying profit taxation systems in the countries show a considerable diversity.
- 4) The profit taxation system of the Netherlands can be characterised as exceptional as far as the taxation of Government PSEs and Government-Controlled PSEs is concerned. Key reasons for that are in the first place that their CIT liability does not encompass (commercial) 'services' but only activities which qualify as 'non services'. A second reason is that the CIT taxable 'non service' activities encompass a: 1) limitative list which is 2) relatively small in reach.
- 5) In quite a few of the other countries the main rule is that Government PSEs and certainly Government Controlled PSEs are taxable entities and liable to tax, certainly in so far they enter into some kind of competition with the market. But also certainly they are not always effectively subjected to CIT since they can claim exemptions and/or other tax mitigating measures.
- 6) Finland subjects municipalities not effectively to CIT in so far as they are active within their own region, although the EC is now reviewing at least parts of this system.
- 7) In most countries the activities regarding public healthcare, education and research are not effectively subjected to tax.
- 8) The Dutch system is in itself relatively transparent with respect to the interpretation of its tax effects.
- 9) The answer to the question whether the system in the Netherlands in view of its relatively exceptional position results in significant differences in CIT burden, cannot be answered on basis of our research. However, our preliminary thought based on what we have seen is that this is certainly not always the case.

Annex 1: Questionnaire

International benchmark study in respect of the treatment of public companies for corporate income tax purposes

1. Introduction

Given the current discussion in the Netherlands and Europe about the treatment of public companies for corporate income tax purposes, PwC Netherlands has approached the University of Tilburg (represented by Dr S.A. Stevens) to jointly set up a working group on this topic. As a result of the cooperation, PwC Netherlands and the University of Tilburg are working on an international benchmark study to obtain a comprehensive view of tax systems in other countries.

The Dutch government announced (on 21 May 2013), by way of a formal letter to the Dutch Parliament, that it will draft new legislation that will be presented to Parliament after the summer of 2014. It envisages that the new legislation will become effective as of 1 January 2016. At this stage, the wording of the new legislation is still under review. In the interest of our clients, PwC Netherlands seeks to have a balanced influence on the process. The best way in which to achieve this is to strengthen our role as a thought leader on this topic.

2. Rationale behind and purpose of this questionnaire

In order to strengthen our role as a thought leader, we feel that a comparative understanding of the CIT position of (legal) entities in other countries will prove to be vital in the support of our clients and business relations that undertake economic activities (PS actors). The questionnaire below aims to function as a starting point for acquiring such an understanding. Firstly we will provide you with a short outline of the Dutch system as it currently operates with regard to NL PS actors.

3. Instruction for completing the questionnaire

It is essential for our benchmark study that all the relevant articles/sections, case law, (local) regulations and literature/opinions, etc. are entered in the questionnaire.

Please feel free to add some questions, if you feel that it is a fundamental question for your country. If the textboxes are too small, please attach additional information.

Further to our accompanying email, we would appreciate it if you could provide us with the answers/information by 15 June 2013 at the latest.

4. Concise description of the Dutch CIT Act 1969

4.1 General

For a better understanding of our questionnaire, we will briefly explain the frequently-used definitions in the Dutch Corporate Income Tax Act 1969 ("CITA"). Based on the CITA, legal entities incorporated according to the rules laid down in the Netherlands Civil Code are subject to CIT in principle. These include "BVs" (private limited liability companies), "NVs" (public limited liability companies) and "cöoperaties" (cooperatives). "Stichtingen" (foundations) and "verenigingen" (associations) are subject to CIT only if and to the extent that they carry out business activities.

Legal entities governed by public law – e.g. the Kingdom of the Netherlands, provinces and municipalities – are not subject to CIT. In principle, legal entities incorporated under the provisions of the Netherlands Civil Code, yet are exclusively owned or controlled by legal entities governed by public law, are exempt from CIT.

4.2 Legal entities governed by public law

As mentioned above, legal entities governed by public law are in principle not subject to CIT. However, certain business activities carried out by legal entities governed by public law are explicitly brought within the scope of the CITA, although they are carried out by legal entities governed by public law. The CITA stipulates that the

following business activities carried on by legal entities governed by public law are always subject to CIT:

- 1) agricultural activities;
- 2) production activities⁷⁴;
- 3) mining activities;
- 4) trading activities other than the trading of real estate;
- 5) transportation activities not limited to public transport within the boundaries of a municipality⁷⁵.

The qualification of these activities as “business activities” basically means that they meet the requirements applying to an “enterprise” but without the necessity to pursue profits. A comparable rule applies to a foundation or association if all its board members can – directly or indirectly – be appointed or removed by legal entities governed by public law.

4.3 Legal entities governed by private law

Legal entities governed by private law not subject to Dutch CIT

Legal entities governed by private law are in principle subject to CIT. However, if these legal entities are exclusively owned by one or more legal entities governed by public law, these legal entities will not be subject to CIT, unless the legal entity governed by private law conducts a business as mentioned in 3.2 above. The same applies to foundations and associations if all their board members can – directly or indirectly – be appointed or removed by legal entities governed by public law.

However, some legal entities governed by private law are currently exclusively owned by Dutch legal entities governed by public law, but are explicitly made subject to CIT by mentioning them in the CITA. Examples include NV Airport Schiphol, ABN AMRO Group NV, Fortis Bank Nederland NV and their subsidiaries.

Legal entities governed by private or public law exempt from Dutch CIT

Apart from the provisions as described in 3.3 and above, the CITA also provides for some subjective exemptions for legal entities (either governed by private or public law) undertaking certain types of activities. The CITA subjectively exempts healthcare organisations and healthcare/life insurance companies, pension funds, libraries, etc.

74 Production activities includes the production, transportation or delivery of gas, electricity or heat, including businesses that develop, build and maintain the infrastructure required for these energy sources.

75 The public transport authorities in Amsterdam, Rotterdam and The Hague are not liable to tax, for instance, but the Dutch Railways are.

Questionnaire

General questions	Answer (please refer to relevant articles/sections, case law, (local) regulations and literature/opinions)
Do public bodies and/or non-profit organisations carry out economic (business) activities?	
For CIT purposes, is there a distinction between entities governed by public law and entities governed by private law?	
What is the definition of a public entity in your country? Is it possible for an entity governed by private law to qualify as a public entity?	
Are public entities (public bodies) and/or non-profit organisations liable to CIT in principle? If so, please explain how they are taxed.	
Are public entities liable to CIT in principle? If so, are they liable to CIT on all their activities, or can a distinction be made between their activities?	
If taxation is limited to business activities, how are these activities defined? How should a distinction be made between business activities and non-business activities?	
Is 'operating a business' a relevant criterion in determining the liability to CIT? If so, what are the conditions for qualifying as a business?	
Does your country's corporate income tax act provide for an exemption for public entities or non-profit organisations? If so, what are the specific conditions?	
Is there a debate in your country about the justification of special tax regimes or tax exemptions for public bodies and/or non-profit organisations from the perspective of creating a level playing field?	
Are profit appropriation and/or a non-profit motive in any way relevant in determining the liability to CIT?	
Are there any other exceptions or incentives in the (corporate income) tax law that apply to public bodies and/or non-profit organisations?	
How is taxable income determined if the CIT liability? For instance, is it permitted to value all assets and liabilities at fair market value (including goodwill)? Does this mechanism apply to all (corporate) taxpayers equally?	
Are there (any) uncertainties in the corporate tax regulations governing public entities, for instance in the definitions of terminology used?	
Are there any signs, e.g. in documents, plans, notes and/or comments, that show that the current regulations will be amended in the near future? If so, how?	
Are you aware of any infringements of EU law with regard to the taxation of public bodies and/or non-profit organisations?	
Has the European Commission started an investigation in your country with regard to a possible infringement of the state aid rules or other EU law?	
Does PwC Tax provide any services in respect of CIT to any public bodies (public companies as mentioned in the introduction or entities governed by public law)?	

Questions relating to sector	Healthcare organisations (please refer to relevant articles/sections, case law, (local) regulations and literature/opinions)
What types of organisations/corporations can be distinguished (recorded in a public)?	
Are there any requirements with respect to the quality of the shareholder (e.g. public/private/hybrid entities)?	
Does your corporate income tax act provide for an exemption? If so, what are the specific conditions?	
Are there any other exceptions or incentives in the (corporate income) tax law that may apply? If so, what are the specific conditions?	
Are there any signs, e.g. in documents, plans, notes and/or comments, that show that the current regulations will be amended in the near future?	
Has the European Commission started an investigation with regard to a possible infringement of the state aid rules or other EU law?	

Questions relating to sector	Social housing corporations (please refer to relevant articles/section, case law, (local) regulations and literature/opinions)
What types of organisations/corporations can be distinguished (recorded in a public plan/university/private)?	
Are there any requirements with respect to the quality of the shareholder (e.g. public/private/hybrid entities)?	
Does your corporate income tax act provide for an exemption? If so, what are the specific conditions?	
Are there any other exceptions or incentives in the (corporate income) tax law that may apply? If so, what are the specific conditions?	
Are there any signs, e.g. in documents, plans, notes and/or comments, that show that the current regulations will be amended in the near future?	
Has the European Commission started an investigation with regard to a possible infringement of the state aid rules or other EU law?	

Questions relating to sector	Institutions of education and research organisations (please refer to relevant articles/sections, case law, (local) regulations and literature/opinions)
What types of organisations/corporations can be distinguished (recorded in a public plan/university/private)?	
Are there any requirements with respect to the quality of the shareholder (e.g. public/private/hybrid entities)?	
Does your corporate income tax act provide for an exemption? If so, what are the specific conditions?	
Are there any other exceptions or incentives in the (corporate income) tax law that may apply? If so, what are the specific conditions?	
Are there any signs, e.g. in documents, plans, notes and/or comments, that show that the current regulations will be amended in the near future?	
Has the European Commission started an investigation with regard to a possible infringement of the state aid rules or other EU law?	

Questions relating to sector	Public transport /ports and airports (please refer to relevant articles/sections, case law, (local) regulations and literature/opinions)
What types of organisations/corporations can be distinguished (recorded in a public plan/university/private)?	
Are there any requirements with respect to the quality of the shareholder (e.g. public/private/hybrid entities)?	
Does your corporate income tax act provide for an exemption? If so, what are the specific conditions?	
Are there any other exceptions or incentives in the (corporate income) tax law that may apply? If so, what are the specific conditions?	
Are there any signs, e.g. in documents, plans, notes and/or comments, that show that the current regulations will be amended in the near future?	
Has the European Commission started an investigation with regard to a possible infringement of the state aid rules or other EU law?	

Annex 2:

	Healthcare	Education	Social Housing	Transportation
Austria	NESTT	ESTT	NESTT / ESTT	ESTT (1)
Belgium		ESTT (9)		ESTT (9)
Czech Republic	ESTT (1)	ESTT (1)	N/R	N/R
Denmark		NESTT	NESTT	NESTT / ESTT
Finland	NESTT/ESTT (2)	NESTT (4)	NESTT / ESTT (4)	ESTT (1)
France	NESTT / ESTT (3)	NESTT / ESTT (3)	NESTT	NESTT / ESTT (1)
Germany	NESTT/ESTT (1) (4)	NESTT (1)	ESTT	NLTT / ESTT (4)
Italy	NESTT/ESTT (1) (4)	NESTT / ESTT (1)	ESTT (1)	NESTT / ESTT (1)
Netherlands	NESTT	NLTT / NESTT / ESTT	ESTT	NLTT/ESTT (5)
Portugal	ESTT / NESTT(6)	NESTT / ESTT	NESTT	ESTT (1)
Sweden	NESTT (7)	NESTT	N/R	NESTT
UK	NLTT (8)	NLTT / NESTT (10)	NESTT / ESTT (1)	NLTT/ESTT
US	NESTT	NESTT / ESTT	N/R	N/R

NLTT	Not Liable To Tax
NESTT	Not Effectively Subject To Tax
ESTT	Effectively Subject to Tax
N/R	Not Relevant

- 1 Special tax mitigating measures
- 2 Effectively Subject to tax for business activities for services provided outside the borders of the municipality
- 3 Not Effectively Subject to tax insofar the institution is public financed and Effectively Subject to tax if it compete with private healthcare/educational services
- 4 Effectively Subject to tax for (unrelated) business income
- 5 Port authorities NLTT, railway and bus transportation ESTT with the exception of transport of persons inside the boundaries of a municipality (NLTT).
- 6 But public establishments with legal personality and financial autonomy are Not Effectively Subject to tax
- 7 A Commercial health care organization (not a NPO) is liable to tax
- 8 For government controlled PSEs. However certain commercial activities are Effectively subject to tax. Companies are Effectively subject to tax
- 9 Not subject for CIT but for legal entities tax.
- 10 Other Education providers are NESTT, but not insofar they generate unrelated business-income

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