

# CHARITIES AND TAXATION: MAIN TRENDS IN COMPARATIVE PERSPECTIVE AT THE BEGINNING OF THE 21<sup>ST</sup> CENTURY

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Taxation in the modern society has become to play the role of one of important and efficient instruments of a state in carrying out its social and economic policy. Eminent French scholar Maurice Duverger wrote shortly after the middle of the 20<sup>th</sup> century in his famous book “Public

Finances” that the tax “ceases to be the grain of sand that interferes with the gears in order to become one of the regulators and engines of the machine. The tax levies on prices and incomes do not only aim to cover the expenses of the State apparatus, but to ensure a certain correction

and a certain orientation of the mechanisms of the market. The “interventionist” goal is thus added to the “financial” goal; the tax becomes an essential instrument of the economic policy of the State, and also of its social policy (action on the income by the taxation).<sup>1</sup> The conclusions made by M. Duverger do not lose their relevance today. There is neither need nor necessity to prove or explain that charitable activity helps the State, where it unfolds, to resolve social problems. By means of taxation States offer incentives to support tendencies consistent with their preferences in social policy and put constraints in order to impede tendencies, which are considered to be undesirable. Of course, with change of a Government preferences and undesirability may shift, however Governments act on behalf of their States. So, a taxation goal to maintain by collective efforts a State, which seemed to be unique in the times of Adam Smith, who wrote that “the necessary expense of any great and civilized state... must, the greater part of it, be defrayed by taxes of one kind or another”<sup>2</sup> (with his four maxims [principles] “with regard to taxes in general”<sup>3</sup> – equity understanding as proportionality [“the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities”<sup>4</sup>]; certainty as opposing to arbitrary actions [“the time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor, and to every other person”<sup>5</sup>]; convenience for the contributor [“the tax is levied at the time when it is most likely to be convenient for the contributor to pay; or, when he is most likely to have wherewithal to pay”<sup>6</sup>]; economical approach [“every tax ought to be contrived as both to take out and to keep out of the pockets of the people as little as possible,

over and above what it brings into the public treasury of the state”<sup>7</sup>), is added by a taxation goal to regulate economic and social State policies. Therefore, it is taken into consideration in the present article that any contemporary State uses taxation as a regulatory tool in the sphere of charitable activity.

### Tax Exemption

In July 2011, the Russian Tax Code<sup>8</sup> was amended, and these amendments substantially improved the taxation of non-commercial organizations. For example, non-commercial organizations no longer have to pay profit tax or value added tax (VAT) on the value of in-kind contributions (services or property rights) they receive as a participant of charitable activity, and such transfer of property or property rights should be gratuitous. Moreover, the amendments extend VAT exemptions previously applied to state budget funded institutions providing social services (i.e. in the areas of culture, art, health care, education, and services to the needy) to non-commercial organizations providing the same services. Membership non-commercial organizations do not pay taxes on the value of their members’ fees.

In the United States of America (USA) under Section 511 of the Internal Revenue Code (IRC),<sup>9</sup> a Section 501(c) organization (i.e. officially in accordance with IRC’s Article 501[c] recognized charitable organization) is subject to tax on its “unrelated business income”, whether or not the organization actually makes a profit, but not including selling donated merchandise or other business or trade carried on by volunteers, or certain bingo games. Disposal of donated goods valued over 2.500 dollars, or acceptance of goods worth over 5.000 dollars may also trigger special filing and record-keeping requirements. The Internal revenue regulations are used not only to determine if the organization is exempt

<sup>1</sup> Duverger, M. *Finances publiques*. 6-me éd. P.: Presses Universitaires de France, 1968. P. 469-470.

<sup>2</sup> Smith, A. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Vol. III, 5<sup>th</sup> ed., L.: Printed for A. Strahan; and A. Cadell, MDCCLXXXIX. P. 254.

<sup>3</sup> *Ibid.* P. 255.

<sup>4</sup> *Ibid.* P. 255.

<sup>5</sup> *Ibid.* P. 256.

<sup>6</sup> *Ibid.* P. 257.

<sup>7</sup> *Ibid.* P. 257.

<sup>8</sup> In the present article Tax Code of Russian Federation is cited from: <http://nalog.garant.ru/fns/nk/11e2106fa4ec328ea2d88df540010b52/>

<sup>9</sup> In the present article the USA Internal Revenue Code is cited from: <https://www.law.cornell.edu/uscode/text/26>

from tax under the organization's activities as a non-profit organization. If the organization purpose is one of those described in section 501(c)(3) of the Internal Revenue Code, it may apply for a ruling that donations to it are tax deductible to the persons or business entities who make them. The organization itself will be exempt from taxation as long as it does not engage in unrelated business activities. As well the Internal Revenue Service (IRS) has enacted intermediate sanctions should the members of the organization engage in practices that may excessively benefit any of the organizations members (or officers, directors, etc.) rather than revoking the organization's exempt status (which was the only option available before the adoption of intermediate sanctions) the IRS may now levy a penalty on the organization for engaging in a transaction that resulted in a private inurement or private benefit.

In China in accordance Article 84 of the Implementing Regulations of the Enterprise Income Tax Law (the official title of the Regulations is 中华人民共和国企业所得税法实施条例), a "qualified not-for-profit organization" (term appeared in Article 26(2) of the Enterprise Income Tax Law [the official title of the Law is 中华人民共和国企业所得税法], whose amended version came into force on the 1<sup>st</sup> of January of 2008) is defined as an organization that concurrently meets the following conditions: "(1) completed the registration for not-for-profit organizations according to law; (2) engage in public welfare activities or not-for-profit activities; (3) the income obtained is used for the public welfare or not-for-profit undertaking as registered, approved, or stipulated in the charter with the exception of the reasonable expenses relating to the organization in question; (4) the properties and the fruits thereof are not to be distributed; (5) an organization whose properties, in the case of deregistration, shall be used for public welfare or not-for-profit purposes or shall be donated to another organization of similar nature and tenets, and shall be publicized to the general public; (6) the founder shall not reserve or enjoy any property right to the properties he gave to the organization in question; (7) the expenses for the salaries and fringe benefits of the staff members are controlled within

the prescribed proportion, and none of the organization's properties shall be distributed in any disguised manner".<sup>10</sup> Such qualified not-for-profit organizations are exempt from the enterprise income tax according to mentioned Law and Regulations. Meantime, some experts say that only certain types of income, such as donate income, are eligible for this benefit.<sup>11</sup> However, after adoption of the Law on Charities (the official title of the Law is 中华人民共和国慈善法),<sup>12</sup> which entered into force on the 1st of September of 2016, and the Law on the Management of the Activities of Overseas NGOs within Mainland China (the official title of the Law is 中华人民共和国境外非政府组织境内活动管理法),<sup>13</sup> which took effect on the 1st of January of 2017, Chinese taxation legislation is being in the process of reformation. Certain steps forward have been made, such as issuance on the 10th of May of 2016 by the Ministry of Finance and the State Taxation Administration of the Notice on Questions in Regard of Corporate Income Tax Policy dealing with Equity Donations to Welfare Public Organizations (official title of the Notice is 关于公益股权捐赠企业所得税政策问题的通知) and an announcement made on the 1st of April of 2016 jointly by the Ministry of Finance, the General Customs Administration, and the State Taxation Administration, according to which there would be no import tariff or value-added taxes (VAT) levied on materials from foreign donors used directly for charity.<sup>14</sup> But what is expected is a complex modification of tax legislation in light

<sup>10</sup> Mode of access: <http://www.chinatax.gov.cn/n810341/n810765/n812176/n812748/c1193046/content.html>

<sup>11</sup> China Philanthropy Law Report. Washington: International Center for Not-for-Profit Law, 2018, p. 30.

<sup>12</sup> A bilingual (Chinese and English) text of the Law is available at: <http://www.chinadevelopmentbrief.cn/wp-content/uploads/2016/04/Charity-Law-CDB-Translation.pdf>

<sup>13</sup> A bilingual (Chinese and English) text of the Law is available at: <http://www.chinadevelopmentbrief.cn/wp-content/uploads/2016/05/Law-on-Management-of-Activities-of-Overseas-NGOs-CDB-Translation-.pdf>

<sup>14</sup> See: China Philanthropy Law Report. Washington: International Center for Not-for-Profit Law, 2018. P. 31-32.

of the new laws and regulations dealing with charity enacted recently.

It is worth noting that there are countries, which have no intention to make non-governmental organizations, including charities, to taxes exempted. Thus, in Eritrea the 2005 Proclamation No. 145/2005 to Determine the Administration of Non-Governmental Organizations<sup>15</sup> prescribes that non-governmental organizations are obliged to “pay taxes and/or duties on all goods which they import into Eritrea” (Article 6[9]) and to “ascertain that an employee pays income tax on income earned from employment” (Article 6[10]). Certainly, everybody is supposed to pay taxes, but when it is stressed in an Act, specially devoted to non-governmental organizations without mentioning in this Act about any probable tax benefits, it is clear that tax exemption of non-governmental organizations is not provided for. Taking into consideration that “the activities of every NGO shall be limited to relief and/or rehabilitation works” (Article 7[1]), which, certainly, assist the State (in this case of Eritrea) to resolve actual social problems, such avoidance, which is, obviously, not encouraging, to give tax exemptions is an exception to a general rule existing informally but reasonably in the overwhelming majority of countries in order to promote charitable activity. The mentioned exception to a general rule is contrary to a dominating tendency described in the present article; meanwhile, exceptions as usual confirm the existence of the rule itself.

### **Purposes of Federal or National Taxation Policies**

*Support, which encourages gifts to charities through charitable deduction*

In the United Kingdom of Great Britain and Northern Ireland (UK) individuals who donate via Gift Aid,<sup>16</sup> introduced by the 1990 Finance Act (the official title is An Act to

grant certain duties, to alter other duties, and to amend the law relating to the National Debt and the Public Revenue, and to make further provision in connection with finance),<sup>17</sup> are free from paying tax on that amount. Having been invented in the very beginning as a tool to be applied to cash donations made by individuals, it has been being used from 2006 and accepted as complying with Her Majesty Revenue & Customs standards for reclaiming tax on income earned by charitable shops, which act as an agent for a donor. Contrary to Gift Aid system for individuals, companies in the UK who give gifts to charities can claim tax on the amount back<sup>18</sup> from Her Majesty Revenue & Customs.

In the USA contributions made to federally recognized non-profit organizations (such as 501[c][3] entities) would typically be tax deductible for the person or entity giving the donation. Meantime, if the federal court decides that a non-profit organization is acting contrary to the laws its taxation benefits may be permanently revoked.

In Russian Federation in accordance with Article 219 of the Tax Code charitable contributions made by natural persons to institutions of culture, education, healthcare, etc., as well as contributions to religious organizations, are tax deductible for donors. However, a charitable contribution should be made in money form to be tax deductible; any contribution in kind is not considered for tax deduction. The upper limit for a contribution is 120.000 rubles, and in this case an amount of tax deduction would be 15.600 rubles, which is calculated in the following way: a sum of the contribution, i.e. 120.000 rubles in this case, is multiplied by 13% (natural persons' income tax rate) makes 15.500 rubles. Bigger amounts of contributions won't increase a sum of tax deduction.

*Equity in encouraging assistance to underprivileged*

Historically the relief of poverty was recognized as one of the charitable purposes.

<sup>15</sup> The text of this Proclamation in English language is available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81435/88425/F975805266/ERI81435.pdf>

<sup>16</sup> Details see on official site: <https://www.gov.uk/donating-to-charity/gift-aid>

<sup>17</sup> In the present article cited from: <http://www.legislation.gov.uk/ukpga/1990/29/contents>

<sup>18</sup> Mode of access: <https://www.inniaccounts.co.uk/guide/charity-donations-through-your-company/>

And still today the prevention and relief of poverty is recognized as a charitable purpose in all countries, where a charitable activity is recognized as such, although a list of charitable purposes is much longer in all countries, and certain purposes, which are recognized as charitable in this or that country, may not be recognized as charitable in other. But what about the prevention and relief of poverty, it is recognized as charitable everywhere. If in previous epochs the main task was supposed to be the relief of poverty, in modern times the prevention of poverty is added. So, it is considered now, that it is not enough to help poor people, but it is necessary to form conditions, which bring society to the extinguishment of poverty as a social phenomenon, and the efforts to create such conditions might be recognized as a charitable activity.

Today charitable activity is aimed at assistance not only poor people, but as well other underprivileged groups of population.

*Limitations for charities, relating to their specific taxation status, on non-profit activity*

**Peculiarities charities' legal status in certain countries**

In some countries there are certain restrictions, which are not common for the overwhelming majority of contemporary countries. For example, in Oman, an association may not “interfere in religious issues” or “hold public festivals or public lectures without obtaining a prior permission from the Ministry” (Law No. 14 of 2000 on Civil Societies<sup>19</sup>, Article 5). Non-governmental organizations in the United Arab Emirates cannot participate in “conferences, forums, assemblies or meetings outside the State” without receiving permission from the Ministry of Social Affairs (Federal Law No. 2 of 2008 In Respect of the National

Societies and Associations of Public Welfare, Article 17<sup>20</sup>). Similarly, in the United Arab Emirates an association must receive

<sup>19</sup> The official title of the Law is *تاسيس جمعيات مدنية* نوناق قنطلسلا نامع مقدر 14 قنسل 2000 نأشب The text of the Law in Arabic is on the official site of Omani Ministry of Justice: <https://www.moj.gov.om/Master.aspx#/>

<sup>20</sup> The text of the Law in English is available at: <http://www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf>, p. 8-9.

approval from the Ministry of Social Affairs prior to holding “conferences, forums, meetings, or events attended by foreigners” (Federal Law No 2 of 2008, Article 18<sup>21</sup>).

**Prohibitions on lobbying and political activity for charities**

Political activity and lobbying in the most general way are prohibited, for example, in Angola. Thus, Angolan Law of Association No. 14/91 of 11 May 1991<sup>22</sup> (Article 8) prohibits non-governmental organizations from participating in “all activities of state organs; electoral processes; and from influencing national policy through the government or parliament”.

In the USA organizations, which obtained a status in conformity with the section 501(c) (3) of the Internal Revenue Code, are absolutely prohibited from supporting political candidates, and are subject to limits on lobbying. They risk loss of tax-exempt status if violated.

So, under the Internal Revenue Code, all organizations, conforming its section 501(c) (3), are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made on behalf of the organization in favour of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes. Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities, including organizing public fora and publishing voter education guides, conducted in a non-partisan manner do not constitute prohibited political campaign activity. Besides, in the USA other activities aimed at encouraging citizens to participate in elections, such as voter registration and get-out-the-vote drives, would not be considered as prohibited political campaign activity if

<sup>21</sup> *Ibid.*, p. 9.

<sup>22</sup> Lei n. 14/91 de 11 de Maio, Lei das associações // Diário de República. Órgão oficial da República Popular de Angola. Sábado, 11 de Maio de 1991. I série, No. 20, p. 261 e seg.

conducted in a non-partisan manner. At the same time, voter education or registration activities with evidence of bias, which would favour one candidate over another; or oppose a candidate in some manner; or have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

In the USA in contrast to the absolute prohibition on political campaign interventions by all organizations conforming section 501(c) (3), public charities (but not private foundations) may conduct a limited amount of lobbying to influence legislation. Although the Law states, that “No substantial part...” of a public charity’s activities can go to lobbying, charities with large budgets may lawfully expend a million dollars (under the “expenditure” test), or more (under the “substantial part” test) per year on lobbying. To clarify the standard of the “substantial part” test, Congress enacted §501 (h)<sup>23</sup> as a part of Tax Reform Act in 1976 (called the Conable election after its author, House of Representatives member Barber Conable). The mentioned section establishes limits based on operating budget that a charity can use to determine if it meets the substantial test. This changes the prohibition against direct intervention in partisan contests only for lobbying. The organization (if it is not a church or private foundation) is now presumed in compliance with the substantiality test if they work within the limits. The Conable election requires a charity to file a declaration with the Internal Revenue Service<sup>24</sup> and file a functional distribution of funds spreadsheet with their Form 990. Internal Revenue Service form 5768 is required to make the Conable election.

In the UK charitable trusts are not allowed by law to promote political changes, and charities attempting to encourage or to support such changes and trying to defend the legality of their actions in this regard through a judicial procedure have been consistently declined by the courts.<sup>25</sup> Usually courts

resort two foundations to substantiate their rejection of charitable trusts’ challenges in this regard. The first one is, in its essence, a judicial respond to charities’ claims that their participation in campaigns for political change, in their opinion, is for the benefit of the community, judges consider that it is not within the court’s competence to assess to what extent such change is beneficial and, moreover, to conclude whether or not any specific change would be at all beneficial. The second foundation, which one can find in the ruling on the case of National Anti-Vivisection Society v. IRC,<sup>26</sup> might be reduced to simple reasoning, based on assumption by courts of the correctness of the law, which logically result in zero support to any charity aiming at a modification of the law or public policy. This revealing case (National Anti-Vivisection Society v. IRC), which is important for development of British legal regulation in the exploring field, sets out a strict rule that charity trusts are prohibited to campaign politically. And it is not a unique judicial case of that kind. There is a well-known case of Bowman v. Secular Society,<sup>27</sup> which indicates that even when sought modifications of the law were ancillary to the main targets of a charity’s campaign, they were still considered by the court as unacceptable. However, there is a dividing line between lobbying and debating; charitable trusts discussing political issues can be valid (it is not a wrong activity under the law of charities for a university students’ union to discuss political issues, for instance), as argued by Hoffmann *J obiter dicta* in a case of Attorney General v. Ross.<sup>28</sup> This dividing line is considered by the Charity Commission for England and Wales<sup>29</sup> in its official guidelines, which permit this Commission to look at the broader goal of the specific organization to come to conclusion if it constitutes a valid charity.

<sup>23</sup> Mode of access: <https://www.councilofnonprofits.org/taking-the-501h-election>

<sup>24</sup> Mode of access: <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>

<sup>25</sup> See, for example: Edwards, R.; Stockwell, N.

Trusts and Equity. 12th ed. Harlow, L., N.Y., etc.: Pearson Longman, 2015. P. 217.

<sup>26</sup> [1940] A.C. 31

<sup>27</sup> [1917] A.C. 406

<sup>28</sup> [1986] 1 W.R.L. 252

<sup>29</sup> Mode of access: <https://www.gov.uk/government/organisations/charity-commission/services-information>

Law 31–90 of 1990<sup>30</sup> (Article 11) demands that Algerian associations should distinct from any associations of political character by their purpose, their names, and their functioning. It also prohibits associations from having any contacts and organic or structural cooperation with any association of political character or accepting grants, donations and legacies from such political association, as well as participating in financial support of them. Associations, as well as foundations, in Qatar are prohibited from becoming “involved in political issues” (Law on Private Associations and Foundations,<sup>31</sup> Article 35, taking into consideration of Article 37, which reads that provisions referring to associations are applicable to Foundations unless it is said otherwise). Kuwaiti law bans charities and public welfare societies from “interfering with politics and religious conflicts” (Law No 24 of 1962 on Clubs and Public Welfare Societies,<sup>32</sup> Article 6).

In Russia charitable organizations are banned to take part in political campaigns, support financially or use their property to support political parties, movements, groups or campaigns (the Federal Law No. 135-FZ of the 11th of August of 1995 on charitable activity and volunteering,<sup>33</sup> Article 12), but this prohibition does not touch upon other (non-charitable) non-commercial organizations.

Public associations, who pursue political purposes that should be fixed in their charters, but who are not political parties (political parties in Russia are created and exist in a form of public associations, however have a specific regulation), have the right even to nominate candidates at the local government elections.<sup>34</sup> As for lobbying or advocacy in Russia, there is no ban on this type of activity carried out by non-profit organizations of any form or of any kind, including charities.

Noteworthy, in Ethiopia Article 62.4 of the 2019 Organization of Civil Societies Proclamation No. 1113/2019 directly stipulates that any charitable organization “may propose recommendations for the change or amendment of existing laws, policies or practices, or issuance of new laws and policies of those, which have relationship with the activities they are performing”.<sup>35</sup> However, Article 62.5 reads that “unless it is permitted with another law, Foreign Organizations and Local Organizations which are established by foreign citizens, which are residents of Ethiopia may not engage in lobbying political parties, engage in voters education or election observation”.<sup>36</sup>

Meantime, there are certain specific requirements for non-commercial organizations on the basis of sources of their funding. Thus, in Russia in 2012 amendments to the 1996 Federal Law on Non-Commercial Organizations<sup>37</sup> were adopted concerning

<sup>30</sup> Loi no. 31-90 du 4 décembre 1990 relative aux associations // *Journal officiel de la République Algérienne Démocratique et Populaire (traduction française)*. No. 53, 5 décembre 1990, p. 1438-1442.

<sup>31</sup> The official title of the Law is *تاسيس و عمل الجمعيات و نوناق جدر (12) قسول 2004 نأشب تاي عم جلا* The official text is available at: <http://www.almeezan.qa/LawPage.aspx?id=3956&language=ar>. The text translated into English is available at: <http://www.almeezan.qa/LawPage.aspx?id=3956&language=en>

<sup>32</sup> The official text in Arabic language is available at: <https://drive.google.com/file/d/0B4kYSYHA1c0pZV80RTdqMEsxcEE/view>

<sup>33</sup> The official title of this Law in Russian is *Федеральный закон № 135-ФЗ от 11 августа 1995 года «О благотворительной деятельности и добровольчестве (волонтерстве)»*. The text of this Law as amended in the Russian language is available at: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_7495/f95e0ef299695f9e5db36e06248bc9d3457ec453/](http://www.consultant.ru/document/cons_doc_LAW_7495/f95e0ef299695f9e5db36e06248bc9d3457ec453/)

<sup>34</sup> Article 84 of the Federal Law No. 67-FZ of the 12th of June of 2002 (as amended by the 25th of May of 2019) on basic guarantees of the electoral rights and the right to take part in a referendum of citizens of Russian Federation (official title in Russian is *Федеральный закон № 67-ФЗ от 12 июня 2002 года [в редакции от 25 мая 2019 года] «Об основных гарантиях избирательных прав и права на участие в референдуме граждан Российской Федерации»*). The text of the Law in the Russian language is available at: [www.consultant.ru/document/cons\\_doc\\_LAW\\_37119/646b3a9e0a9db49747d143eb8559e40a6c825356/](http://www.consultant.ru/document/cons_doc_LAW_37119/646b3a9e0a9db49747d143eb8559e40a6c825356/)

<sup>35</sup> *Federal Negarit Gazette*. 25th Year. No. 33. Addis-Ababa, 12th of March 2019, p. 11040.

<sup>36</sup> *Ibid.*, 11041.

<sup>37</sup> The official title of this Law in Russian is *Федеральный закон № 7-ФЗ от 12 января 1996 года «О некоммерческих организациях»*. The text of the Law (as amended) in the Russian language is available at: [www.consultant.ru/document/cons\\_](http://www.consultant.ru/document/cons_)

non-commercial organizations receiving or having received funds or assets from abroad (simultaneously with this Law and in line with the mentioned amendments the 1995 Federal Law on public associations<sup>38</sup> was amended). Such non-commercial organizations, except for registered religious organizations, associations of employers, chambers of commerce and industry, state-owned corporations, public companies, as well as non-commercial organizations set by them, federal, regional and municipal institutions, who received funding from abroad, are obliged to register themselves as foreign agents if they are involved into political activities. The description of political activity in this Federal Law is vague and too general: actions aimed at an impact upon decisions adoption by governmental bodies in order to change a governmental policy as well as to influence public opinion for the same purpose. According to the mentioned Federal Law, activities in such spheres as science, culture, art, health care, social protection and support, protection of motherhood and childhood, support for people with disabilities, propaganda of healthy style of life, physical culture and sport, protection of flora and fauna, charitable activity, as well as promotion of charitable activity and voluntary efforts shall not be considered as political activity. However, the Federal Law does not establish correlation between funding from abroad and political activity. For example, a non-commercial organization had received a grant from abroad for social support of people with disabilities, had spent all the money for this purpose, and later without any funding from abroad organized a manifestation or public hearing, claiming that a Law on Non-Commercial Organizations should be amended; such a non-commercial organization is supposed to be a foreign agent, although its manifestation or public hearing did not connected to any funding from abroad. Funding from abroad is defined in the Federal Law very broadly:

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<sup>38</sup> The official title of this Law in Russian is Федеральный закон № 82-ФЗ от 19 мая 1995 года «Об общественных объединениях». Its text (as amended) in the Russian language is available at: [www.consultant.ru/document/cons\\_doc\\_LAW\\_6693/](http://www.consultant.ru/document/cons_doc_LAW_6693/)

money or assets from foreign countries, their governmental bodies, foreign or international organizations, foreign citizens or stateless persons, or persons empowered by them, from Russian legal entities, received money or assets from abroad, except for public joint stock companies, in which Russian Federation has shares. But a stateless person, for example, may reside permanently in Russian Federation, gaining money exclusively inside Russian Federation; the Federal Law does not specify this case. Any commercial company may import or export goods, and, therefore, may be considered as a company received money or assets from abroad. In any non-commercial organizations, which are obliged to be registered as foreign agents, should send financial and other reports to governmental bodies twice a year, and inform general public always at any public action or publication on their behalf that they are foreign agents. Penal Code of Russian Federation<sup>39</sup> was also amended in 2012 to provide for penalties (fines, public work or even imprisonment) in case of avoiding registration as a foreign agent.

**Restraints, connected to a charities' special taxation status, on commercial activity**

The fact that an organization is a nonprofit does not mean it cannot sell goods or services for money. In fact, many not-for-profit organizations make money selling everything from food or shoes to medical or recreational services. A not-for-profit organization can pay salaries to officers and employees. But, in order to maintain nonprofit status, the non-profit organization must not distribute any profits for the benefit of directors, officers or members – for example, in the form of dividends. Meanwhile, in some countries there are certain specific restrictions. Thus, non-governmental organizations in Bahrain are banned from entering into any speculative activities (Law on Associations, Social and Cultural Clubs, Special Committees Working in the Field of Youth and Sports, and Private Foundations adopted by the Decree No. 21 of 1989, and amended later,<sup>40</sup> Articles 18 and 63). In Bahrain also non-

<sup>39</sup> The text of the Penal Code (as amended) in the Russian language is available at: <https://base.garant.ru/10108000/>

<sup>40</sup> Mode of access: <https://www.bahrain.bh/>

governmental organizations, except for social welfare and cultural societies, are unable to obtain real estate without first receiving permission from the competent authority (the above-mentioned Law, adopted by the Decree No. 21 of 1989, Article 7).

In many countries special rules of book-keeping for non-profit organizations are elaborated. For example, in Russia not-for-profit organizations are supposed to conduct book-keeping of their non-commercial activities separately from book-keeping of their commercial activities to have different taxation on the results of these two types of activities, otherwise all the activities of any organization are considered commercial with the respective taxation. Non-profit organizations in Russia are advised by practicing lawyers to set up subsidiary businesses to carry out commercial activities, profit of which after paying all taxes might be used by founders – non-profit organizations – for their needs within their missions and purposes, established by their charters.

#### Charities' restraints on compensation

Directors of not-for-profit organizations can serve with or without compensation. In the USA the compensation of a non-profit organization director(s) must be deemed “reasonable” by the Internal Revenue Service. When a 501(c)(3) application or other exempt application is submitted, the USA Internal Revenue Service generally prefers an independent, financially disinterested board.

The Russian Federal Law on Charitable Organizations and Volunteering (cited earlier) stipulates that a share of a charity's budget allotted for salaries and compensations to the staff (including directors, if they are paid) must not exceed 20%, while not less than 80% of the charity's budget must be used for its programs and projects funding. But these legal prescriptions are not applied to non-commercial organizations, which have not obtained a charitable status.

In China in a non-public fundraising foundation directors or board members receiving financial remuneration from a respective foundation are not allowed to make up more than one-third of its board members, as prescribed by Article 20 of the 2004 Regulations on the Management of Foundations.<sup>41</sup> Paragraph 3

<sup>41</sup> Mode of access: [www.chinadevelopmentbrief.cn/wp-content/uploads/2014/08/REGULATIONS-FOR-THE-MANAGEMENT-OF-FOUNDATIONS.pdf](http://www.chinadevelopmentbrief.cn/wp-content/uploads/2014/08/REGULATIONS-FOR-THE-MANAGEMENT-OF-FOUNDATIONS.pdf)

of Article 23 provides for: “The supervisory official and board members who do not have full-time jobs at the foundation are not eligible for compensation from the foundation”<sup>42</sup> (in Chinese: “监事和未在基金会担任专职工作的理事不得从基金会获取报酬。”)

In Ethiopia “the Administrative cost of an Organization established for the benefit of the general public or that of third Parties may not exceed twenty percent of its total income” in accordance with Article 63.2 of the 2019 Organization of Civil Societies Proclamation No. 1113/2019.<sup>43</sup> The cited Article explained that “Administrative Expense” means “expenses which are not related to the project activities of an Organization but are necessary to ensure the continuity of an Organization and related to administrative activities, and shall include: salaries and benefits of administrative employees; purchase of consumables and fixed assets”, etc.

#### Regulation of Fiduciary Behavior and Fundraising of Charities

In some countries territory of fundraising is limited by registration of the organization. For example, to publicly raise money, charities in Australia are required to achieve registration under the State jurisdiction within which they intend to raise funds and must be registered in each and any State within which they intend to publicly raise funds. In order for the charity to raise funds in the remaining seven Australian States and Territories it would need to register in each State or Territory individually.<sup>44</sup>

In certain countries a special license is required for fundraising. Thus, in Bahrain, to obtain a license to raise funds, a non-governmental organization must disclose how the money will be collected, how it will be spent, and the name of the bank and the account where the money will be deposited. Once the license is obtained, it is only good for two months (Decree No. 27 of 2006, Article 4<sup>45</sup>). In Kuwait, associations are only permitted to collect funds once each year after first receiving

<sup>42</sup> Ibid.

<sup>43</sup> Federal Negarit Gazette. 25th Year. No. 33. Addis-Ababa, 12th of March 2019, p. 11042.

<sup>44</sup> Mode of access: <https://www.acnc.gov.au/for-charities/start-charity/before-you-start-charity>

<sup>45</sup> See footnote 37

a license from the government (Law 24 of 1962,<sup>46</sup> Article 22).

There are restrictions to foreign funding in several countries. For instance, in Egypt, non-governmental organizations may not accept funds from a foreign source or send funds abroad without permission from the Ministry of Social Solidarity (Law No. 84 of 2002,<sup>47</sup> Article 76). Government permission is also required for a non-governmental organization to receive foreign funding in Algeria (Law No. 90–31 of 1990,<sup>48</sup> Article 29), Jordan (Law No. 51 of 2008 on Societies as amended, Article 9: prior approval is required to receive foreign funding and to collect donations from the public)<sup>49</sup>, Syria (Executive Decree No. 1330 of 1958 “The Executive Bylaw of the Associations and Private Institutions Law Applicable by Resolution No. 93 of 1958”, Article 17, which prescribes any fundraising upon only a prior permission given by the Ministry of Social Affairs and Labour)<sup>50</sup>, and Sudan (Law on Organization of Voluntary and Humanitarian Work of 2006,<sup>51</sup> Article 6), among others.

In Ethiopia non-governmental organizations are restricted to receive more than 10% of their financing from foreign sources from engaging in activities related to “the advancement of human and democratic rights, ... the promotion of the equality of nations, nationalities and peoples and that of gender and religion, ... the promotion of the rights of the disabled and children’s rights, ... the promotion of conflict resolution or reconciliation, ... [and] the promotion of the efficiency of the justice and law enforcement services” (2009 Proclamation for the Registration and Administration of Charities and Societies Regulation No. 168/2009,<sup>52</sup> Article 14(2))” – “n”; this

Regulation is still in force to an extent is not contradictory to the 2019 Organization of Civil Societies Proclamation No. 1113/2019, but it is planned to replace it with a new one in a full conformity with the mentioned Proclamation within not later than a year after the entry into force of the Proclamation).

In India, according to Foreign Contribution (Regulation) Act, 2010<sup>53</sup> (Act No. 42), which has replaced 1976 Foreign Contribution (Regulation) Act, it is strictly prohibited for any political party or any office-bearer thereof (Section 3[1][e]) as well as any organization of political nature (Section 3[1][f]) to accept foreign contribution. As for any other non-governmental organization (including any charity presumably, however, charities are not mentioned directly in this Act) “having a definite cultural, economic, educational, religious or social programme”, it is obliged to obtain a (special) prior certificate of registration from the Central Government in order to be eligible to accept foreign contribution (Section 11[1]). But in any case such acceptance of foreign contribution should not affect prejudicially “(i) the sovereignty and integrity of India; or (ii) public interest; or (iii) freedom or fairness of election to any Legislature; or (iv) friendly relations with any foreign State; or (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities” (Section 9[e]).

In some countries foreign funding is not prohibited, but is subject to certain specific requirements. In Russia, for instance, non-commercial organizations, who are supposed to be registered as foreign agents, as have been already mentioned, are bound by legislation to comply with specific duties.<sup>54</sup> Banks also must inform a governmental body, responsible for monitoring probable money laundering

<sup>46</sup> See footnote 31.

<sup>47</sup> Text of the Law in Arabic language is available at: [www.sis.gov.eg/ar/Story.aspx?sid=2485](http://www.sis.gov.eg/ar/Story.aspx?sid=2485)

<sup>48</sup> See footnote 29.

<sup>49</sup> Mode of access: [www.icnl.org/research/monitor/jordan.html](http://www.icnl.org/research/monitor/jordan.html)

<sup>50</sup> English translation of the text is available at: [www.icnl.org/research/library/files/Syria/93-1958-En.pdf](http://www.icnl.org/research/library/files/Syria/93-1958-En.pdf), pp. 25-26.

<sup>51</sup> Mode of access: [www.sudan.gov.sd/index.php/ar/](http://www.sudan.gov.sd/index.php/ar/)

<sup>52</sup> Mode of access: <https://lawethiopia.com/index.php/legislation/federal-legislation/civil-societies-charities>

<sup>53</sup> The full title of this statute is “An Act to consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto”. It is available at: <http://www.icnl.org/research/library/files/India/ForeignContribution.pdf>

<sup>54</sup> See footnotes 34 and 35.

or extremist organizations funding, about all sums of money exceeding two hundred thousand rubles transferred to non-commercial organizations from abroad or from international organizations.

In certain countries funding provided by international intergovernmental organizations is restricted. For example, Eritrean 2005 Proclamation No. 145/2005 to Determine the Administration of Non-Governmental Organizations<sup>55</sup> broadly restricts the Organization of United Nations' and bilateral agencies from funding non-governmental organizations, and requires that "no international NGO may engage in Eritrea in relief and/or rehabilitation work except through the Ministry<sup>56</sup> or other concerned Government entity" (Article 9[1]). By the way, "local NGO's shall be accountable to donors, the Ministry, other Government entities and beneficiary communities" Article 8(2).

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<sup>55</sup> The text of this Proclamation in English language is available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81435/88425/F975805266/ERI81435.pdf>

<sup>56</sup> "The Ministry" in this Proclamation means "Ministry of Labour and Human Welfare".

## БЛАГОТВОРИТЕЛЬНОСТЬ И НАЛОГООБЛОЖЕНИЕ: ОСНОВНЫЕ ТЕНДЕНЦИИ НАЧАЛА XXI ВЕКА В СРАВНИТЕЛЬНОЙ ПЕРСПЕКТИВЕ

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<p><b>Информация о статье:</b> <i>Поступила в редакцию:</i> 15 октября 2019 <i>Принята к печати:</i> 10 января 2020</p>	<p><b>Аннотация:</b> Налогообложение в современном обществе стало играть роль одного из важных и эффективных инструментов государства в проведении его социально-экономической политики. Налоговые сборы с цен и доходов направлены не только на покрытие расходов государственного аппарата, но и на обеспечение определенной коррекции и определенной направленности рыночных механизмов. Таким образом, «интервенционистская» цель добавляется к «финансовой» цели; налог становится важным инструментом экономической политики государства, а также его социальной политики (воздействие на доход путем налогообложения). Выводы, сделанные М. Дювергером, сегодня не теряют своей актуальности. Нет необходимости доказывать или объяснять, что благотворительная деятельность помогает государству решать социальные проблемы. Посредством налогообложения государства предлагают стимулы для поддержки тенденций, соответствующих их предпочтениям в социальной политике, и устанавливают ограничения, чтобы препятствовать тенденциям, которые считаются нежелательными. Таким образом, целью налогообложения является поддержание коллективными усилиями государства. В настоящей статье исследуется связь налогообложения и благотворительной деятельности.</p>
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<p><b>Ключевые слова:</b> благотворительное налогообложение; основные тенденции; современное общество; эффективный инструмент; государство; социально-экономическая политика</p>	

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