

The tax on legal persons in the light of the civil law : a positive and prospective study of Belgian tax law for the private non profit sector

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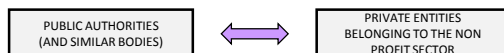
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1. CONTEXT

Since the major Belgian tax reform of 1962, which implemented the "one taxpayer, one tax" principle, the income taxes are divided into four categories: a tax on the total income of the residents of Belgium, called "personal income tax"; a tax on the total income of resident companies, called "corporation tax" (hereafter CT); a tax on the income of non-residents, called "non-resident's tax" and a tax on incomes of legal persons other than companies, called "tax on legal persons" (hereafter TLP). In the medium term, further reform of the income taxes is contemplated. One of them is hardly discussed: TLP.

2. SCOPE OF THE RESEARCH

TLP has a broad and eclectic scope:



Regarding the public entities, TLP applies unconditionally and exclusively. In opposition to that, for the private entities, TLP applies in competition with CT in the sense that only legal entities entirely devoted to non profit activities are subject to it. As the liability of public entities to the TLP is provided unconditionally (consequently with few practical issues except of political opportunity), focus on the **tax treatment of the private non profit sector**.

Key legal forms used in Belgium will be especially analyzed i.e.:



Both civil law and tax law aspects will be studied to identify the key elements of civil law for a good understanding of their interaction with the tax system.

3. WHY THIS RESEARCH?

First, tax system raises questions of major interest. Regarding the private non profit sector, the policy of "all or nothing" dominates: whether an entity is entirely subject to TLP, or, if the conditions of taxation for TLP are not met, it is completely governed by the CT rules. Big differences between these two tax regimes are:

	CT	TLP	TLP versus CT
TAX BASE	active and passive income	only passive income	LIMITED BASE
RATES	Proportional rate: 33.99% (unless reduced rates)	Specific rate for each income (generally lower than CT rate)	LOWER RATES

Second, legal texts relating to the TLP are inadequate. Both (unstable) case law and (shared) doctrine should provide concrete meaning to open and vague notions as operations constituting an activity that does not implement the « industrial or commercial methods » or « only ancillary industrial, commercial or agricultural operations ».

Last but not least: economic importance. The project will be focused on a part of the non-profit sector. In 2010, this sector accounted for 5.5% of GDP and about 12% of employment.

- ⇒ Undetermined or underminable concepts?
- ⇒ What about legality and legal certainty principles?

4. CURRENT SITUATION

Determining liability to any such taxes has therefore fundamental consequences for the life of the concerned entity and the current tax system is a major source of misunderstanding, complexity, obstruction and inadequacy in relation to the general interest pursued and, as such, is an obstacle to the expansion of this sector.

5. RESEARCH QUESTION

"WHICH TAX REGIME IS ADEQUATE FOR THE NON PROFIT LEGAL PERSON'S INCOME? "

⇒ Should we tax these entities; if so, why, how and to achieve what purposes?

6. RESEARCH PLAN

Introduction: a diagnosis of the current system to identify the issues and factors underlying the inadequacy and obsolescence of the existing tax system. The tax system is indeed formally intended as an extension of the civil law but, today, the tax law distorts the civil law.

First part: make proposals on the basis of existing legislation to clarify the tax treatment of the private non profit sector (*de lege lata*).

Second part: propose a new model for the tax system (*de lege ferenda*). Two opposed working assumptions developed around the following question:

WHICH BALANCE BETWEEN TAX LAW AND CIVIL LAW?



TWO ASSUMPTIONS

TAX LAW SHOULD BE RECONNECTED TO CIVIL LAW

By a functional comparative approach

- Belgium (B.) : specific tax (TLP)
- France :
 - ⇒ No specific tax
 - ⇒ Civil law tradition (profit criterion) // B.
- United Kingdom :
 - ⇒ No specific tax
 - ⇒ Common law tradition (registration criterion) >< B.

TAX LAW SHOULD BE DEVELOPED IN FULL AUTONOMY WITH REGARD TO CIVIL LAW

Through the European Union law

- European tax law: VAT (harmonized) ;
- Reflections through the EU terminology :
 - ⇒ State aid
 - ⇒ Competition
 - ⇒ Economic activity
- European legal frameworks:
 - ⇒ European Cooperative Society
 - ⇒ Proposal for a European Foundation Statute

7. PRACTICAL OBJECTIVES

1. Provide a new model for the non profit legal person's income taxation.
2. Provide valuable guidance to the actors of the private non profit sector and answer this question: how – through which legal vehicle – conduct their project?