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Third Sector Foundation of Türkiye

01

Tax Regulations Concerning Associations and Foundations



Prof. Leyla Ateş & Assoc. Prof. Özgün Akduran

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About us

Founded in 1993, the Third Sector Foundation of Türkiye (TÜSEV) aims to develop solutions to the common and current problems faced by civil society organizations (CSOs) in Türkiye. With over 30 years of experience and support primarily from our Board of Trustees, we continue our activities with the goals of:

- Creating an enabling and supportive legal and fiscal environment for CSOs,
- Promoting strategic and effective giving,
- Ensuring dialogue and cooperation between the public sector, private sector, and civil society,
- Promoting Turkish civil society internationally and establishing cooperation,
- Enhancing the reputation of civil society,
- Conducting research on civil society and increasing knowledge,

We continue our activities for a stronger, more participatory and reputable civil society in Türkiye.

Abbreviations

GIB	Revenue Administration
ITL	Income Tax Law
IPA	Instrument for Pre-accession Assistance
ISKUR	Turkish Employment Agency
VAT	Value Added Tax
VATL	Value Added Tax Law
CITL	Corporate Income Tax Law
OECD	Organization of Economic Cooperation and Development
CSO	Civil Society Organizations
STGM	Association of Civil Society Development Center
SDL	Stamp Duty Law
GNAT	Grant National Assembly of Türkiye
TÜSEV	Third Sector Foundation of Türkiye

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Preface

As the Third Sector Foundation of Türkiye (TÜSEV), we have been working to improve the legal, financial and operational infrastructure of civil society since 1993. We aim to create solutions to the problems faced by civil society organizations (CSOs) and contribute to their operation in a more enabling environment, through the activities we carry out for the presence of a stronger, more participatory and reputable civil society in Türkiye. The activities which we started to carry out in October 2021 together with the Association of Civil Society Development Center (STGM) under TÜSEV's Civil Society Law Reform Program and which we conduct within the scope of the Monitoring Freedom of Association Project funded by the European Union Delegation to Türkiye, are aimed at raising awareness on the legal and financial legislation concerning CSOs, monitoring and improving the enabling environment for civil society, and strengthening the public-CSO cooperation.

The activities and research we conduct as TÜSEV indicate the importance of access to financial resources and financial sustainability for civil society to continue working effectively and for development of civic space. The main steps of the reforms to strengthen CSOs' capacities of securing resources include diversification of financial resources, elimination of obstacles to access to resources, and introduction of a structure that is more incentivizing for CSOs and donors in the financial and tax regulations concerning civil society.

We are glad to present our series of three publications, which we hope will guide both civil society organizations and the public sector by examining the tax regulations concerning CSOs in Türkiye under three main themes and suggesting steps for improvement. Our first publication, ***Tax Regulations Concerning Associations and Foundations***, aims to identify regulations and tax advantages that will support CSOs, by examining the impact created by the current tax regime on CSOs' financial sustainability. ***Taxation of Economic Enterprises of Associations and Foundations*** focuses on revealing the problems faced by CSOs' economic enterprises due to fiscal/tax regulations and suggesting recommendations to overcome these problems. The final publication in the series, which is titled ***Public Benefit and Tax Exemption Statutes***, examines the statuses of public benefit associations and tax-exempt foundations, and outlines steps that can be taken to ensure equal access of more CSOs to these statuses, to reduce tax liabilities on public benefit activities, and to encourage giving. These publications provide a comparative analysis of the situation in Türkiye in comparison with examples from other countries and include the results of the research on the Fiscal/Tax Framework concerning Civil Society in Türkiye partaken by more than 150 CSOs and experts.

As TÜSEV, we will continue to share our knowledge and experience with our stakeholders through the areas of interaction and communication we create and the information resources we produce, and we will continue our efforts for a stronger, more participatory and reputable civil society. We would like to extend our gratitude to Prof. Leyla Ateş and Assoc. Prof. Özgün Akduran, who authored the publications, as well as all the individuals, institutions and organizations who were involved in the preparation of the series and contributed their opinions.

Sincerely,

TÜSEV

Getting started

Enhancing civil society organizations' financial capacities is a public policy objective in Türkiye. This objective has often been stated in development plans, which constitute fundamental policy documents. The most recent Twelfth Development Plan (2024-2028) reiterates this objective and explicitly lists financial regulations to be introduced in the fiscal area in order to contribute to the financial sustainability of civil society organizations, among the measures to be taken for this purpose.¹ Carried out within the scope of the Monitoring Freedom of Association Project, which was implemented through the cooperation between the Third Sector Foundation of Türkiye (TÜSEV) and the Association of Civil Society Development Center (STGM) and funded by the European Union Delegation to Türkiye, our study aims to formulate legal design proposals regarding the financial reform regulations in question, by means of the research findings obtained through qualitative and quantitative research methods as well as comparative law methodology.

The financial system of civil society organizations, or "associations and foundations" as referred to in the tax legislation, should be addressed from three aspects. The first is the tax regulations concerning associations and foundations. Associations and foundations may be subject to various tax burdens due to the incomes they derive, expenditures they incur and assets they own, while they may also be exempted partially or wholly from some of these burdens through tax concessions. Furthermore, there are tax incentives granted by the state to income and corporate income taxpayers to support donations and aids to associations and foundations. The second aspect is regarding the treatment of economic enterprises of associations and foundations as separate corporate income tax subjects and their taxation accordingly. Thirdly, Turkish tax legislation distinguishes associations working for public benefit and foundations granted tax exemption by the President (*hereinafter referred to as "associations and foundations with status"*) from other associations and foundations in various aspects and offers a more advantageous tax regime to the holders of these statuses. The acquisition of these statuses constitutes a separate legislative system. Our study addresses these three issues in separate publications.

The timing of the study is of particular importance, since income and corporate income tax laws contain temporary articles based on which associations and foundations are taxed. The Temporary Article 67 of the Income Tax Law, whose effective period has been extended for nearly 20 years to date through legislative amendments, will expire on December 31, 2025. The Temporary Article 2 of the Corporate Income Tax Law regarding economic enterprises of associations and foundations will also expire on the same date. It is expected that these effective periods will be re-extended or the

1 Twelfth Development Plan (2024-2028), para. 938, 938.6,
https://www.sbb.gov.tr/wp-content/uploads/2024/06/Twelfth-Development-Plan_2024-2028.pdf

temporary provisions will be introduced permanently.² Temporary articles are exceptional regulations that suspend the main rule in its entirety or in certain aspects.³ As the name suggests, they do not aim for continuity; therefore, they are not designed to create a sustainable regime. However, achieving the Twelfth Development Plan's goal of contributing to the financial sustainability of civil society organizations requires the establishment of a regime focused on civil society. For this reason, a permanent fiscal regime that takes the needs of associations and foundations into account should be developed. Our three publications aim to contribute to the design of such a regime.

The economics literature does not yet provide a clear answer regarding the tax regulations which would contribute most to the financial sustainability of civil society organizations. Little is known about whether donations and aids should be incentivized; whether associations and foundations should be exempt from taxes on income, wealth and expenditures, such as income tax, value added tax, stamp duty, fees, property tax, inheritance and transfer tax, or which of these they should be exempt from, and whether economic enterprises of associations and foundations should be subject to corporate income tax, or to what extent.⁴

On the other hand, considering these questions outside of an economics framework, we should note that volunteers who, despite the absence of a legal obligation to do so, support civil society for the production of public goods or services that the state or the market has partially or completely failed to provide, as well as the activities of such volunteers should be supported by the tax system.⁵ When the state waives tax revenues by providing tax incentives, it essentially means the collection of higher taxes from other sectors that it continues to tax. However, since the public goods and services produced by civil society benefit the whole society, this cost could be considered as a recompense for the sacrifice made by volunteers from their personal assets through donations.⁶ The relationship between civil society and social benefit was expressed as follows in our early development plans:

"According to today's perception, the state is obliged not only to take measures related to sustenance and authority for ensuring the prosperity of its citizens to the possible extent, but also to prepare the background to realize its objective through economic and financial measures.

2 Erdoğan Sağlam, "Torba yasa ile stopaj oranlarına ilişkin yetki maddelerinde yapılması düşünülen değişiklikler" ("Amendments planned to be made in the authorization articles regarding withholding tax rates under the Omnibus Law"), 13 December 2023, <https://t24.com.tr/yazarlar/erdogan-saglam/torba-yasa-ile-stopaj-oranlarina-iliskin-yetki-maddelerinde-yapilmasi-dusunulen-degisiklikler42677>

3 Fahri Bakırcı, *Yasalarda ve Yasa Maddelerinde Geçicilik (Temporariness in Laws and Articles of Laws)*, Meclis Bülteni, 2004, p. 41.

4 Richard Steinberg, in *The Routledge Handbook of Taxation and Philanthropy* (ed. Henry Peter & Giedre Lideikyte Huber), Routledge, New York, 2021, pp. 178-198 (hereinafter referred to as the "Routledge Handbook")

5 Richard Steinberg, "Economic Theories of Nonprofit Organizations", in *The Non-Profit Sector: A Research Handbook* (ed. Walter W. Powell & Richard Steinberg), 2. B., Yale University Press, London, 2006, pp. 117- 139

6 Steinberg, *Routledge Handbook*, p. 193.

As a consequence of this obligation, separate chapters are created in the budget of each state to fulfill its public duty. This public duty is usually financed through taxes. The public services of the state have greatly increased and diversified in accordance with today's social state approach. In such countries, foundations represent an institution that aims to provide direct assistance to public services that the state can scarcely provide or cannot provide at all, through the will of individuals. In countries which have developed into foundation networks, various public services are supported by the old and well-established institution of foundation. This also provides commensurate savings from the budget for the state.”⁷

Furthermore, by reducing the tax burden on civil society and volunteers, tax administrations also make a public statement that donations are valuable and worthy of support.⁸ Indeed, extensive studies which have been published in recent years and which compare the tax regulations applicable to civil society organizations in various countries demonstrate that many tax administrations strongly make this statement.⁹ These studies can also help us identify common denominators across countries, understand where we stand, and serve as a reference for the design of new tax rules when the current system needs to be reformed.¹⁰ Therefore, these studies have been employed in all three of our publications where we assess the current state of the fiscal system for associations and foundations and list our recommendations for its reform.

Within the scope of the “The Fiscal/Tax Framework Concerning Civil Society in Türkiye” research (hereinafter, Fiscal/Tax Framework Research), a literature review, a survey involving civil society organizations, in-depth interviews with relevant stakeholders and focus group discussions have been carried out using a methodology that employs a combination of qualitative and quantitative tools. The research aimed to demonstrate the fiscal/tax framework affecting the financial structures of civil society organizations and to assess the impact of the current situation on the overall development of civil society. The research followed three main outlines. Accordingly, the first part of the research focused on the level of knowledge of civil society organizations regarding current fiscal/tax regulations and practices, their perceptions of tax obligations and advantages, their evaluations regarding the legislation and applications, and their suggestions for change. The second main block of the research was the review of fiscal/tax regulations in terms of the activities and sustainability of economic enterprises of civil society organizations. The third part of the research focused on the experiences of civil society organizations with status during the processes of application for such statuses as well as evaluation and supervision, the problems they encounter in benefiting from the advantages provided by the statuses, their perceptions of the statuses in general, and their suggestions for change. The research was conducted using a mixed methodology that employs a combination of quantitative and qualitative methods. In this context, between 17 October 2023 and 2 February 2024, a survey with 124 civil society organizations, in-depth interviews with 30 civil society organizations and 10 experts were conducted and a total of 5 focus groups were held, 4 of which

7 Prime Ministry State Planning Organization, Specialization Commission Report on Foundations, SPO Publication, Ankara, 1983, p. 14, <https://www.sbb.gov.tr/wp-content/uploads/2022/08/Vakif-Ozel-Ihtisas-Komisyonu-Raporu.pdf>

8 Steinberg, Routledge Handbook, p. 193.

9 See for example. Organization of Economic Cooperation and Development (OECD), Taxation and Philanthropy, OECD Publishing, Paris, 2020; Philanthropy Europe Association (Philea), Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe, Brussels, 2022; European Commission, Comparative Legal Analysis of Associations Laws and Regimes in the EU, Publications Office of the European Union, Luxembourg, 2022; Council on Foundations, Country Notes: Curated Resources for Making Grants Globally, 2024, <https://cof.org/country-notes>.

10 Philea, p. 9.

brought together civil society organizations of different categories and scales, and 1 of which brought together financial advisors working with civil society organizations.

Legislators would take budgetary requirements into account while implementing our recommendations in respect of the legislation. Two points should be emphasized in this regard. First, in Türkiye, there is no publicly available statistical information that enables calculations relating to the current tax burden of associations and foundations and the burden to be imposed on the budget by possible tax advantages. This situation also makes it difficult for civil society to carry out strong advocacy activities in the financial area. The statements provided by a civil society organization's representative in our qualitative research point to this situation:

"(A)t the end of the day, the state runs on these taxes... How much is the VAT burden of the third sector... The amount of income that the (state) would be waiving and the relief it would provide CSOs in return; these are the items that should actually be compared. If we merely suggest canceling VAT, they may object. But if we say, look, it's only 25 billion liras we are talking about here... Then the matter would be evaluated with precise numbers known, in principle and in terms of how it reflects on the balance sheet, on the state. A whole different story if it's just a drop in the ocean, for example. This requires a very comprehensive work though. I mean, the amounts of VAT collected from all CSOs and foundations would have to be recorded for 2 or maybe 3 years to form a statistic." (Foundation, Large Scale, With Status)

Contrary to the situations where civil society organizations are in end consumer status in terms of value added tax, in cases where organizations file tax returns themselves or tax returns are filed due to the withholding taxes applied while they receive payments, the data is already submitted to the tax administration and is available for use for statistical purposes.

The second point we will underline is the fact that the tax administration does not consider it a necessity to support civil society despite the financial difficulties experienced by civil society. Nevertheless, investors continue to be supported with quite generous tax incentives despite the lack of statistics regarding their effectiveness in our country. It is observed from the statements of a civil society organization's representative in our qualitative research that this different treatment is questioned:

"While we don't have a very large income, economic enterprises are established to generate earnings in line with the purposes and activities of foundations, as you know. Yes, it is a commercial enterprise, subject to (corporate income tax liability). It is not exempt from any tax. So, it is another problem to be paying these taxes additionally, while actually serving the foundation's purposes. I mean, although occasional incentives and practices are introduced for importation or exportation, this sector, which works for the public benefit, is completely ignored. It just doesn't make any sense to me." (Foundation, Large Scale, With Status)

We hope that our three publications titled "Tax Regulations Concerning Associations and Foundations", "Taxation of Economic Enterprises of Associations and Foundations" and "Public Benefit and Tax Exemption Statuses", where we analyze the current situation regarding the fiscal system for associations and foundations, without prejudice to the aforementioned restrictions, and list our recommendations to be used as reference in the design of new tax rules, contribute to the sustainability of civil society in Türkiye.

Introduction

The basic tax regulations concerning foundations and associations have two aspects. First, associations and foundations may be subject to various tax burdens in terms of the income they derive, expenditures they incur and wealth items they possess. The state may wholly or partially relieve foundations and associations from some of these burdens through certain tax concessions. Secondly, there are tax advantages granted by the state to income and corporate income taxpayers in order to promote donations and aids to associations and foundations. These two aspects constitute the two main parts of the study.

Unlike some countries, social security premium payments are not considered as taxes in Türkiye; however, they impose a significant financial burden on the labor costs of foundations and associations. For this reason, the status of associations and foundations vis-à-vis social security regulations will be discussed under a separate title in the first part of the study.



I. Status of associations and foundations vis-à-vis tax regulations

1. Associations and foundations in income tax regulations

In Türkiye, incomes derived by associations and foundations from donations, aids, membership fees and public funds are excluded from income taxation, as in many countries around the world. A study conducted by the OECD demonstrated that such income of civil society organizations that is not aimed at generating earnings and profits is not taxed in Australia, Austria, Belgium, Bulgaria, Canada, Chile, Finland, Germany, Greece, Ireland, Israel, Italy, Latvia, Malta, Mexico, Netherlands, New Zealand, Norway, Portugal, Romania, Singapore, Slovak Republic, Slovenia, South Africa, Sweden, Switzerland, United Kingdom and United States of America.¹¹ Similarly, according to the study conducted by Philea, all European Union member states (except Denmark), Albania, Bosnia and Herzegovina, Kosovo, Liechtenstein, Montenegro, North Macedonia, Norway, Russia, Serbia, Switzerland, Ukraine and the United Kingdom do not tax the donations and aids of public benefit foundations.¹²

As a minority example, Denmark does not tax donations made to create the endowment of public-benefit foundations, while taxing incomes from other donation and aids.¹³ However, foundations are allowed to partially or wholly relieve themselves of the tax burden, by deducting the expenditures they incur in line with the foundation's purposes from the tax base.¹⁴ Accordingly, if a foundation saves its income instead of spending it in line with its purposes or spends it for other purposes, it would have to pay taxes over such amounts. The expenditures it incurs in line with its purposes, on the other hand, are entirely excluded from income taxation.

Although the exclusion of donations and aids to associations and foundations from taxation in Türkiye is in line with global examples, civil society organizations perceive the other taxes imposed on them by the administration as a payback for this practice.

"We pay taxes in any case. If the VAT rate is 18%, we pay eighteen per cent; if they say it is 20%, then we pay twenty per cent. Because, from the state's perspective, we don't pay income tax on the donations we receive, so we might as well pay some over our expenditures." (Foundation, Large Scale, with Status)

Civil society organizations also point to the deterrent effect of taxation on donors. While appearing to support civil society organizations by not taxing the donations they receive, the state conveys an

11 OECD, p. 58. It is noted that in almost all of the countries covered by the study, civil society organizations go through a special application process to qualify for a privileged tax treatment (tax exemption status), p. 42.

12 Philea, p. 99. According to the study, the vast majority of foundations in Europe are for public benefit and generally have tax-exempt status (p. 13).

13 Philea, p. 35.

14 Leo Foundation, "Responsible Tax Practices", undated, <https://leo-foundation.org/en/about-us/how-we-work/>.

opposite message to the society by then taxing the donations depending on their purpose of use.

“Ultimately, we pay a part of donors’ donations to the state. This is not something that is actually very welcome for donors, for the conscious ones. And I also think it is something that affects donor behavior when it comes to conscious donors... Because there is a group of people who react by doing their philanthropic deeds through other means, to avoid paying a part of their donations to the state. On the other hand, without these taxes, we would naturally be able to engage in more activities and expenditures towards our purposes. If we were able to collect those figures - which we never could... We should actually check how much it is. If we could collect it, we would perhaps be able carry out twenty projects instead of ten. I think there would be such significant effects when you look at the numbers. I think the number and quality of our activities would also increase. In terms of quantity, we are focused on the quality of our activities and prefer doing less, but better. So, there would be a numerical increase; which would result in increased capacity for us.” (Foundation, Large Scale, With Status)

Nevertheless, in Türkiye, associations and foundations are subject to taxation both on their passive income (dividends, interest, rents, etc.) derived from their assets and on their active income derived from their commercial activities. This study is focused on the taxation of passive income and we have addressed the taxation of active income of associations and foundations in detail in another study.

Examples from around the world indicate that, unlike Türkiye, many countries do not tax civil society organizations’ passive incomes, i.e. the incomes they generate from asset management. Austria, Croatia, Southern Cyprus, Czech Republic, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovenia, Slovakia (excluding capital gains), Spain, Sweden (excluding real estate rent), Albania (excluding fixed rate bonds, real estate rent and some dividends), Bosnia and Herzegovina (excluding real estate rent), Kosovo, Liechtenstein, Montenegro, Serbia, Switzerland, Ukraine and the UK do not tax the passive income of public benefit foundations.¹⁵ Moreover, Colombia, Indonesia and Ireland do not tax both passive and active income of charitable organizations (with tax-exempt status) if it is spent for charitable purposes within a certain period of time,¹⁶ while Australia, New Zealand and Malta have entirely excluded not only the passive income, but also the active income of such organizations from taxation.¹⁷ On the other hand, Belgium,

15 Philea, p. 100-102.

16 OECD, p. 63. Contrary to the Denmark example, the taxation regime here applies to the incomes generated by charitable organizations through investments of their assets formed by donations and aids rather than the donations and aids they receive.

17 OECD, p. 58.

Bulgaria, Greece, Italy and Romania tax public benefit foundations' passive income equal to or higher than 15,000 Euros.¹⁸ Thus, incomes below the limit set are excluded from taxation.

On a closer look at the taxation regime for passive income in Türkiye, we note that foundations and associations are not listed among taxpayers in the Income Tax Law (ITL) or the Corporate Income Tax Law (CITL) (ITL, 3; CITL 2).¹⁹ However, the ITL obliges certain persons to apply withholding tax as the party responsible for taxation to some passive income payments they make to associations and foundations, resulting in income tax burden for associations and foundations. As a rule, the withholding tax practice requires that the party who receives the payment subjected to withholding is an income or corporate income taxpayer. However, the legislator introduced exceptions for this requirement, including the withholding tax applicable to certain payments made to associations and foundations.²⁰

In addition, foundations and associations are obliged to apply withholding tax themselves. While this situation does not create a statutory tax burden for foundations and associations, it may become an actual tax burden as per the provision in the ITL which states that "if the tax that must be withheld is assumed by the paying party, the tax in question shall be calculated over the sum of the amount actually paid and the tax assumed by the paying party (ITL, 96/2; similar provisions in CITL, 15/7, CITL, 30/11). These two situations will be discussed separately below.

1.1. Taxation of the income generated by foundations and associations through withholding tax

Taxation of incomes of foundations and associations is primarily based on the withholding tax institution in Türkiye. Certain persons are obliged to apply withholding tax as the party responsible for taxation from payments while they pay certain revenues from immovable property and movable property to foundations and associations, and to declare and pay the taxes withheld to the tax office (ITL, 94). This withholding tax is not applied to be offset against income tax, since foundations and associations are not income taxpayers. The taxes withheld or required to be withheld replace the annual tax and become the final tax burden (ITL, 108/1-4). This means that associations and foundations must bear the income tax burden even in cases where they cannot cover their operational expenses (such as rent, office supplies, electricity, water and internet costs, announcements, staff wages and social security premiums).

"The second issue is, what do we do at banks now? We collect donations and try to do that in the first five months so that their value is not lost due to inflation, etc. Then we invest these donations internally, putting them in TL, foreign currency deposits, etc. at banks. That is when we are subjected to withholding tax. These withholding taxes would be deductible, if we were a non-exempt company that pays corporate income taxes. They are withheld from our money by banks. So, there is a total tax base for corporate income tax, as you know. The withholding taxes applied at banks are offset against that tax base, meaning that you only incur loss from a period shift. Ultimately, it has no cost impact on normal companies. But that is not the case with foundations." (Foundation, Large Scale, With Status)

¹⁸ Philea, p. 36.

¹⁹ Economic enterprises of foundations and associations are listed as separate corporate income taxpayers in the CITL and taxation of economic enterprises and their active income are addressed in detail in another publication.

²⁰ Billur Yaltı, Kurum Kazançlarında Tevkifat Üzerine Bir Değerlendirme (An Evaluation on Withholding Tax in Corporate Earnings), Vergi Sorunları Dergisi, No. 79, 1995, p. 96-127.

1.1.1. Parties obliged to apply withholding

Parties that are obliged to apply withholding to certain payments they make to foundations and associations in cash or on account are as follows: public administrations and institutions, economic public institutions, other institutions, trade companies (collective companies, ordinary limited partnerships, limited partnerships with capital divided into shares, joint stock companies, limited liability companies), business partnerships, associations, foundations, economic enterprises of associations and foundations, cooperatives, investment fund managers, tradesmen and independent personal service providers who are obliged to declare their real income, and farmers who determine their agricultural earnings on the basis of balance sheet or agricultural business account principle (ITL 94/1).

1.1.2. Payments subject to withholding

The income of associations and foundations subject to withholding tax and the respective tax rates are shown in the following table.

Table 1. Taxation of the income of associations and foundations²¹

Association and foundation incomes	Withholding tax rates ²²	
	Foundations and associations with status	Foundations and associations without status
Real estate rent payments (ITL, 94/5-b)		20%
Profit shares (dividends) (ITL, 94/6-b-i)		10%
Interest on all kinds of bonds and treasury bills, securities issued by the Housing Development Agency, Public Partnership Administration and Privatization Administration, and income from leasing certificates issued by asset leasing companies (ITL, 94/7)	None	0, 3, 7, 10% to be applied to incomes derived from securities issued before 1/1/2006
Deposit interests (ITL, 94/8)	None	15%
Dividends paid to providers of interest-free loans, dividends paid in return for profit and loss sharing certificates and dividends paid in return for profit and loss participation accounts by private financial institutions (ITL, 94/9)	None	15%
Benefits provided in return for the acquisition or disposal of securities based on repurchase or sale commitments (repo and reverse repo transactions) (ITL, 94/14)	None	15%

21 The incomes listed below -except for real estate rent payments- are paid by those who are obliged to apply withholding as listed in Article 94 due to their nature. Since associations and foundations can rent their real estates to parties other than the persons and organizations listed in the Article 94, real estate rent income does not always have to be subject to withholding tax. Therefore, associations and foundations are not subject to income tax burden on the real estate they rent to these parties.

22 For current rates, see Revenue Administration (GIB), "Decision attached to the Decree no. 2009/14592 dated 12/1/2009 regarding the withholding tax rates under the article 94 of the Income Tax Law no. 193", <https://gib.gov.tr/node/86499>.

While the legislator does not make any distinction between associations and foundations with respect to the first two payments among these six groups of payments (i.e. real estate rent payments and dividends), it excludes public benefit associations and foundations which are granted tax exemption by the President from the withholding tax application in terms of the last four payments pertaining to interests. Since withholding tax constitutes the final tax for associations and foundations, the income tax burden on foundations and associations with status is completely eliminated with respect to the said payments. This practice, which is a consequence of the amendments introduced to Article 94 of the Income Tax Law by the Law No. 5228 dated 16 July 2004,²³ means that an advantageous regime has been created for those with status among associations and foundations. It is an important achievement in terms of state support provided to civil society organizations from a tax perspective. However, this regime was suspended shortly after its entry into force on 1 January 2005, and a temporary taxation regime was created in the Income Tax Law pursuant to the Law No. 5281, to be applied to certain passive incomes derived as of 1 January 2006 (ITL, Temporary Art. 67).

1.1.3. Temporary tax system

The temporary income taxation regime taxes certain income from movable property and capital gains, without discriminating between associations and foundations with or without status. It is stipulated that the interest incomes of all associations and foundations (the scope of the regime does not cover real estate rent payments and dividend payments), including the associations and foundations with status that were previously excluded from taxation, shall be taxed through withholding at the rates indicated in the following table.

Table 2. Withholding tax rates stipulated in the Temporary Article 67 of ITL²⁴

Association and foundation incomes	Withholding tax rates	
	Foundations and associations with status	Foundations and associations without status
Interest on all kinds of bonds and treasury bills, securities issued by the Housing Development Agency, Public Partnership Administration and Privatization Administration, and income from leasing certificates issued by asset leasing companies (ITL, Temporary 67/ 1& 2)		10%
Deposit interests (ITL, Temporary 67/4)		15%
Dividends paid to providers of interest-free loans, dividends paid in return for profit and loss sharing certificates and dividends paid in return for profit and loss participation accounts by private financial institutions (ITL, Temporary 67/4)		15%
Benefits provided in return for the acquisition or disposal of securities based on repurchase or sale commitments (repo and reverse repo transactions) (ITL, Temporary 67/4)		%15

²³ OG: 31.072004, 25539.

²⁴ For current rates, see GIB, "Decision attached to the Decree no. 2006/10731 dated 22/7/2006 regarding the withholding tax rates under the Temporary Article 67 of the Income Tax Law no. 193", <https://gib.gov.tr/node/86323>. Due to the economic crisis which began to take effect in 2020, a second temporary regime which was most recently extended until 31 July 2024 was established in the temporary regime under the Temporary Articles 2, 3, 4 and 5, stipulating lower withholding tax rates for certain interest incomes. These rates are applied again without discrimination between associations and foundations, see *ibid*.

Thus, by suspending the advantageous regime for interest income of associations and foundations with status, the state withdrew the step it had taken to support civil society organizations from a tax perspective. The statement of justification of the law does not provide any explanations regarding why the tax advantage of associations and foundations with status was ceased under the new taxation regime.²⁵ Moreover, under the temporary income taxation regime, the gains derived by associations and foundations from trading securities, which are not subject to withholding under the Article 94 of the Income Tax Law, began to be taxed without any distinction between those with and without status (ITL, Temporary Art. 67/1). In this context, the state has further aggravated the tax burden of civil society organizations.

“When you invest money in our sector, the withholding taxes collected on interest returns at banks naturally impose a significant burden. That is what I’d like to add. As far as I remember, this rate was previously reduced to zero. Those were good times. But it was introduced again later. Then why was it reduced to zero in the first place? Why is it back now? That too has not been fully explained. But we think it is an important burden on a foundation that is investing its money.” (Focus group interview (2), Foundation, Large Scale, with Status)

Indeed, according to the findings of the quantitative phase of the Fiscal/Tax Framework Research, income taxes paid on movable property constitute a burden for 92.8% of foundations with an income of TL 5 million and above. This rate is 36.9% for foundations with an income of TL 5 million or less. Such a great disparity is not observed when an analysis is made according to the income level of associations.

Although the temporary regime was planned to end on 31 December 2015, it was first extended until 31 December 2020 under the Law no. 6655 and then extended until 31 December 2025 under the Law no. 7256. Accordingly, the incomes of associations and foundations have been taxed as per a temporary regime that has been continuing for approximately 20 years.

1.1.4. Availability of income tax planning capabilities

Associations and foundations are excluded from income taxation in Türkiye, if they gain the aforementioned income from movable property (real estate rent, dividends and interest) and capital gains (gains from securities trading) from abroad without an economic enterprise organization. This is due to the fact that the taxation of associations and foundations is based on the withholding tax practice and parties who are obliged to apply withholding tax are only those who are located in Türkiye. Since the income in question does not need to be declared separately in Türkiye, taxation would not be possible. However, under the Article 16 of the Regulation on Foundations, “(f)oundations shall invest their assets by taking economic rules and risks into account and shall deposit their money in banks established in Türkiye.” Therefore, it does not seem possible for foundations to receive interests from deposits abroad. Although there is no such restriction on other income, foundation representatives stated during a focus group meeting that they do not carry out such tax planning activities.

25 See. GNAT, Vergi Kanunlarının Yeni Türk Lirasına Uyumunu İle Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun Tasarısı İle Plan ve Bütçe Komisyonu Raporu (1/937) (Draft Law on the Alignment of Tax Laws with the New Turkish Lira and Amendment of Certain Laws and the Planning and Budget Commission Report (1/937)), 2004, <https://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d22/c071/tbmm22071044ss0725.pdf>

(E)ven donations received from abroad must be reported to the Directorate General of Foundations. Down to the last kuruş, with receipts. A board (decision) must be taken in that matter. So, I think you have skipped a few levels. I mean, we are not there yet.” (Focus group interview (3), Foundation, Large Scale, With Status)

Moreover, in Türkiye, interest income from securities issued abroad by treasury and asset leasing companies are excluded from the taxation regime under the Temporary Article 67 of the Income Tax Law. Therefore, Eurobond incomes received by foundations and associations would be taxable, provided that they are associated with the article 94 of ITL. However, since Article 94 of the Income Tax Law does not stipulate withholding tax for such securities issued after 1 January 2006, associations and foundations would not be subject to taxation.²⁶ On the other hand, during a focus group meeting, a representative of a foundation stated that investing in Eurobond is not a preferred instrument due to its risks and therefore this tax advantage is not utilized much.

“Eurobond or similar items... do not provide definite returns... So the board of directors should assume (that risk)... which is not easy. This is because... they always... have very long terms. If you can afford waiting that long, then you can rely on the fixed return there. You can say, that’s enough for me. But after two or three years, the situation could change and you may need the money. But the value of Eurobond could be at an entirely different level. And that could be problematic. When that day comes, it would be very difficult to justify it... Everybody is fine as long as you make money, but when it’s lost, people would ask why you made that specific investment.” (Focus group interview (3), Foundation, Large Scale, with Status)

1.2. Liability of associations and foundations to withhold income and corporate income tax on their payments

Associations and foundations are obliged to apply withholding at the rates specified in the law while they make certain payments, to be offset against the income or corporate income taxes of the recipients of such payments (ITL, 94; CITL 15, 30). They become the parties responsible for tax due to this liability and declare and pay the taxes they withhold as the party responsible for taxation. The main payments related to the activities of associations and foundations on which they must apply withholding tax and the respective withholding tax rates are shown in the following table.

²⁶ See. GIB Istanbul Tax Office Directorate, “Whether Eurobond Interest Incomes and Trading Gains Derived by Foundations must be Declared”, 4 August 2020, <https://gib.gov.tr/vakif-terafindan-elde-edilen-eurobond-faiz-geliri-ve-alim-satim-kazanclarinin-beyan-edilip>.

Table 3. Liability of associations and foundations to withhold income and corporate income tax²⁷

Payments made by associations and foundations	Withholding tax rates		
	To natural persons	To tax-resident corporations	To non-resident corporations
Wages (ITL, 94/1-b)	Progressive tariff between 15-40%	-	-
Payments made due to independent personal services: (ITL, 94/2; CITL, 30/1-b)	17% (services under ITL, 18), 20% (other services)	-	20%
Allowances related to multiple-year construction and repair works (ITL, 94/3; CITL, 15/1-a; CITL, 30/1-a)	5%	5%	5%
Payments made to non-residents due to sales of copyrights and patent rights (ITL, 94/4; CITL, 30/2) ²⁸	20%	-	20%
Income from immovable property (ITL, 94/5; CITL, 30/1-c)	20%	-	1% (on leasing payments within the scope of the Financial Leasing Law), %20 (others)
Agricultural income (ITL, 94/11)	1, 2, 4%	-	-
Payments to exempt tradesmen: Purchase of goods (ITL, 94/13-a, b, c)	2, 5%	-	-
Payments to exempt tradesmen: Purchase of services (ITL, 94/13-a, d)	2, 10%	-	-
Payments made to those who provide advertising services on the internet and those who intermediate in such services (ITL, 94/18; CITL, 15/1-ğ; CITL, 30/1-d)	15%	0%	15%

As a rule, withholding tax imposes a tax burden on the parties who receive payments. However, while conducting their activities, associations and foundations must gross up all their expenditures, which are agreed on over their net amounts (ITL, 96/2; CITL, 15/7, 30/11); in other words, they have to

27 For current rates, see GIB, "Decision attached to the Decree dated 12/1/2009 no. 2009/14592 on the withholding tax rates under the Article 94 of the Income Tax Law no. 193", <https://gib.gov.tr/node/86499>; GIB, "Decision attached to the Decree dated 12/1/2009 no. 2009/14594 on the withholding tax rates under the Article 15 of the Corporate Income Tax Law no. 5520", <https://gib.gov.tr/node/86543>; GIB, "Decision attached to the Decree dated 12/1/2009 no. 2009/14593 on the withholding tax rates applicable to the earnings and revenues of non-resident corporations subject to withholding tax as listed in the Article 30 of the Corporate Income Tax Law no. 5520", <https://gib.gov.tr/node/86702>.

28 From payments made in return for the sale, transfer and conveyance of concessions, copyrights, business, trade names, trademarks and similar intangible rights in addition to payments made due to the sales of copyrights and patent rights to non-resident corporations.

bear the tax burden of the other party. In-depth interviews conducted within the scope of the project revealed that withholding taxes applied to rent payments (income from immovable property), income from independent personal services and internet advertising service payments are ultimately born by civil society, while withholding taxes on wages significantly increase labor costs. According to the quantitative research findings of the Fiscal/Tax Framework Research, more than half of civil society organizations consider withholding taxes on wages paid to employees as a tax burden. However, it has been determined that this withholding tax burden varies among different segments. Accordingly, for foundations with an income level of TL 5 million and above, withholding taxes on both wages paid to employees and on independent personal service payments are considered as a burden by 92.9% of civil society organizations. Withholding taxes on payments made in return for renting goods and rights constitute a higher burden on foundations than associations.

"I mean, the association's own administrative expenses are already high. Paying rent is difficult in terms of sustainability. There ... the 20% withholding tax is applicable again... The rest is goes to employer, that is, employee costs. That's where the biggest share lies." (Association, Small Scale, Without Status)

"Of course, a lot would be different if this tax liability was abolished. For example, withholding tax payment in renting is a significant liability; we pay 20% withholding tax on rent. This is a serious difficulty for us. When the taxes are deducted, we set up a budget for the coming years at the end of each project during the year. Unfortunately, within this budget, human resources, for example, we have offices in 21 provinces. Each office is rented, and we pay 20% withholding tax for these rents." (Foundation, Small Scale, Without Status)

"The biggest expense among our budget items is personnel expenses. Taxes paid for the personnel impose a significant burden. I can say that personnel expenses account for approximately 70% of our budget. And approximately 40% of these personnel expenses is actually comprised of taxes." (Association, Medium Scale, Without Status)

"(F)or example, we are making a copyright payment... We apply both VAT2 and withholding tax to that payment. I mean, it is a serious burden... for our association. In fact, almost a quarter of its income is allocated to such taxes...So it would be great if it was exempted from these withholding taxes. I don't mean the taxes withheld from employees' wages here; they are also too high, but I exclude them from my suggestion." (Focus group meeting (4), Financial Advisor)

"Sometimes you receive services from natural persons, independent professionals. Some of them issue independent personal service receipts to you. Those receipts include both VAT and withholding tax. For some of them, you pay the price with statements of expense. You must also apply reverse charge VAT or withholding tax on them. I am neither a corporate income taxpayer, nor a VAT payer. So, statements of expense also create a withholding tax impact, which remains as a burden on us. (Foundation, Large Scale, With Status)

“Advertising activities are carried out. Actually, we made some posts talking about the foundation rather than advertisements. In each transfer made abroad in relation with them, we also declare withholding tax for payments to Instagram, that is, Meta. Maybe the withholding tax declaration requirement could be abolished. There could be an extra incentive there. After all, we work for the public benefit and the posts we publish there are aimed at collecting more donations, providing more benefit for the society. So maybe the tax rates applicable to such activities could be different than those required from other companies, legal entities. It would be better if they didn’t exist at all, but at least a partial withholding tax could be applied.” (Foundation, Large Scale, With Status)

During the in-depth interviews, it was also emphasized that, since wage withholding is based on a progressive tariff, failure to update income tax brackets against inflation results in wage earners to be subjected to high withholding tax rates quickly, thus indirectly increase the labor costs of associations and foundations.

“In an environment where prices of everything increase by 50%, 60%, increases in the tax brackets are kept very low, which puts a huge burden on employees. That burden is indirectly reflected on foundations, civil society organizations and companies. This is because employees receive the net amount, so they either quit work and you hire another one for a higher cost and employ new people in their place, or you resort to other solutions, make some improvements. So, I would say the two biggest problems are the value added tax burden and the failure to increase the tax brackets as necessary.” (Foundation, Large Scale, With Status)

2. Associations and foundations in other tax regulations

Associations and foundations face a wide range of tax burdens on wealth and expenditures in addition to income taxes. In spite of that, the state has introduced very limited tax concessions against such burdens. Associations and foundations without status have hardly been allowed to benefit from these concessions. However, a regulation that provides a general tax concession for certain associations with respect to taxes other than income taxes and similar financial liabilities has been present in our legal system for years.²⁹

“My friend sent it to me and I couldn’t believe it... here they are... the Green Crescent, the Red Crescent, ... For example, they sent me a document stating that Darüşşafaka is exempt from stamp duty. This right was granted to them at the time and they used it. I’m not saying they shouldn’t, but this right should be granted to us too. We are a foundation acting for the public benefit and there is a contract signed for the foundation, so the work will be carried out for the public benefit and the expenses will be incurred for that purpose. Still, a stamp duty must be paid over it. The duty should either be abolished or lowered to a symbolic amount.” (Focus group interview (4), Foundation, Large Scale, With Status)

²⁹ The Law No. 1606 dated 11 July 1972 on the Exemption of Certain Associations and Institutions from Certain Taxes, and all Fees and Duties, Art. 1: “The Turkish Red Crescent Association, the Turkish Aeronautical Association, the Directorate General of Social Services and Child Protection Agency, Türkiye Yardım Sevenler Derneği, the official hospice institutions, the Darüşşafaka Society and the Green Crescent Society are exempt from all taxes, fees, duties, charges, shares and funds in cases where the tax, fee and charge obligation incumbent on them belongs to corporations. (Additional sentence: 16/6/2009-5904/Art. 29) These exemptions shall not apply to the economic enterprises belonging to these organizations, except for the activities carried out by the Turkish Red Crescent Society in accordance with the Law dated 11/4/2007 no. 5624, and to the withholding taxes to be applied in accordance with the Income Tax Law dated 31/12/1960 no.193 and the Corporate Income Tax Law dated 13/6/2006 no. 5520.”

In the survey and focus group meetings, the taxes whose financial burden on the civil society were emphasized were value added tax, stamp duty, special consumption tax, fees, real estate tax, motor vehicle tax, banking and insurance transactions tax, and advertisement tax. Inheritance and transfer tax was not prioritized among tax burdens, probably due to the tax concessions introduced.

Among the taxes listed, value-added tax, special consumption tax, banking and insurance transactions tax and advertisement tax are essentially indirect taxes, and associations and foundations are not liable for these taxes if they are the buyers of the goods and services stipulated in the law. However, with the clear intention of the legislator, associations and foundations end up as the actual taxpayers of these taxes for which they are not legally liable.³⁰ Therefore, these taxes constitute a cost for them. From an economic perspective, they reduce the purchasing power of associations and foundations commensurately with the rates in the law.

"VAT must be paid due to purchases of services and goods of all kinds. VAT actually means paying donations... to the state as taxes through these civil society organizations." (Ministry of Treasury and Finance, Tax Inspection Directorate, Bureaucrat Opinion)

"You donate me money. And I buy it, whatever the price. But I would buy and distribute more without VAT." (Foundation, Large Scale, With Status)

"There was an earthquake, you know. Everyone started to work quickly to meet the needs. There were containers, subject to VAT. (T)he state took an initiative for VAT... It took the initiative to exclude them from taxation in order to make sure where they went precisely, so that the cash could be used more effectively. That is the impact of tax." (Ministry of Treasury and Finance, Tax Inspection Directorate, Bureaucrat Opinion)

Value added tax: as the party liable for the tax (in sales)

Value added tax is a tax levied on deliveries of goods and services performed in Türkiye, as well as imported goods and services (VATL, 1). While the general rate is 20%, there are two categories of deliveries and services subject to a reduced rate of 10% or 1%.³¹ As a rule, deliveries of goods and services performed by associations and foundations are not subject to VAT. This practice is in line with the European Union's directive exempting non-profit organizations from value added tax for their non-commercial activities.³² On the other hand, deliveries and services performed by economic enterprises of associations and foundations are subject to value added tax (VATL, 1/3-g). Since the taxation of economic enterprises of associations and foundations is discussed in another publication, the value added tax status of these enterprises will not be addressed here.

30 Mualla Öncel, Ahmet Kumrulu, Nami Çağan, Vergi Hukuku (Tax Law), Ankara, 1985, p. 88.

31 GIB, "List of VAT Rates" (undated), <https://www.gib.gov.tr/yaritim-ve-kaynaklar/yararli-bilgiler/kdv-oranlari-listesi>

32 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Article 132 (1)(l), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02006L0112-20240101>

However, transactions of leasing of the goods and rights specified in Article 70 of the ITL are subject to value added tax independently (VATL 1/3-f). Whether these transactions are within the scope of commercial, industrial, agricultural activities and independent personal services is not taken into account, and personal leasing transactions are considered within the scope of value added tax.³³ Therefore, in case associations and foundations lease the goods and rights listed in the Article 70 of ITL, value added tax liability is triggered. Although the leasing of real estates that are not included in the economic enterprise (land, buildings and the parts and accessories leased together with them, sea hunting areas and fisheries as well as rights registered in the land registry as real estate) is excluded from value added tax under the clause 17/4-d of the VATL, the value added tax liability continues if associations and foundations lease the other goods and rights (exploration, operation, concession rights and licenses, copyrights, ship and ship shares, motor transportation vehicles, etc.) listed in the Article 70 of ITL apart from real estate.

Value added tax: as the party incurring the tax (in purchases)

Value added tax is built on a deduction mechanism where taxpayers can deduct the value added tax they pay during the deliveries of goods and services received by them or due to the goods and services they import, from the value-added tax they calculate when delivering goods and services. However, since associations and foundations do not have any value added tax liability except their economic enterprises, they cannot benefit from the deduction mechanism. Therefore, they are treated as final consumers, and the value added tax they bear for up to 20% (up to 18% before July 2023) results in a significant burden imposed on them. According to the quantitative research findings of the Fiscal/Tax Framework Research, 61% of the organizations stated that the value added tax they bear on domestic purchases of goods and services constitutes a financial burden for them. According to an analysis by legal status, 54.5% of associations and 78.8% of foundations reported value added tax as a burden. However, it is observed that the burden of value added tax increases as the income level increases, for both associations and foundations. 63.1% of associations with an income of 500 thousand TL and above and all foundations with an income of 5 million TL and above indicated value added tax as a significant burden.

The limited tax concessions provided with respect to this burden include the value added tax exemption applicable to the deliveries and services performed free of charge (donations) by value added taxpayers to foundations and associations with status, and to the deliveries of food, cleaning, clothing and fuel materials donated to associations and foundations engaged in food banking activities to help the poor (VATL, 17/2-b).

During in-depth interviews, civil society representatives frequently expressed the view that deliveries and services performed to them should be exempt from value added tax. Similarly, a large majority of the civil society organizations (77.4%) that joined the survey stated that their purchases should be exempt from value added tax.

³³ Mehmet Maç, KDV Uygulaması, 6. Bası, 2023, Madde 17 (VAT Application, 6th Edition, 2023, Article 17), p. 26, <https://www.denet.com.tr/tr/kdv6.php>

“CSOs are exempt from VAT and corporate income tax. They do not calculate any VAT on the donations they receive without VAT. But since the deductible VAT of particularly organizations like us that operate and organize activities in the field of culture and arts is not considered, that VAT is paid by them as cost. As a result, there is actually no VAT exemption in practice. In this case, we generally pay VAT at 20% on all costs. This is a really heavy burden. It is actually a serious problem for CSOs to have to deal with such a serious VAT burden, especially when they are doing a public service, that is, a service that will support culture and arts tourism, that will support the country’s tourism. Organizations, CSOs would be significantly relieved, if there was a legal regulation about applying VAT exemption in some way to the products and services purchased by them, in addition to the VAT exemption of the donations they collect. I think that this would rid them of the considerable cost there” (Focus group interview (3), Foundation, Large Scale, with Status)

“VAT troubles me a lot. I think VAT should not be reflected on foundations. As you know, associations and foundations are not VAT taxpayers. But we are compelled to pay VAT. It exists on all our costs. Since we cannot reimburse it from the state, we naturally cover it from our donations. That is why I think the VAT burden should be lifted from associations and foundations.” (Focus group interview (2), Foundation, Large Scale, With Status)

“Since we are not VAT taxpayers, we book our every purchase as expense including VAT. Therefore, it imposes an additional cost, burden on us. Deduction is not possible, we cannot do it. So, VAT is included in everything we buy. If they abolish VAT, it would solve the problem for many civil society organizations.” (Foundation, Large Scale, With Status)

“VAT is a burden in itself. It is the most unnecessary burden. We cannot issue invoices. There is nowhere we can recover the VAT. That is a burden in itself. As I said, we can’t use VAT exemption for everything. The VAT exemption certificate can be an advantage in the service purchases you mentioned, as long as you can use VAT exemption. Otherwise, they bring obligations themselves. As an association, we purchase a lot of visibility-related services within the scope of projects, for example. We purchase services relating to activities and events, that is, accommodation, plane tickets. Each of them has a tax bracket item, which inevitably brings about great obligations from a budgetary point of view. Particularly the 18% VAT bracket applicable to the services we generally buy imposes an extra burden on us.” (Association, Medium Scale, Without Status)

Similar demands have been raised within the European Union as well, since civil society organizations are exempt from value added tax on their deliveries and cannot recover the value added tax arising from the goods and services they purchase, as per the common legislation. In Ireland, organizations have long advocated for alleviation of the heavy burden they bear in their purchases with VAT, and this advocacy led to the introduction of a VAT compensation mechanism

in 2019. To review the demands of civil society organizations, the Irish tax administration established the VAT on Charities Working Group, which was comprised of representatives of the public sector and civil society, in 2015. The results of the group's work were published in a report in 2016.³⁴ According to research included in the report, in 2010, the total expenditures of Irish civil society organizations was €1.7 billion, while the total value added tax paid was €77.4 million (4.5% of total expenditures). The amount of taxes paid is equivalent to 59% of the total income derived by organizations as a result of the donations collected by them.³⁵ Civil society organizations stated that this situation discouraged donors, resulting in the organizations' dependence on public funds and consequently on taxes paid by citizens.³⁶

Under the European Union legislation, taxes paid in purchases are deductible within the value added tax system, only if they are associated with sales.³⁷ Therefore, civil society organizations aimed to alleviate the tax burden by having a compensation mechanism established outside the value added tax system. For this purpose, the compensation mechanism system enforced by Denmark in 2007 was examined and recommended to the Irish government.³⁸ This compensation mechanism was based on the refund of the value added tax paid by civil society organizations, in proportion to their private funding capacities. It was thus aimed to incentivize organizations' non-public incomes sourced from the private sector.³⁹ The refund application is made by submitting details of the organization's audited value added tax expenditures for the year and the ratio of public and private resources.⁴⁰ Since the introduction of this system in Denmark, it has been observed that civil society has implemented pending projects and focused more on the utilization of foreign resources whose value added tax burden was eliminated, after reviewing operational decisions.⁴¹

Finally, Ireland included the compensation mechanism in its system in 2019.⁴² Claims for compensation are limited to a minimum amount of €500 and a maximum amount of €1 million, and must be for deliveries and services in line with the organization's objectives.⁴³ Furthermore, an annual amount of €10 million is allocated from the government budget for the total amount of tax that can be refunded under this regime. If the total claims exceed this amount, the claims are met on a pro rata basis.⁴⁴ In Denmark, where the system was originally applied, no annual limits were set and a refund of approximately €15,5 million was made in 2010.⁴⁵

34 See: Irish Department of Finance, "VAT on Charities Working Group Report", October 2015, <https://assets.gov.ie/181171/e1b2db8d-cbbb-4e8e-8869-234095b59e6c.pdf>

35 Ibid. p. 2.

36 Ibid. p. 4.

37 Ibid. p. 7.

38 Ibid. p. 12.

39 Ibid.

40 Ibid.

41 ISOBRO & Deloitte, "Danish Charities Get Compensation for VAT Expenses- Casestudy", 11 November 2010, <https://www.eccvat.org/wp-content/uploads/2021/03/Copenhagen-Economics-Danish-case-study.pdf>; Third Sector, "Tax special: A lesson from the Danes", 27 May 2009, <https://www.thirdsector.co.uk/tax-special-lesson-danes/finance/article/907997>.

42 OECD, p. 69.

43 Ibid.

44 Irish Tax and Customs, "VAT Compensation Scheme for Charities", 1 December 2023, <https://www.revenue.ie/en/companies-and-charities/charities-and-sports-bodies/vat-compensation-scheme/vat-compensation-scheme-for-charities/how-do-you-calculate-the-claim-amount.aspx>

45 ISOBRO & Deloitte, p. 2.

Another practice aimed at alleviating the heavy burden imposed on civil society organizations in their purchases subject to value added tax is implemented in the UK.⁴⁶ For this purpose, the UK offers advantageous value added tax rates to civil society organizations. Accordingly, civil society organizations pay 5% value added tax instead of 20% on their purchases of fuel and energy for residential accommodation (e.g. children's home or nursing home for the elderly), non-commercial charitable activities (e.g. free daycare for the disabled) and small-scale usage (distribution of up to 1,000 kilowatt hours of electricity or 2,300 liters of kerosene per month). They are also subject to 0% value added tax for deliveries of certain goods and services. Such goods and services include advertisements and items aimed at fundraising, aid for the disabled, construction services, medicines and chemicals, equipment for preparation of 'talking' books and newspapers, lifeboats and related equipment including fuel, pharmaceutical or pharmaceutical materials, resuscitation training models, medical, veterinary and scientific equipment, ambulances, products for the disabled, motor vehicles designed or adapted for the disabled and rescue equipment. Furthermore, civil society organizations do not pay value added tax over certain goods and services imported. These imported goods and services are as follows: basic needs of people in need, equipment and office supplies to help the organization function for the benefit of people in need, and products to be used or sold at charity events.

In addition, like other taxpayers, associations and foundations may alleviate their value added tax burden within the scope of a project in Türkiye. Associations and foundations can be relieved of this burden through a VAT exemption certificate they obtain within the scope of European Union Projects under the Articles 28/2-b and c of the Framework Agreement between Türkiye and the European Union regarding the Instrument for Pre-Accession Assistance, known as IPA II.⁴⁷ The aim of this concession is to increase the efficiency of the foreign aid program, thus realize the economic, political and social reforms necessary for Union membership, by allowing the union's resources to be allocated entirely to the targeted project.⁴⁸ In Türkiye, a similar general support is not available for the domestic resources transferred by natural persons and corporations to associations and foundations in order to serve the social and economic development of Türkiye.

"I know how much relief is provided by VAT exemption alone, especially in activities based on (EU) projects. I can at least say that, it would be a great advantage for organizations, associations, if this exemption was generally provided without requiring a lot of specific conditions." (Association, Medium Scale, Without Status)

"We take on EU projects. But as we said before, it is very limited; we take it only for one project which accounts for a small part in our overall activities. Yes, we do benefit from the related tax exemption... We can naturally carry out more ... activities, as VAT is not collected. But it is not enough at all." (Focus group interview (2), Foundation, Large Scale, with Status)

46 GOV.UK, "VAT for Charities" (undated), <https://www.gov.uk/vat-charities/what-qualifies-for-relief>

47 The Council of Ministers Decision on the Approval of the Framework Agreement Regarding the Regulations for the Implementation of the Financial Aid to be made by the Union to the Republic of Türkiye under the Instrument for Pre-Accession Assistance (IPA II) between the European Commission and the Republic of Türkiye, which is represented by the Government of the Republic of Türkiye, approved under the Law no. 6647 (OG: 21.06.2015; 29393), <https://www.resmigazete.gov.tr/eskiler/2015/06/20150621-1-1.pdf>

48 See. Birol Ubay & Ebru Tiyar, 'Avrupa Birliği Katılım Öncesi Mali Yardım Aracı ve Vergi İstisnası Boyutu' ("The European Union Instrument for Pre-Accession Assistance and the Tax Exemption Aspect"), Maliye Dergisi, July-December 2019, Ed. 177, p. 448-475.

However, if associations and foundations (like other taxpayers) donate social service facilities to public institutions as per a protocol to be signed by them, they are granted value added tax exemption certificates, based on which they do not carry value added tax burden in the deliveries of goods and services within the scope of the application projects relating to the construction of such facilities (VATL, 13/1-k).

“There are some advantages for VAT. I think I just skipped that. VAT exemption may apply in our investments such as schools and hospitals. We have been benefiting from them for the last few years. That was good work.” (Foundation, Large Scale, With Status)

Value added tax: As the party responsible for withholding tax

There is widespread hesitation in practice regarding the scope of tax liability of associations and foundations in relation to the value added tax return no. 2 (shortly referred to as VAT2). In the VAT2 application, parties responsible for value added tax declare and pay the tax they calculate over the price of the deliveries of goods and performance of services they receive, to the tax administration.

“We pay copyrights to each author. Majority of these people do not own companies. They can’t issue a lot of statements of expense either. It is not very acceptable for the Associations Authority and the tax office. We did a lot of research on what to do. In the end, we chose this method to be able to at least say that we paid taxes for those people by paying VAT2. They were really surprised the last time they came for an audit. They asked us why we were paying VAT2. We pay VAT2 to avoid getting into trouble. For the individuals who are not taxpayers as well. We thought we should pay the maximum amount in terms of tax, to avoid getting criticized in that regard by the tax office or the associations authority when necessary. We are paying utmost attention.” (Focus Group Meeting (2), Association, Small Scale, Without Status))

The VAT2 liability of associations applies to the limited number of transactions listed below and VAT2 is not payable for other deliveries and services:⁴⁹

- Services received in Türkiye from those without a place of residence, place of work, legal headquarters and business headquarters in Türkiye, or the services that are performed by them abroad but that are enjoyed in Türkiye (for example, advisory services or social media and advertisement services received by an association or foundation from a non-resident person or entity in relation with their activities in Türkiye in return for a certain price are within this scope),
- Deliveries and services to be received by them from independent personal service providers who perform the deliveries and services within the scope of the Article 18 of ITL on a customary and continuous basis, but who exclusively perform them to the parties responsible for withholding tax as listed in the Article 94 of ITL.⁵⁰

Nevertheless, our qualitative research findings indicate that VAT2 has become a significant burden for civil society organizations. This is attributed to the fact that the digital individuals and

⁴⁹ For detailed information, see Maç, Article 9.

⁵⁰ This withholding is at the discretion of those who carry out the copyright activity. These persons may have VAT liability registered and declare to the party responsible for the withholding tax that they would like to be subjected to withholding, Maç, Article 9, p. 14.

organizations (such as Google, Facebook, etc.) that civil society organizations rely on to ensure digital transformation in the digital media era and to meet their visibility needs so that their activities can be supported, are mostly based abroad.

“(T)he area I specifically complain about when it comes to associations is the VAT2 problem... If we were to work on this issue, we should suggest exclusion of civil society organizations from this VAT2 application” (Focus group meeting (4), Financial Advisor).

Stamp duty

Associations and foundations are subject to stamp duty for the papers they issue. While associations with status are exempt from stamp duty for papers they issue in all kinds of transactions,⁵¹ foundations with status are exempt from stamp duty only for the papers issued in their establishment procedures.⁵² Accordingly, stamp duty is levied on the papers issued by these foundations after their establishment.⁵³ The responses to the question about whether stamp duty imposes a burden, which were provided in the quantitative phase of the Fiscal/Tax Framework Research, were analyzed by level of income, revealing that 92% of the foundations with an income exceeding 5 million considered it as a burden.

“We carry our humanitarian aid activities. For example, we buy flour from a contractor and make a contract between us regarding this. Let’s say I will buy ten million worth of flour, then send it to Gaza, to Somalia. Stamp duty is applicable there, since the contract is considered commercial.” (Foundation, Large Scale, With Status)

This inequality is rooted in the legislative background. In the first version of the Stamp Duty Law, only associations with status and all kinds of transactions conducted by them were exempt from stamp duty.⁵⁴ A tax advantage was also provided to foundations with status, as per a provision added to the Stamp Duty Law (SDL) in 1967 under the Law no. 903, which introduced foundations to our law in the modern sense. However, this advantage was limited only to their establishment procedures.⁵⁵

On the other hand, associations and foundations without status can benefit from an exemption only for the lease agreements regarding immovable properties which are leased for use as residential areas and are not included in economic enterprises, as well as surety annotations and collaterals to be affixed to these agreements.⁵⁶

51 SDL, Schedule no. 2/V-17: “Papers which are issued in all kinds of transactions of associations working for the public benefit and whose Stamp Duty must be paid by those organizations.”

52 SDL, Schedule no. 2/V-19: “All kinds of papers issued in the establishment procedures of foundations granted tax exemption by the President, as well as papers issued in all kinds of transactions of foundations established to strengthen the Turkish Armed Forces (including the Gendarmerie General Command)

53 Tax ruling dated 2 June 2012 numbered B.071.GİB.4.34.17.01-KDV.17-1796 issued by the Istanbul Tax Office Directorate, <https://nelsus.com.tr/vakfin-vergi-kanunlari-karsisindaki-durumu-hk/>

54 OG: 11.07.1964, 11751, https://www5.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc047/kanuntbmmc047/kanuntbmmc04700488.pdf

55 OG: 24.07.1967, 12655, https://www5.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc050/kanuntbmmc050/kanuntbmmc05000903.pdf

56 SDL, Schedule no. 2/IV-31: Lease agreements regarding immovable properties which are leased for use as places of settlement by associations and foundations and as residential areas by natural persons and are not included in economic enterprises, as well as surety annotations and collaterals to be affixed to such agreements.”

"We have many contracted firms; these contracts are renewed yearly and we are subject to their stamp duty every year. It is applied to other contracts concluded during the year as well. Some firms take the initiative here. They want to support us as an association and assume the stamp duties completely. But some of them are extremely reluctant to do that and let us pay the fifty percent. At worst, it is split half and half. (Focus Group Meeting (1), Association, Medium Scale, without Status)

Furthermore, stamp duty exemption is granted only to associations and foundations, without any attempt to alleviate the stamp duty burden of natural persons and corporations who enter into protocols in order to make donations to associations or foundations.

"As you know, contracts are concluded for any donation with a high amount. In such contracts, the stamp duty and other taxes are generally payable by the donor. But it is actually deterrent from donors' point of view. In really big transactions... stamp duty amounts can be very high... But why would anyone who is working for the public benefit, doing a charitable deed, or foundations have to pay such high amounts of stamp duty?" (Focus group interview (2), Foundation, Large Scale, With Status)

Fees

A fee is a financial liability levied on those who benefit from a service performed by the administration, due to the said service. Fees are collected at fixed or proportional rates on judicial procedures, public notary procedures, land registry and cadastral procedures, consular procedures, passport, residence permit, visa and certification procedures at the Ministry of Foreign Affairs, ship and port procedures, concession, license and diplomas and traffic procedures. According to the findings of the quantitative phase of the Fiscal/Tax Framework Survey, notary fees were considered to impose the highest financial burden by the surveyed organizations with 48.7%. The fee considered to impose the least financial burden was land registry fee, with 82.9% of the organizations stating that land registry fee did not constitute a burden.

In order to alleviate this burden, fee exemption is applied to the registration and annotation procedures of the immovable property and other rights in kind to be acquired by associations and foundations with status, and registration and annotation procedures of the facilities pertaining to the said associations and foundations and the immovable property and other rights in kind to be acquired later by such facilities, as well as the cancellation procedures thereof (Fees Act, 59/b). The establishment procedures of foundations with status and the donations to be made to such foundations are also exempt from fees (Fees Act, 38/3).

Property tax

Property tax is levied on the tax value of buildings, land and plots located within the borders of Türkiye at rates ranging from 1 per thousand to 6 per thousand. Associations with status are exempt from building and land tax provided that they are not leased and are not owned by or allocated to economic enterprises (Property Tax Law, 4/e; 14/c), while foundations with status are exempt from building tax provided that they are not leased and are allocated to the purposes written in their official statute (Property Tax Law, 4/m). Contrary to associations with status, foundations with status cannot benefit from land tax exemption. Associations and foundations without status, on the other hand, cannot benefit from any property tax exemption.

The criterion of not being leased indicates that the association or foundation will begin to be taxed if it starts using the property as a source of income. This practice is in line with the examples of other countries.⁵⁷ However, there is no justification for the different treatment of foundations with status and associations with status in terms of land tax exemption.

Advertisement and advertising tax

Advertisement and advertising tax is levied according to a fixed tariff, on all kinds of advertisements and advertising services performed within municipal boundaries and neighboring areas (Law on Municipal Revenues, 12, 15). Taxation of advertisements made by associations and foundations, especially to announce their public benefit activities, constitutes a considerable burden. With respect to the entertainment tax, another tax stipulated by the Law on Municipal Revenues, a tax exemption is granted for entertainment activities organized by associations with status (Law on Municipal Revenues, 19/3), whereas no tax concession is granted to civil society organizations for advertisement and advertising tax.

Inheritance and transfer tax

Inheritance and transfer tax is levied on the transfer of property belonging to persons with Turkish nationality, as well as property located in Türkiye, from one person to another, either by inheritance (will, inheritance) or gratuitously (donation, lottery, etc.). A progressive tax tariff is applied between 1% and 10% in case of inheritance and between 10% and 20% in case of gratuitous transfer (Inheritance and Transfer Tax Law, 16). The Inheritance and Transfer Tax Law provides various concessions both for associations and foundations. However, the provision on the exemption of foundations under the this law no longer serves any purpose, since all foundations have been provided with a very comprehensive concession as per the provision in the article 77 of the Foundations Law no. 5737, which was issued later, stating that "Movable and immovable property that are donated to foundations during or after establishment are exempt from Inheritance and Transfer Tax".⁵⁸ Upon analyzing the provisions concerning associations, it is observed that only associations with status are exempt from inheritance and transfer tax (Inheritance and Transfer Tax Law, 3/1-a). On the other hand, aids granted by associations and foundations with status, as required by their statuses and in accordance with their purposes of establishment, are exempt from inheritance and transfer tax (Inheritance and Transfer Tax Law, 4/f) Therefore, the persons acquiring these properties do not have to pay inheritance and transfer tax.

Special consumption tax

Special consumption tax is levied at a fixed or proportional rate over the goods listed in four separate lists attached to the law (Special Consumption Tax Law, 1).⁵⁹ There are no tax concessions provided to civil society organizations for this tax.

Motor vehicles tax

Motor vehicle tax is a tax with specific tax bases, which is levied on motor land vehicles recorded and registered with traffic branches or offices in accordance with the Highway Traffic Law and on

⁵⁷ OECD, p. 69.

⁵⁸ Mehmet Maç & Tank Cemali, Veraset, Hibe ve Ölüm, 2.B. (Inheritance, Grant and Death, 2.B.), Undated, Article 3, p. 8-9, <https://www.denet.com.tr/tr/veraset.php>.

⁵⁹ For the lists and current taxes, see: GİB, Special Consumption Tax Amounts and Rates, https://gib.gov.tr/fileadmin/mevzuatek/otv_oranlari_tum/ozeltuketimoranlari-OpenPage.htm

airplanes and helicopters recorded and registered with the Ministry of Transportation, Directorate General of Civil Aviation (Motor Vehicles Tax Law, 1). There are no tax concessions provided to civil society organizations for this tax.

Banking and insurance transactions tax

Banking and insurance transactions tax is levied on financial transactions. Associations and foundations are subject to banking and insurance transactions tax burden at the rate of 0.2% for their foreign exchange transactions and 5% for their insurance transactions. There are no tax concessions provided to civil society organizations for this tax.

3. Associations and foundations in social security regulations

Association and foundations carry the title of employer due to the individuals working for them under employment contracts. Employers must withhold insurance holders' shares of premiums to be calculated over the earnings subject to premium received by the insurance holders they employ within a month, from the wages of the said insurance holders, add the premium amounts corresponding to their own share to those amounts, and then pay the total amounts by the end of the following month/period at the latest (Social Security and General Health Insurance Law, 88/1). The total premium rate paid in this context corresponds to 37.5% of the earnings subject to premium.⁶⁰ Like other private sector employers, associations and foundations may benefit from the 5-point discount support on employer's premium shares (Social Security and General Health Insurance Law, 81/1-ı) or partial supports provided for certain employees, which are granted to encourage timely payment of social security premiums.⁶¹ Combined with income withholding tax, social security premiums significantly increase employers' costs. According to the quantitative findings of the Fiscal/Tax Framework Research, 52.9% of civil society organizations state that employer's share of social security premium payments constitutes a financial burden for them. This rate reaches 84.9% for all foundations and 100% for foundations with an income above 5 million.

"A social security advantage is provided to the civil society. This provides a 5% advantage in social security. Of course there are some advantages for employees, but they do not cover everybody. They only cover certain individuals, employees. For example, if a female employee is under the age of 25 and is directed from the social security institution or finds a job with the institution's, with ISKUR's guidance, then certain social security advantages apply, but they do not cover everyone. They only cover that specific person and only up to a certain age. So it does not actually provide much of an advantage." (Association, Medium Scale, with Status)

60 Social Security Institution, "Employer Premium Rates", undated, <https://www.sgk.gov.tr/Content/Post/c7812ea8-5087-413f-aeb5-d3c1d153e11a/Isveren-Prim-Oranlari-2022-05-15-07-11-41>

61 For information about these supports and their requirements, see: Social Security Institution, "Current Premium Incentives, Supports and Discounts", undated, <https://www.sgk.gov.tr/Content/Post/c52f99f0-da6c-4029-9b9a-a0d6f96a6a42/Guncel-Prim-Tesviki-Destek-ve-Indirimleri-2024-02-05-02-35-11>

II. Status of persons who donate to associations and foundations in terms of tax regulations

In Türkiye, persons who donate to associations and foundations may, under certain conditions, deduct their donations and aids from their income tax base if they are natural persons and from their corporate income tax base if they are corporations.⁶² The tax payable is calculated by applying the tax rate to the reduced tax base. The state encourages the support of civil society organizations through this tax concession, which leads to reduction in the payable tax amount.⁶³ For countries that apply progressive tax tariffs, deduction from the tax base leads to lower donation costs for wealthy persons.⁶⁴ Our practice of applying deduction from tax bases is generally parallel with the practices of other countries.⁶⁵ However, there are also points where countries diverge.

For example, there is a small number of countries where donations and aids must be offset against the payable tax rather than being deducted from the tax base. This method becomes applicable after calculation of the tax, thereby reducing the payable tax. Unlike deduction from the tax base, the value of tax offset is equal for all taxpayers, as long as tax liabilities are equal to or higher than the offset value.⁶⁶ These countries include Cyprus, France, Hungary and Spain.⁶⁷ In Belgium, Estonia, Ireland, Lithuania, Portugal, Romania, Slovakia, Albania, and North Macedonia, both the tax deduction and tax offsetting methods are used.⁶⁸

On the other hand, while Lithuania does not allow tax deduction or offsetting for natural persons, it allows them to transfer 2% of the taxes they pay, directly to a public benefit foundation through their tax return.⁶⁹ The aforementioned method known as the allocation system (percentage charity or tax percentage allocation), which allows for the transfer of a certain percentage or a certain amount of the payable tax to non-profit organizations, is also applied in Romania, Slovenia, Portugal, Hungary, Italy and the Slovak Republic.⁷⁰ However, the Slovak Republic adopts this method for both income tax and corporate income taxpayers, while the others allow only income taxpayers to apply it.⁷¹

62 Since two different legislation (i.e. ITL and CITL) is applicable to the taxation of natural persons' and corporations' incomes in Türkiye, this section makes consecutive references to the regulatory articles of both laws regarding the incentive in question.

63 GIB, Guidelines on Donations and Aids in terms of the Tax Legislation, 2024, https://www.gib.gov.tr/sites/default/files/fileadmin/beyannamerehberi/2024/vm_bagisyardim.pdf

64 OECD, p. 78.

65 OECD, p. 75; Philea, p. 107-115.

66 OECD, p. 78.

67 Philea, p. 38.

68 Ibid.

69 Ibid. p. 37.

70 OECD, p. 89.

71 Ibid. p. 102.

In addition, there are countries that limit the tax advantage (deduction or offsetting) granted to donors to a portion of the tax base, i.e. net income, as in our country, as well as countries that limit it to a portion of gross income, a fixed value or a combination of these, or limit the size of the donation itself.⁷²

Countries may impose restrictions on the form of donations in addition to donation amounts. Austria, Finland, Israel, New Zealand, Norway and Sweden have regulations that limit tax incentives to cash donations and do not support donations in kind.⁷³

The incentives available to donors in our country will be discussed below separately according to whether they are limited to a portion of the income.

1. Incentive for donations and aids limited to 5% of the income

There is a general incentive provision in the Income and Corporate Income Tax Laws that provides tax deduction for donations and aids to associations and foundations with status, without any limitation in terms of field of activity (ITL, 89/4; CITL, 10/1-c). Accordingly, the portion of the total donations and aids of income and corporate income taxpayers in return for receipts to public benefit associations or tax-exempt foundations, which does not exceed 5% of their earnings for that year (10% for income taxpayers, limited to regions with priority in development) is deductible by these taxpayers from their tax bases. However, according to the findings of the quantitative phase of the Fiscal/Tax Framework Research, when answering the question posed by sharing the provisions of the relevant law, the majority of civil society organizations stated that they were not aware of this tax incentive. It was observed that 64% of associations with status and 23% of foundations with status were not aware of ITL 89/4. With respect to CITL 10/1-c, on the other hand, 56% of associations with status and 38.5% of foundations with status stated that they were not aware of the provision. Considering that the aforementioned provisions provide associations and foundations with the most basic tax incentive granted to them by having a status, it has been concluded that civil society organizations lack knowledge about the legal basis of tax advantages.

The incentive's contribution to civil society's financial sustainability remains limited for various reasons. First of all, 5% is a low rate. The study conducted by OECD indicates 5% as the lower limit. As it can be seen from the table below, it lists countries where rates of 10%, 15%, 20%, 40% and 60% are applied, led by Australia and Singapore which do not impose any limits.

72 OECD, p. 77.

73 Ibid. p. 78.

Table.4 Tax deduction regulations on donations and aids in various countries

Country	Deduction upper limit
Argentina	5% of the annual income
Australia	No limitation as long as it does not result in loss declaration
Austria	10% of the total income
Bulgaria	65% of the tax base
Czech Republic	15% of the tax base for natural persons, 10% of the tax base for corporations
Estonia	50% of the tax base for a maximum amount of 1,200 Euros
Finland	Up to EUR 500,000 for natural persons and up to EUR 250,000 for corporations
Germany	20% of total income or, in the case of corporations only, also 4% of turnover and fees paid
India	10% of the gross income
Indonesia	5% of the tax base
Italy	10% of the tax base
Japan	40% of the total income
Latvia	For natural persons, 50% of the tax base up to a maximum of 600 euros, deduction of donations does not function as an incentive as corporations are not taxed when they reinvest their earnings
Luxembourg	Euro 1,000,000 or 20% of net income
Mexico	7% for the previous year's income for private institutions, 4% of the previous year's income for public institutions
Netherlands	10% of the gross income for natural persons, 50% up to EUR 100,000 for corporations
Norway	Unlimited up to 50,000 Norwegian Kroner
Singapore	Unlimited
Slovenia	0.5% of the tax base
South Africa	10% of the tax base
Switzerland	20% of the tax base
USA	30% or 60% of gross income depending on the beneficiary

Source: OECD, p. 81, 98-100.

Secondly, natural persons must be subject to the tax return procedure in order to benefit from this incentive. As stated above, donations and aids are deducted during the determination of the tax base, over the incomes to be declared in the income tax return. In this case, the incentive for donations and aids cannot be utilized in situations where the income owner does not file annual

tax returns and the taxes they pay through withholding tax become the final tax. Although wage income accounts for a significant share in the total income taxes, the ratio of taxpayers who declare wage income to the total taxpayers who file tax returns is quite low,⁷⁴ which points to the prevalence of this inequality.

The scientific data according to which majority of the individuals in Türkiye make small and irregular donations⁷⁵ demonstrates that enabling wage earners to benefit from this tax advantage would provide a significant support in terms of collecting and regularizing donations for civil society organizations, thereby contributing to their financial sustainability. Qualitative research findings also support this.

"But the actual benefit can be gained by, the way to increase the donations lies, to a great extent, in payroll giving, in smaller amounts, yet more comprehensive and continuous. This could significantly increase organizations' incomes. That's because, they are given once and continue for at least a year. I am sure that they would all add up, if there is a tax advantage and people can observe the consequences of their donations in the society in some way."
(Focus group interview (3), Foundation, Large Scale, With Status)

"I also attach great importance to payroll giving... if people became more conscious and there is an environment allowing them to deduct those amounts from their income taxes ... I think the number and amount of individual giving would greatly increase. If a person goes beyond the fourth bracket under the Income Tax Law, then they would be obliged to file income tax returns. Such taxpayers can also deduct, for example, their families' education expenditures, if any, while issuing income tax returns. If they made any donations, they can deduct those as well. I think there is actually an injustice here, because both persons are on a payroll. One of them has a high level of income while the other has a low level of income, but both of them are actually involved in an activity to support a public service, serving a sacred purpose. The number of people with low income on payrolls is actually much higher. In other words, the ratio of payrolls with a level of income exceeding the fourth bracket is probably about ten or fifteen per cent in Türkiye, but those with an income below that bracket account for about eighty, eighty five per cent. If awareness is raised on this issue, the number of individual donations will actually increase. They do that in some way in private health insurance, for example. When you pay for private health insurance, you can report it to HR to deduct from the cumulative income tax base of that month, and HR deducts it. So, people might as well have their monthly donations deducted. It is actually not that difficult. I think a support provided in this regard is very important in terms of supporting individual donations." (Focus group interview (3), Foundation, Large Scale, With Status)

Finally, donations and aids not deductible in the relevant year cannot be carried forward to following years.

⁷⁴ Murat Çimen & Ramazan Armağan, Gelir Vergisi Unsurlarının Vergi Adaleti Bağlamında Değerlendirilmesi: 1980 Sonrası Değişiklikler ve Gelişmeler (Evaluation of Income Tax Elements in the Context of Tax Justice: Changes and Developments after 1980), Vergi Raporu, No. 222, March 2018, p. 121.

⁷⁵ Ali Çarıkoğlu & S. Erdem Aytaç, Individual Giving and Philanthropy in Turkey, TÜSEV Publishing, September 2016, p. 16-17; Ali Çarıkoğlu & S. Erdem Aytaç, Individual Giving and Philanthropy in Turkey, TÜSEV Publishing, 2022, p. 31-32.

2. Incentive for donations and aids allowing full deduction from the income

Under Income and Corporate Income Tax Laws, certain fields of activity are determined and more advantageous incentives are provided for donations and aids to associations and foundations for those purposes. The whole amount of the costs of food, cleaning, clothing and fuel items donated to associations and foundations engaged in food banking activities⁷⁶ (ITL, 40/10; ITL, 89/6;⁷⁷ CITL, 6/2)⁷⁸ and the whole amount of donations and aids within the scope of cultural and touristic expenditures made to associations and foundations with status (ITL, 89/7; CITL, 10/1-d) are deductible. Furthermore, donations and aids to the associations and foundations individually listed in Income and Corporate Income Tax Laws as well as certain other laws are wholly deductible from the tax base.⁷⁹

According to the quantitative research findings of the Fiscal/Tax Framework Research, which are presented in Table 5 below, 61.1% of associations and 39.4% of foundations reported that they were not aware of ITL 40/10 and ITL 89/6 regarding food banking, while 58.9% of associations and 36.4% of foundations reported that they were not aware of CITL 6/2 regarding food banking. An analysis of associations and foundations by income level revealed that the level of awareness declines in direct proportion to the level of income. 84% of associations with an income of 500 thousand TL or less and 47.4% of foundations with an income of 5 million TL or less are not aware of both ITL 40/10 and ITL 89/6 and CITL 6/2.

Table 5. Civil society organizations' awareness of the tax deduction incentive provided to donors in food banking

Type of organization	ITL 40/10 and ITL 89/6	CITL 6/2
Associations (Total)	61.1%	58.9%
Associations (with an income of 500 thousand TL or less)	84%	84%
Foundations (Total)	39.4%	36.4%
Foundations (with an income of 5 million TL or less)	47.4%	47.4%

Furthermore, it has been observed that 56% of the associations with status were not aware of ITL 89/7 regarding the deduction of donations and aids within the scope of cultural and touristic

⁷⁶ The statutes of the association or the foundation must contain provisions on the provision of food aid to those in need (GIB Associations, p. 12; GIB Foundations, p. 7). The association/foundation is not further required to have a public benefit status, since food banking activities are deemed to be of public benefit in terms of their subject matter.

⁷⁷ Both ITL 40/10 and ITL 89/6 concern food banking. However, the deduction right is regulated equivalently under the first provision and the Article 89/6, for income taxpayers who derive commercial earnings and income taxpayers who derive income other than commercial earnings, respectively.

⁷⁸ Paragraph 2 of Article 6 of the Corporate Income Tax Law states that "(t)he provisions of the Income Tax Law on commercial earnings shall apply in the determination of the net corporate income", and in accordance with this reference, donations related to food banking in the 10th clause of the Article 40 of the Income Tax Law can also be deducted by corporate income taxpayers.

⁷⁹ For a list of these laws and relevant institutions and organizations, see. Hayati Şahin & Tevfik Başak Esen, Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations, TÜSEV Publishing, İstanbul, 2018, p. 15.

expenditures. On the other hand, while 76.9% of the foundations with status were aware of the incentive, they stated that it did not concern their organizations since it was specific to a certain field of activity. Similarly, 56% of associations with status stated that they were not aware of the CITL 10/1-d, and 69.2% of foundations with status stated that while they were aware of the incentive, it did not concern their organizations.

As a rule, the portion of these donations and aids not deductible within the relevant year cannot be carried forward to following years, as with the incentive for donations and aids limited to 5% of income. However, food banking donations can be booked directly as expense and thus have an advantage over other donations in that they can be offset in future years in the event of loss.⁸⁰ As a matter of fact, some civil society representatives would like to have the scope of the food banking incentive expanded due to its advantages.

"The scope of food banking can also be expanded, for example. There are tax deductions in 3-5 categories. Donors benefit from this. So can it be expanded further?" (Focus group interview (5), Foundation, Large Scale, with Status)

On the other hand, in-depth interviews reveal that the right to deduct the whole amount of donations in kind is used by some associations and foundations as a relief from the 5% limit and a way to convince donors.

"When our team is presenting a project, they say, 'We need supplies here. We need clothes... They tell donors that they can deduct whole donations from the tax base if they donate aids in kind. If they buy and donate one thousand clothes, they can deduct the whole cost from their tax exemption. But if they give the money for a thousand clothes, they can deduct up to 5% of their income tax. They cannot deduct more.'" (Foundation, Large Scale, With Status)

⁸⁰ Mehmet Maç, "Kurumlar Vergisi Matrahını Etkileyebilen Bağışlar" ("Donations that may Affect the Corporate Income Tax Base"), 01.12.2021, <https://www.denet.com.tr/vergi/dosyalar/makaleler/DUYURU150.K21.pdf>

III. Recommendations

1. The financial system of civil society must be built on a permanent regime.

For many years, the taxation of associations and foundations has been carried out in accordance with exceptional regulations that suspend the main rule in whole or in certain aspects. Under the temporary taxation regime introduced to the ITL to be applied to certain passive incomes derived as of 1 January 2006 as per the Law no. 5281, certain income from movable property and capital gains are taxed without distinction between associations and foundations with and without status (ITL, Temporary Art. 67). Again, the provisional article added to the CITL under the Law No. 5766 dated 4 June 2008 provides a temporary exemption for economic enterprises of associations and foundations due to real estate rental income, interest income and gains from trading of securities (CITL Temporary Art. 2). However, what will contribute to the sustainability of civil society is the establishment of a permanent regime that is focused on itself, rather than temporary provisions which do not aim for continuity and therefore are not designed to create a sustainable regime. For this reason, a permanent fiscal regime that takes the needs of associations and foundations into account should be established.

2. Tax supports should be increased to contribute to the financial sustainability of civil society.

During the in-depth interviews conducted with civil society organizations, it was expressed that the impression created regarding the tax support provided by the state does not really match the actual situation ("it seemingly exists"). According to the quantitative survey, 7 out of 10 organizations do not find the existing tax advantages provided by the state sufficient to support financial sustainability. Our qualitative study findings confirm this finding.

"The tax advantages provided to civil society organizations, foundations and associations appear to exist, but detailed calculations reveal an outflow equal to the inflow. My impression is that there are no meaningful incentives from the tax aspect." (Foundation, Small Scale, Without Status)

"Since we are not a profit-oriented organization, it is only natural that we do not pay taxes since we do not operate for profitability. We have a tax exemption...But apart from that, there is not much that we benefit from, we do not get much discounts. I mean something specific to civil society. Yes, we do benefit from VAT exemption for school construction, but that is not specific to civil society. It is something every donor already benefits from. There is an insurance discount in advance payments, but that is available to all taxpayers. There is nothing specific to civil society that we benefit from in that regard." (Foundation, Large Scale, With Status)

"None. As I said, there are only two matters. The only tax we do not pay is corporate income tax, and we shouldn't pay it anyway. We also have the five per cent tax base deduction. I think this may even be a disadvantage. When people learn about the tax exemption, they think we do not pay taxes at all." (Foundation, Large Scale, With Status)

"In other words, although the title of tax-exempt foundation or public benefit association is given and they receive documents as if the foundation is exempt, foundations and associations are subject to tax provisions in the same way. (Incentives are granted) only for the donations and aids for taxpayers that donate to them. Therefore, this is an indirect incentive for the foundation. Because when donating, taxpayers may prefer to donate to a foundation that is recognized as tax-exempt. Consequently, it has an indirect effect of increasing donations and facilitating the achievement of foundations' objectives, but there are no exemptions granted to foundations or associations per se. They are still responsible for withholding tax, and all other ones." (Ministry of Treasury and Finance, Tax Inspection Board, Bureaucrat Opinion)

3. The tax burden on the civil society's passive incomes should be alleviated.

There is a significant income tax burden on civil society organizations' passive incomes. The burden can be alleviated by excluding these incomes wholly or partially from the scope of withholding tax, reducing the withholding tax rates for the society or exempting them from tax up to a certain amount. Indeed, when asked about the new types of tax concessions that could be provided to support the civil society's financial sustainability, a public representative pointed to passive incomes taxed through withholding. While determining the withholding tax rates applicable to incomes from immovable property, the provision of the Article 94/5 of the Income Tax Law provides a separate heading for rent payments made to foundations (except registered foundations) and associations in return for the renting of their immovable property, which indicates that although a separate rate is not determined in practice, regulations that protect civil society can be made.

"I think that, withholding taxes, as taxes collected on income, leave some room for improvement... Rents and so on. I mean income withholding tax." (Ministry of Treasury and Finance, Tax Inspection Directorate, Bureaucrat Opinion)

“With respect to withholding taxes, abolishing the obligation to apply withholding tax to payments issued in our name could be a relief for us, as we are not income taxpayers.” (Financial Advisor)

“When foundations and associations are not subject to tax, this could provide a significant advantage in terms of spending those amounts for different resources. If it cannot be abolished completely, a different taxation system could be introduced. For example, the 20% withholding tax levied on rent amounts could be reduced to 5% or 2% for foundations and associations.” (Foundation, Small Scale, Without Status)

4. Civil society organizations’ liability to apply withholding tax should be alleviated.

The regulation abolishing the obligation to apply withholding tax to certain payments pertaining to projects financed by European Union grants, which can be benefited from by associations and foundations as other taxpayers, demonstrates that this burden can be alleviated. Income and corporate income withholding tax is not applicable to the payments made in relation with multiple-year construction and repair works financed through the aforementioned grants, and to the payments to those who carry out such works due to their independent personal services, limited to the amount of expenditures made from the fund account (ITL, Temporary 84).

Another method to alleviate the obligation could be withholding tax refund, as stipulated in the additional Article 12 introduced under the Law no. 7103 dated 2018 to the Law no. 3289 on the Organization and Duties of the Directorate General of Sports in order to support amateur sports and youth system sports training facilities. According to the said provision, income tax amounts which are declared and paid to the state after being withheld from the wage payments made to athletes by sports clubs and sports joint stock companies are refunded by the relevant tax office in the five business days following payment, to the special accounts opened by the relevant sports club or sports joint stock company in banks based in Türkiye, to be used in certain expenditures.⁸¹

5. The labor costs of the civil society incurred due to withholding tax and social security premiums should be reduced.

A tax arrangement to reduce the cost of labor could take the form of complete tax relief, similar to the income tax and stamp tax incentives provided for wages of research and development staff in technology development zones (Technology Development Zones Law, Temporary Art. 2), or could be in the form of taxation of wages at low, fixed rates, as those received by athletes (5, 10, 20%) or jockeys, apprentice jockeys and coaches (20%) (ITL, Temporary Articles 72 and 68, respectively).

“For example, withholding tax is not collected at all or collected at very low rates from people who carry out software activities in technoparks. A portion of their earnings is exempt from tax. Foundations deserve that too, by nature.” (Foundation, Medium Scale, Without Status)

⁸¹ The expenditures determined in the Law are as follows: wages of athletes, coaches and other sports personnel, food, accommodation, travel, health, education and training expenditures related to their sporting activities, expenditures relating to preparation camps, competitions, materials and equipment, sports federation visa, license, registration and participation expenditure for amateur and youth system activities, expenditures incurred for the construction of youth system sports training facilities and for the operation and maintenance of these facilities, including the wages of personnel working therein.

“Currently, the highest tax burden is imposed on employees registered in SGK in our country. They pay 30-35% of their salaries as tax. I would really like CSO employees to be entitled to a reduction in this matter. Because there is more wear and tear here as a result of the nature of the work done, the individual's purpose and struggle for existence. The Social Security burden is really heavy too. When we add employees to our budget, we include their taxes as well, which naturally makes us go way above our budget. As a result, we have to employ fewer personnel. (Focus Group Meeting (1), Association, Medium Scale, without Status)

6. The value added tax burden on civil society organizations should be alleviated.

Various mechanisms can be employed to alleviate the value added tax burden carried by civil society, including the refund mechanism implemented in Denmark and Ireland or the reduced value added tax system applied in the UK. Furthermore, the practices available in our tax system in the form of value added tax exemption in the donation of social service facilities and the European Union grants that can be used by associations and foundations like other taxpayers demonstrate that this burden can be alleviated within the scope of a project.

On the other hand, value added tax exemption is applicable to domestic purchases of goods and services performed by foreign charity and aid organizations as well as diplomatic representatives and consulates of foreign states in Türkiye, for donation to general and annexed budget departments, special provincial administrations, municipalities, villages, unions organized by them, universities, revolving fund organizations, public institutions and organizations established by law and Presidential Decree, professional organizations in the status of public institutions, political parties, trade unions, pension and aid funds established by law or having legal personality, agricultural cooperatives and associations and foundations with status. (VATL, 17/2-c). Similarly, the goods and services to be purchased for official use by international organizations operating in Türkiye within the framework of host government agreements or other agreements to which Türkiye is a party, and by programs, funds, representative offices and specialized organizations affiliated to these organizations, as well as their purchases of goods and services to be delivered free of charge and performance of services and deliveries of goods to be carried out by them free of charge for purposes of social and economic aid are exempt from value added tax (VATL, Temporary Art. 26). Similar to the aforementioned tax concessions granted to foreign countries and organizations, introducing value added tax exemption for the purchases of goods and services performed by foundations and associations could be considered.

7. Civil society organizations' value added tax liability for the services they receive electronically from abroad should be abolished.

The provision stating that “The value added tax of the services that are provided electronically by those without a place of residence, work place, legal headquarters and business headquarters in Türkiye to natural persons who are not value added taxpayers shall be declared and paid by the providers of these services” was added to the 9th Article of VATL concerning tax liability, under the Law no. 7061 dated 28 November 2017. Thus, natural persons have been relieved of the value added tax liability relating to the services they purchase electronically. The scope of this provision could be expanded to abolish the value added tax liability of associations and foundations relating to the services they receive electronically.

8. Leasing of goods and rights such as exploration, operation, concession rights and licenses, copyrights, ships and ship shares, and motorized transport vehicles that are not included in the economic enterprises of civil society organizations should be exempted from value added tax.

The provision which excludes personal leasing transactions of real estate from value added tax subsequently provides value added tax exemption to the renting transactions of areas designated as cafeterias in schools affiliated to the Ministry of National Education by school family associations and the leasing transactions of other goods and rights specified in Article 70 of the Income Tax Law carried out by institutions and organizations such as hospitals, clinics, dispensaries, sanatoriums affiliated to the Ministry of Health. (VATL, 17/4-d). Leasing transactions of the other goods and rights specified in Article 70 of the Income Tax Law by associations and foundations can be included in the scope of this provision.

9. The stamp duty burden on civil society organizations should be alleviated.

In terms of stamp duty burden, whereas associations with status are granted a broad stamp duty exemption for all their papers, foundations with status benefit from stamp duty concession only in terms of papers issued in their establishment procedures, and associations and foundations without status benefit from stamp duty concession only in terms of lease contracts pertaining to immovable property that are leased for use as residential areas and are not included in economic enterprises, as well as surety annotations and collaterals to be affixed to these contracts. The scope of these concessions could be expanded.

10. Stamp duty burden imposed on natural and legal persons who enter protocols for donation to civil society should be alleviated.

Papers issued in relation with donations to general and special budget administrations, special provincial administrations, investment monitoring and coordination directorates, municipalities and villages between the relevant administrations and donors are exempt from stamp duty (see Stamp Duty Law, Schedule no. 2/IV-55). A similar concession should be granted to persons who gratuitously donate their property to a civil society organization.

11. The rate of tax deduction utilized by income and corporate income taxpayers that provide civil society organizations with donations and aids should be increased.

100% of the donations and aids of income and corporate income taxpayers to public institutions and organizations for the construction and continuation of the activities of facilities such as schools, health facilities, student dormitories, kindergartens, orphanages, nursing homes, care and rehabilitation centers, places of worship, youth centers and youth and scouting camps are deductible, while the deduction of donations made to associations and foundations for the same facilities is limited to 5% of the earnings of that year. There is a consensus among civil society organizations that this rate should be increased. International practices also support this view. Furthermore, granting this incentive to all foundations and associations would contribute significantly to promoting the culture of giving in Türkiye and supporting the financial sustainability of civil society organizations. In this case, another method that could be adopted is allowing the deduction of these donations from the tax base at gradually increasing rates, taking

different characteristics (having or not having status, field of activity, purpose, etc.) of civil society organizations into account. On the other hand, costs of food, cleaning, clothing and fuel items donated to associations and foundations engaged in food banking activities, and donations and aids within the scope of cultural and tourism expenditures to associations and foundations with status are wholly deductible. Furthermore, income and corporate income taxpayers are allowed to deduct all donations they make to foundations that establish universities, in order to support university activities, from the tax base.⁸² It may be considered to ensure that income and corporate income taxpayers who transfer their earnings and revenues to the state at the statutory rates in order to meet public services benefit from incentives at least at the tax rates applicable to them, if they transfer the said earnings and revenues to civil society.

12. Donations and aids not deductible in the relevant year should allowed to be carried forward to following years.

Losses in tax returns of previous years can be deducted by income and corporate income taxpayers on the tax returns of subsequent years, on the condition that they are not carried forward for more than five years. A similar arrangement could also be introduced for donations and aids not deductible in the relevant year.

13. Wage earners who do not file tax returns should be allowed to deduct their donations and aids to civil society organizations from their tax base.

The article 63 of ITL allows certain deductions to be made while calculating the actual net value of wages by employers. As with pension and social insurance premiums, social security support premiums, unemployment insurance premiums, life/personal insurance premiums, statutory withholdings and fees paid to labor and civil servant unions, deduction of the donations and aids to civil society organizations could be included in this provision to enable their deduction from incomes by being indicated on wage payrolls. It may be stipulated that the expenditures subject to deduction must be incurred in Türkiye, substantiated with documents or receipts obtained from associations and foundations, and these documents must be submitted to employers. Furthermore, life and personal insurances are subject to a limitation which requires that "the premium amount to be subjected to deduction may not exceed 15% of the wage earned in the month in which it is paid and the annual amount of the minimum wage on annual basis". A parallel limitation can be imposed for the total amount of donations and aids to be subject to deduction.

⁸² Law no. 2547 on Higher Education, 56/b, 2nd paragraph: "Donations made in return for receipts by income or corporate income taxpayers to universities, institutes of high technology and foundations granted tax exemption by the President among the foundations which are established for the purpose of allocating at least 3/4 of their income to support and ensure the continuation of the activities of state universities and which actually operate within this framework, are deductible from the income and corporate earnings to be declared with annual tax returns under the provisions of Income and Corporate Income Tax Laws. The Ministry of Finance is authorized to determine the principles and procedures for the implementation of this provision"; Additional Art. 7: "Higher education institutions to be established by foundations shall benefit from the financial concessions, exemptions and exceptions set forth in Article 56 of this Law and shall be exempt from real estate tax."

Conclusion

The activities carried out by civil society organizations, both directly and through their economic enterprises, have a transformative power for society and the economy. This power is recognized by the European Union, which points to the contribution of civil society organizations to the labor market and gross national product, seeking ways to integrate them into fair, sustainable and inclusive policies to be developed against the challenges faced by countries, such as climate change, digitalization, rising inequalities and demographic change.⁸³ In Türkiye, on the other hand, increasingly heavy tax burdens are imposed on associations and foundations for purely budgetary reasons, and there are significant restrictions on the incentivization of donations and aids of natural persons and corporations to associations and foundations. The correct practice would be for the state to develop multifaceted policies including tax, aimed at ensuring the most efficient use of the third sector's transformative power. To this end, the objective of this publication is to present a picture of the current situation and to serve as a resource for developing a holistic policy.

⁸³ European Commission, "Proposal for a Council Recommendation on Developing Social Economy Framework Conditions", COM(2023) 316 final, Strasbourg, 13.6.2023.

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