TAX AND ACCOUNTING REGIME OF NON-PROFIT ENTITIES

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SUMMARY

The tax regime of non-profit entities established in the Law 49/2002 contains a set of advantages of subjective scope for non-profit entities as long as they meet certain requirements. In addition, certain criteria for presenting the annual accounts are modified; as well as the definitions and acknowledgment criteria of the conceptual framework. This regime will only be applicable to those non-profit entities that are included in art. 2 of this law, that meet the requirements of art. 3 and have opted for said regime through the corresponding census declaration.

The formulation and approval of the annual accounts and, where appropriate, the subsequent review by the competent body, will follow the regime provided in the corresponding regulatory standard of the entity's legal regime. Currently, after the approval of the 2011 PGC for non-profit entities, the annual accounts that non-profit entities must prepare for financial years beginning after January 1, 2012, are included in the third part of the PGC 2011 for these entities, which entails notably relevant changes with regards to the previous regime.

The objective of this assignment is to analyse the accounting and tax differences of non-profit entities in comparison to the rest, highlighting several differences regarding the preparation of the annual accounts of foundations and associations of public utility (not including statements with regards to ongoing cash flow situation or changes in equity); the presentation criteria of the financial statements regarding assets and liabilities that are not affected by a market activity; or the particular criteria applicable to income and expenses (for example, long-term expenses or grants awarded to such entities). In the tax field, the main changes are limited to the IS (10% rate, certain exemptions; partial exemptions in the IS for entities that do not exceed 75,000 euros per year), and also other taxes such as the IBI or the IAE.

KEYWORDS

Non-profit entities, Law 49/2002, tax advantages, true and fair view, annual accounts.

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I. INTRODUCTION

Non-profit organizations make up a relevant element in any society; as such entities form an economic and social fabric of undeniable importance, in relation to their size, characterization and impact when generating wealth and employment (Fuentes, 2004). Furthermore, they play a relevant role in uniting society, behaving as innovative social agents, who safeguard and promote social values, such as democracy and citizen participation. They encourage solidarity and allow us to channel altruistic initiatives.

In this assignment, firstly, the definition of non-profit entities will be examined and will be classified into three groups, according to the categorisation that the legislation makes: associations, foundations and non-governmental organizations.

The general objective of this TFG will be to subsequently present a study of the accounting regulations aimed at these entities from a national and international viewpoint offering a broader perspective of the accounting information that non-profit organizations must prepare and disclose, specifying the differences with respect to the entities that are governed by the General Accounting Plan.

The final part of the assignment will set forth a series of conclusions in relation to the tax advantages of non-profit entities, highlighting several novelties limited to the IS (10% rate, certain exemptions; partial exemptions in the IS of those entities that do not exceed 75,000 Euros annual), and also other taxes such as IBI or IAE. Likewise, the distortion generated in the market by the concession of tax advantages to these entities will be determined.

II. DEFINITION AND TYPES OF NON-PROFIT ENTITIES

Non-profit entities are characterized, above all, by carrying out acts that have an impact on the general interest of society, supplementing or complementing the acts programmed and followed by the public powers, leaving behind the archaic idea that their purpose is only for charity. They are all characterized by certain traits, firstly their activities are promoted in favour of public interest, secondly, by the forfeit to obtain profit, understood in the strict sense of obtaining earnings to be distributed among their associates, from where, and this is their third characteristic, they move away from the

market with regards to their operations, meaning operating through commercial forms of organization and economic exploitation (Eseverri, 2008).

If the essence of these entities is characterized by these three concepts, the problems they face stems, necessarily, from the mechanisms they have to arbitrate to finance their activities and from the financial means they must use to cover their needs.

2.1. Associations

The first large group of non-profit entities, mentioned in the Law 49/2002 as a beneficiary of the special tax regime, together with the foundations, is the one constituted by associations that have been declared of public utility. The fundamental right of association is enshrined in art. 22 of the Constitution and is explained in the Organic Law 1/2002, of March 22, regulating the right of association, which contains the regime of non-profit associations that are not subject to special regulation (such as unions , political parties, cooperatives, communities of goods, etc.).

The formation of associations is carried out through the agreement of three or more legally constituted natural or legal persons, who undertake the task to pool knowledge, create the means and activities to achieve legal, common purposes, of general or particular interest (article 5 of the Organic Law 1/2002). Art. 7 of Organic Law 1/2002 requires the registration of associations in the corresponding Registry for the sole purpose of advertising and the limitation of liability of promoters.

Organic Law 1/2002 allows, in art. 13, associations to carry out economic activities and defines that they will have to keep accounts that allow a true account of their assets, as the financial result and situation of the entity, including any activities carried out by said association (article 14).

Moreover, art. 25 of Organic Law 1/2002 recognizes access to the Register of foreign associations that carry out activities in Spain in a stable or lasting capacity, which will have to establish a delegation in Spanish territory, as has been determined in relation to foundations. They will also have to prove that they are validly constituted in accordance with their personal law and Organic Law 1/2002 (article 28.3).

Development measures can be established by public administrations in favour of associations that pursue objectives of general interest, as contemplated in Chapter VI of

the Law and they may obtain the declaration of public utility if they meet certain requirements. This is important, as it gives them access to the special tax regime of Law 49 / 2002.22

The mentioned requirements would be, to briefly state, the following. Firstly, that its statutory purposes are inclined to promote the general interest. Secondly, that its activity is not restricted, exclusively, to benefit its associates. Thirdly, that the payments made to members of the representative bodies is not awarded from public funds or subsidies/grants. Fourth, that they have the appropriate means and organization to guarantee the fulfilment of their purposes. And, lastly, that they are/have been in continuous uninterrupted operation, meeting all legal requirements, during the two years prior to the filing of the application (article 32 of Organic Law 1/2002).

The declaration of public utility procedure will require a favourable report, in any case, from the Ministry of Finance and will be resolved by Ministerial Order, without prejudice to the powers of the regional communities to make their own declarations of public utility (arts. 35 and 36 of Organic Law 1/2002), with regards to the benefits established in their respective legal systems.

The regulatory regulation of the procedures for the declaration of public utility of the associations in progress found in the Organic Law 1/2002, corresponds to Royal Decree 1740/2003, of December 19, which repeals Royal Decree 1786/1996, of July 19. The request for a declaration of public utility will be addressed to the public body in charge of the Registry of Associations where the entity is registered. The following documents must be attached to the application: legal report of the activities carried out continuously during the two preceding years; completed annual accounts of the last two tax years; certifications of the State Agency for Tax Administration (AEAT) and the General Treasury of Social Security in which it is stated that it is up to date in the fulfilment of its obligations; certified copy, if applicable, of the registration in the Economic Activities Tax; and, finally, certification of the agreement to request the declaration of public utility.

The resolution for the request of a declaration of public utility is the responsibility of the Minister of Interior. The Ministerial Order will put an end to the administrative procedure and an administrative contentious appeal may be filed against it and, where appropriate, an optional appeal for reinstatement. Once a period of six months has elapsed from the receipt of the request in the registry of the competent body for the

instruction of the procedure, without a specific resolution having been notified, the request for a declaration of public utility may be considered rejected (negative silence).

2.2. Foundations

The Constitution recognizes, in art.34 the right of foundation for purposes of general interest. The initial regulatory development of this right was carried out through Law 30/1994, of November 24, on Foundations and tax incentives for private participation in activities of general interest. Regulation later replaced by Law 50/2002, of December 26, on Foundations, which, however, retains numerous precepts and solutions of its predecessor, given the positive effects found in its application.

In Spain you can find more than one concept of foundation, due to the fact that there is concurrent competition in matters of foundations between the State and the regional communities. Thus, it is necessary to take into account not only the provisions of Law 50/2002, of December 26, on Foundations, but also the laws that regulate this matter in the various regional communities. This fact must be taken into account because the requirements and conditions requested to access the legal category of foundation, and even its regulation from the civil point of view, are not the same throughout the territory. This circumstance, undoubtedly, can influence access to the special tax regime contemplated in Law 49/2002, since there may be entities that have the qualification of foundation according to their regional regulations and however, do not comply with the conditions required by art.3 of Law 49/2002 to be considered, for tax purposes, as non-profit entities.

In relation to this matter of competence, we must not lose sight of the fact that it is the State's responsibility to regulate those foundations that are state-wide because they carry out their activities simultaneously in more than one regional community. Likewise, according to art.149.1.1 of the Constitution, the State also has exclusive competence to regulate the basic conditions that guarantee the equality of all Spaniards in the exercise of the right of foundation, recognized in art.34 of the Constitution. Furthermore, it should not be forgotten that the State has exclusive jurisdiction to enact procedural and civil legislation, within the limits established by the Constitution (art. 149.1.6º and 8º).

In use, therefore, of its powers, the State has approved Law 50/2002, of December 26, which has come to replace Title One of the repealed Law 30/1994, of

November 24, and which is applicable in its entirety directly to the foundations of state competence and partially, to the regional foundations.

Foundations are considered, according to art. 2 of Law 50/2002, non-profit organizations when, by the will of their creators, have their assets affected permanently by carrying out activities of general interest. The foundational purpose must benefit generic communities of people. According to art.4.1, foundations will have legal status as of public registration of its constitution in the corresponding Registry of Foundations.

Law 50/2002 dedicates art.7 the regulation of the situation of foreign foundations with activities in Spain, requiring them to certify that they have been validly established in accordance with their personal Law, permanent establishment in Spain and registration in the competent Registry of Foundations.

Since the implementation of the law 30/1994 and currently Law 50/2002, the element regarding assets has diminished importance when configuring these institutions. If we go to the regional protectorates, it is possible to find foundations constituted with only thirty Euros of equity. This has been one of the reasons that have given rise to the high proliferation of foundations in recent years, since many organizations that should have assumed an associative form have instead been established as foundations due to the easy access to this legal concept.

Specifically, in order to avoid this situation and the exponential growth of foundations, in art. 11 of Law 50/2002 a presumption of a minimum provision of thirty thousand Euros has been established. Consequently, lower equities will only be accepted if their adequacy and sufficiency for the foundational purposes are justified. However, this measure, in Pedreira's (2003) opinion, does not constitute an adequate solution to the aforementioned problem of the proliferation of foundations, since what should be required, in his opinion, for foundations is that they have an adequate source to obtain sufficient income with which to fulfil its corporate purpose, without having to have initially high endowment assets, but rather permanent and stable financing. Only in this way is it being ensured that entities are going to be able to develop a body with social interest in mind supporting public powers.

On the other hand, the aforementioned Law 50/2002 foresees that foundations will have to keep an orderly and adequate account of their activity, which allows a chronological follow-up of operations carried out. To this end, they will necessarily keep

a daily book, an inventory book and annual accounts, which include the balance sheet, the income statement and a legal report. Likewise, they are obliged to submit the annual accounts to an external audit when circumstances established by law arise. Finally, pursuant to art.25, when economic activities are carried out, the accounting of foundations shall be in accordance with the provisions of the Commercial Code, indicating in the legal report equity elements affected by commercial activities.

All these issues are explained in the Royal Decree 1337/2005, of November 11, which approves the Regulations of Foundations of state competence.

2.3. Non-governmental organizations

Law 49/2002 includes a third category of non-profit entities (hereinafter NGDOs): non-governmental development organizations, to which Law 23/1998, of July 7, on International Development Cooperation refers to.

According to the literal diction of art.32 of Law 23/1998, these are "entities of private law, legally constituted and not for profit, which have among their purposes or as sole objective, according to their own Statutes, the carrying out of activities related to the principles and objectives of international development cooperation."

This express reference to the NGDOs made by Law 49/2002 must be interpreted with express recognition of the growth experienced and the extent of their field of action and social presence.

From the outset, this express reference to the NGDOs contained in Law 49/2002, could lead us to believe that they are directly attributed, of their own accord, the status of non-profit entities for tax purposes (meeting the requirements of article 3 of Law 49/2002). Now, if we analyse the requirement established in letter c) of article 2, which states: "they comply with any of the legal forms referred to in the preceding paragraphs", this interpretation is not correct. Indeed, if NGDOs want to enjoy the special tax regime, they must be configured as foundations or associations and, in addition, in this last case, have to obtain the declaration of public utility (just like NGOs that are not dedicated to the development).

Therefore, according to Cruz Amorós and López Ribas (2004), article 35 of Law 23/1998 remains in force, although the references it makes to Law 30/1994 must be understood as reference to the precepts corresponding to Law 49/2002. In accordance

with section 1 of this art.35, "the tax regime of non-profit entities regulated in Chapter I of Title II of Law 30/1994, of November 24 (today Title II of Law 49/2002, of December 23), will be applicable to non-governmental development organizations registered in the Registries referred to in Article 33 of this Law, provided they review the legal form and comply with the requirements set forth therein. "

As Pedreira (2003) comments, the situation would have been different if the original wording of the draft of Law 49/2002 had been respected, which granted the possibility of opting for this regime to all non-governmental development organizations, without distinction. It should not be forgotten that, as already mentioned, pursuant to art. 32 of Law 23/1998, of July 7, on international cooperation for development, they are not required to have a specific legal form, but only to be registered in the corresponding registry at the Spanish Agency for International Cooperation.

Due to this, this author concludes that section c) of art. 2 of Law 49/2002 is unnecessary, because it is repetitive and because it causes confusion for the administrators, who may think that this special tax regime is applicable to all non-governmental development organizations, which is not the case.

In addition, confusion is made worse by the fact that for most taxpayers it is very difficult to discern between an NGDO, an association, a declared association of public utility and a foundation. For this reason, the categories of entities should be simplified as much as possible, avoiding the introduction of redundant distinctions.

In any case, the application of the special tax regime in Law 49/2002 for NGDOs will mean that such entities will only be taxed on income deriving from non-exempt economic operations, and at a reduced tax rate of 10 per cent, considering as such those economic exploitations different from those stated in art.7 of Law 49/2002. This precept includes, as we will examine further on, a list of economic exploitations where income is included in the exemption of the Corporation Tax of the receiving entity, provided that they are developed in compliance with their specific objective or purpose.

The list cited in art. 7.1º of Law 49/2002 is very broad and includes, among others, the promotion services and management of the social activity, as well as the assistance and social inclusion services derived from certain activities, among which we can find cooperation for development, especially affecting NGDOs.

Gil del Campo (2003) points out that incomes derived from fair trade activities must also be included in the exemption of the aforementioned art. 7.1 of Law 49/2002 provided that this income is obtained directly by foundations and associations declared of public utility, within the framework of development cooperation projects. Included in any earned income they must include the net results of fair-trade stores, also including those located in Spain. Although it is a purely commercial activity (retail trade), if it is carried out with the requirements this type of cooperation requires (long-term agreements with producers, reinvestment of benefits in social projects, etc.), it represents an additional type of technical cooperation or economic cooperation, included in the cooperation instruments referred to in art.9 of Law 23/1998, of July 7, on Development Cooperation.

Following this author, income derived from technical assistance activities of NGDOs aimed at the creation of micro-enterprises in the southern hemisphere or professional training activities, raising the level of knowledge, qualifications, technical skills and productive attitudes of their inhabitants (technical cooperation) should also be exempt.

In any case, if the results of the fair trade stores had any problem to fit into the exemption of art.7.1 of Law 49/2002, you could always go to the exemptions contemplated in art. 7.11, economic exploitations that are merely auxiliary or complementary to exempt economic exploitations or activities aimed at fulfilling the statutory purposes or the objective of the entity; or to art.7.12 economic holdings of little relevance, considering as such those whose net amount of the turnover for the year does not altogether exceed 20,000 Euros (Gil del Campo, 2003).

Any other income obtained by an NGO outside the framework of an economic activity will be exempt under the provisions of art.6 of Law 49/2002. In most cases, when NGDOs are dedicated solely to channelling grants for cooperation projects and programs, the activities carried out (the percipience of these grants) will constitute an income subject to Corporation Tax, but expressly declared exempt by art.6.1º.c) of Law 49/2002.

On the other hand, as will be shown later, the mere activity of receiving donations from individuals is also not an economic activity, but rather is exempt income, as it derives from carrying out the activities of its corporate purpose or specific purpose.

Finally, when the NGDOs are not subject to the special tax regime contemplated in Law 49/2002, they will have to apply the partial exemption regime from Corporation Tax regulated in arts.120 et seq. of Royal Legislative Decree 4/2004, of March 5, approving the Consolidated Text of the Corporation Tax Law (TRLIS). As we will see later, the reduced tax rate to be applied to its taxable base is 25 per cent and, for its application, the positions of the entity's administration and representation body do not require payment. It is called a partial exemption because it does not include income from economic exploitations, income derived from equity or certain income obtained in transfers of goods or rights (art. 121.2 TRLIS).

III. ACCOUNTING REGULATIONS IN SPAIN

3.1. Background

The current regulation of accounting information of non-profit entities in Spain has its most immediate premise in the sectorial adaptation of the accounting plan for charitable foundations, issued in 1986. With the aim of unifying accounting systems and criteria so that accounting, budgets and accountability focus on obtaining authentic and homogeneous information, allowing tax obligations to be fulfilled. Despite its voluntary nature and limited to a specific type of entities, its importance lies in the fact that it establishes the current accounting standardization model for Spanish non-profit organizations, establishing itself as one more economic sector that is adjusted to the general framework established in the business accounting plan.

3.2. Sector adaptation

The previous sectoral adaptation was promulgated by the Institute of Accounting and Accounts Auditing (ICAC) in 1998, together with the budget information rules. However, with the approval of the General Accounting Plan by Royal Decree 1514/2007, on November 16, and the General Accounting Plan of Small and Medium-sized Enterprises by Royal Decree 1515/2007, Royal Decree 1491/2011 of October 24 was approved, which sanctions the adaptation rules of the General Accounting Plan for non-profit entities and the model of action plan for non-profit entities (applicable to the tax year starting in the beginning from 2012).

It is of general application for private non-profit organizations, although it is obligatory only for foundations under state competence and associations declared of public utility. However, regardless of its mandatory nature from a legal point of view, there is no doubt that sectoral adaptation constitutes an official benchmark that can and should guide the actions of Spanish non-profit entity administrators in matters of accounting and budgetary information.

Additionally, section 1 of the explanatory memorandum to Royal Decree 1491/2011 states: "(…) The adaptation rules that are now approved are generally applicable to non-profit entities, although the mandatory nature of the same will be imposed by the specific provisions to that effect (…)".

From this, it is inferred that the aforementioned rules are mandatory for all foundations under state competence and associations declared to be of public utility (Alonso and Pousa, 2013). As for the other non-profit entities, although they are not formally obliged to follow these rules, the obligation they have to present the true account of their assets, the financial situation and the legal report of the entity, as well as their Non-profit characteristic leads one to understand that what is reasonable, without being obligatory, is that they apply in the same sense the adaptation norms indicated.

In this sense, it should be noted that to the extent that a non-profit entity voluntarily applies said regulations, it must do so in accordance with the principles and evaluation criteria included in them, with a coherent whole, and the lack of obligation should not empower exemption or non-compliance of the same (Alonso and Pousa, 2013).

In short, the current legislation on accounting information of Spanish non-profit organizations establishes requirements that include the preparation of the annual accounts, in similar and even deeper terms than businesses; and, in addition, the preparation of the budget and account of profits.

1 Art. 3 of Royal Decree 1491/2011, of October 24, which approves the adaptation rules of the General Accounting Plan for non-profit entities and the model of action plan ofnon-profit entities. and art. 5 of Royal Decree 1740/2003, of December 19, onprocedures relating to associations of public utility. All this regardless of what otherprovisions may establish their mandatory application to different non-profit entities.
2 ICAC Consultation Number: 4. BOICAC Number: 94 / June 2018. Content: Scope of application of theRules for adapting the PGC to non-profit entities.

In the opinion of Rúa and Vara (2001, p. 113), "the most extensive and costly information system of all economic sectors has been imposed on non-profit entities".

Accounting regulations have evolved, so they will have to be updated to respond to the recent legal reform in the sector. Thus, it is worth mentioning that new laws have been enacted to regulate the activity of foundations and associations, with changes in the tax regime of non-profit organizations. In addition, it should be borne in mind that the general accounting standardization process in our country is also undergoing reform, in line with the current European strategy that is committed to international standards.

IV. CONCEPTUAL FRAMEWORK OF ACCOUNTING OF NON-PROFIT ENTITIES

4.1. True and fair view

The annual accounts must be prepared in a clear way, so that the information provided is understandable and useful for contributors, beneficiaries and other interested parties, showing the true account of assets, financial situation and of the variations originated in net assets during the year, as well as the activity carried out, in accordance with legal provisions (NRV 1ª MC)

For this purpose, the accounting for operations will take into account not only their legal form but also their economic reality. Annual accounts must include relevant and reliable information of the following aspects:

a) The degree of achievement in the exercise of the activities planned to meet the set objectives of the entity.

b) The nature of the entity's assets, liabilities and equity. In particular, the restrictions to which the assets are subject, if any, will be reported.

c) The surplus for the year as a result of the activities carried out, and a measure of the entity's self-financing capacity, highlighting any change in the net worth generated in the period for this concept.

d) The total variation of the entity's net equity, as an expression of its future viability and the ability to fulfil the general interest purposes entrusted to it.

The entities to which the regulations are addressed, together with the non-profit activity, may carry out profit-making activities of a commercial nature with the aim of contributing to the financial viability of the companies, provided that the applicable legal regime does not prohibit it. The General Accounting Plan is intended to regulate the accounting of activities carried out in the fulfilment of its purposes, without profit,

regardless of whether the provision or service is granted free of charge or by compensation.

When the entity carries out commercial activities, its accounting will be adapted to the provisions of the PGC, independently of the provisions in the third part of the General Accounting Plan. However, the documents that make up the annual accounts will, in any case, be those established by the regulatory rules of the entity's legal regime (Barroso, 2012).

4.2. Elements of the annual accounts, registration and valuation criteria

Along with the changes included in the criteria for the presentation of annual accounts compiled in the following section, it was necessary to modify the definitions and criteria for recognition of the conceptual framework in response to the objectives of a social nature that entities, in general pursue.

The elements that meet the recognition criteria that are established later, are recorded in the balance sheet, are (NRV 4th MC):

a) Active assets: assets, rights and other resources economically controlled by the entity as a result of past activities, from which the entity is expected to obtain profitable returns in the future. Specifically, assets will meet this definition when they have a potential service for the entity's users or beneficiaries.

b) Liabilities: current obligations arising as a result of past activities, in which settlement entails the entity to dispose of economic resources. For these circumstances, provisions are understood to be included.

c) Equity: constitutes the residual part of the entity's assets, after deducting all its liabilities. It includes the contributions made as a foundational endowment or social fund, either at the time of its constitution or later, by the founders or associates, who are not considered liabilities, as well as accumulated surpluses or other variations that may affect said assets.

The elements that meet the recognition criteria established at a later date, recorded in the legal report, are:

a) Income: increase in the entity's net worth during the year, either in the form of gains, increase in the value of assets, or a decrease in liabilities, provided they do not originate from new contributions, monetary or not, to the foundational endowment or social fund.

b) Expenses: decrease in the entity's net worth during the year, either in the form of payments, devaluation of assets, or recognition or increase in the value of liabilities.

The surplus for the year is the difference between the income and expenses accrued in the period to which the annual accounts refer to, except for those that must be accounted directly in the equity.

The entity's income statement will show variations in equity generated during the year. In particular, any variation originated by the surplus for the year will be presented with the appropriate breakdown.

The requirement for the registration of the elements will take effect when the probability criteria is met for the acquirement or transfer of resources and their value can be determined with an adequate degree of reliability. When the value is estimated, the use of reasonable estimates does not impair its reliability. In particular (NRV 5th MC):

a) Assets should be included in the balance sheet when it is possible to obtain profitable returns based on future activity, and provided they can be reliably valued. The accounting recognition of an asset also implies the simultaneous recognition of a liability, the reduction of another asset or the recognition of income or other increases in equity.

b) As long as they can be measured reliably liabilities should be recognized in the balance sheet when it is probable that, upon maturity and in order to settle the obligation, resources that incorporate potential returns due to its activity are delivered or designated. The accounting recognition of a liability involves the simultaneous recognition of an asset, the decrease of another liability or the recognition of an expense or decrease in equity.

On the other hand, in the valuation criteria, the replacement cost criterion of an asset has been included.

V. ANNUAL ACCOUNT PRESENTATION CRITERIA

5.1. Formulation of the annual accounts

The annual accounts must be prepared by the entity's governing body, which will be responsible for their veracity. The formulation and approval period will be a maximum of six months, counting from the end of the tax year. However, in the event that they are

audited for the annual accounts, they must be formulated within the three months following the end of the financial year (NECA 2ª).

The formulation and approval of the annual accounts and, where appropriate, the subsequent review by the competent body, will follow the regime provided in the corresponding regulatory standards of the entity's legal regime. For these purposes, the annual accounts must be signed by all the people who have the power to do so, and if anyone is missing, an express indication of the cause will be made in each of the documents. In any case, the annual accounts will reflect the date on which they were formulated.

Non-profit entities will prepare the annual accounts in their normal or abbreviated format, following the limits established for other Businesses. For these purposes, the net turnover amount will be understood as the sum of Income of the entity from its own activity and the net amount of sales from the commercial activity. On the other hand, non-profit entities can also opt to apply as PGC-PYMES or micro-entities. (NECA 3rd).

5.2. Documents that make up the annual accounts

Currently, after the approval of the 2011 PGC, the annual accounts that must be prepared by non-profit entities for all those fiscal years started after January 1, 2012, are included in the third part of the PGC.

It should be taken into account that, in the event that the non-profit entity is the dominant company of other commercial entities and therefore forming what is called in the Commercial Code "Consolidable Group", the provisions of this will apply and you must prepare consolidated accounts.

In the event that the non-profit entity is the parent company of other commercial entities and therefore forming a "Consolidable Group", it must prepare consolidated accounts

There will be three types of financial statements or annual accounts of foundations and associations of public utility, as defined in relevant rules *and* in the conceptual accounting framework of the 2011 PGC: the balance, the income statement and the legal report, which we will expand on below.

5.3. Presentation rules of the financial statements

In general, the criteria for presenting the financial statements are those included in the PGC, except as indicated below.

5.3.1 Balance

Assets and liabilities not affected by a commercial activity are not classified according to the normal operating cycle, but rather according to the expected completion period. In this sense, the classification between running and non-running items will be made according to the following criteria (NECA 5ª):

a) Current assets will comprise:

• the assets that the entity expects to sell, consume or utilise in the short term, that is, within a maximum period of a year, counted from the closing date of the tax year. Consequently, non-running financial assets will be reclassified into running in the corresponding proportion.

• financial assets accounted for at fair value, except any financial derivatives with a settlement period of no more than one year.

• Cash and other equivalent liquid assets, the use of which is not restricted, to be exchanged or used to settle a liability at least within the year following the year-end date.

• Existing assets, in particular, the assets of the Historical Heritage, will be classified and not included in running costs.

b) Current liabilities will comprise:

• Obligations whose maturity or extinction is expected to occur in the short term, that is to say, within a maximum period of one year, counted from the year-end date; in particular, those obligations for which the entity does not have an unconditional right to defer its payment in said term. Consequently, non-running liabilities will be reclassified into running in the corresponding proportion.

• Financial liabilities accounted for at fair value, except for financial derivatives with a settlement period of more than one year.

• any other elements of the liability will be classified as not running.

In the event that the entity has cycle production stocks of more than one year, the items in heading B.I. of assets «3. Products in progress» and «4. Finished products

from the normal balance, will be broken down to show separately those of short cycle and those of long production cycle.

When the entity has credit for sales and services with a maturity of more than one year, the heading A.VIII will be created in non-running assets, with the name "Non-running debtors".

Credits with users, sponsors or affiliates with a maturity of no more than one year, will be presented under this same heading, with the appropriate breakdown.

When the entity has debts with suppliers with a maturity of no more than one year, the heading B.VI will be created in non-running liabilities, with the name "Non-running creditors".

Debits with beneficiaries with a maturity of no more than one year will be presented under heading B.VI of the liability, to which reference has been made previously, with the appropriate breakdown.

5.3.2. Income statement

The income statement reflects the variations originated in the net equity throughout the year, for the following concepts (NECA 6ª):

a) The surplus for the year.

b) The amount of income or expenses directly associated to equity, as required by the registration and valuation rules.

c) Transfers or reclassifications made to the surplus for the year, as required by the registration and valuation rules.

d) Adjustments due to changes in accounting criteria and any error corrections.

e) Variations in the foundational endowment or social fund.

f) The remaining variations that occur in equity.

In view of this composition, it is inferred that the balance of the aforementioned accounts is made up of the contributions and decreases of the foundational endowment or social fund, and of all the income and expenses of the year and of the previous years that must be registered in this document due to a change in criteria or the correction of an accounting error.

As a result, when there is an error in the year to which the annual accounts refer to that corresponds to a year prior to the comparison, it will be reported in the report, and will include the corresponding adjustment in the income statement, so that the Initial equity of said comparative exercise will be modified in order to include the rectification of the error. In the event that the error corresponds to the comparative year, the income statement of the previous year must be rectified. The same rules will apply with respect to changes in accounting criteria. (NECA 6th)

In the PGC, the aforementioned information is shown in the total balance section of changes in equity. The profit and loss accounts are reflected independently in the result of the period. resulting from this information a sole amount that allows the identification of the taxable base of corporation tax, or to apply the mercantile rules to and identify the distributable profit.

Although in non-profit entities both purposes have less relevance, it is no less true that both the substantive and the fiscal norms have built from the accounting outcome the requirement of very relevant obligations such as a degree of compliance to show the destination of income or income for own purposes.

If circumstances are examined in the complementary nature of the registration and valuation provisions included in the second part of the PGC, we can see in the adaptation that it is determined that the references made in said normative bodies with regards to the profit and loss account must be considered to be transferred to the surplus of the income statement of the new adaptation. After establishing this connection point between both models, that of the company and that of non-profit entities, the presentation in a single document of all income and expenses only results in an increase in the relevance of the information provided (Drafting WoltersKluwer, sf).

As indicated, in addition to all income and expenses, the new income statement reflects the changes in net worth that are affected by operations directly related to increase or decrease of the founding endowment or social fund. This criterion seeks to identify the variation in enforceable resources originated during the year, as an indicator of the ability to carry out activities in the following years. In other words, the concept of endowment or contributions to the social fund is not intended to be assimilated as income, and its decrease to that of expenditure, but rather the aim is to show the economic capability of transaction, which, unlike contributions to the capital of the mercantile companies, does not seek its recovery gaining profitability, but to provide

economic viability to a specific project, to peruse the achievement, where the aforementioned funds could be consumed (Drafting Wolters Kluwer, nd).

VI. PARTICULAR CRITERIA APPLICABLE TO INCOME AND EXPENSES

6.1. Long-term expenses

Aid/grants awarded firmly by the entity and other long-term committed expenses will be recorded in the income statement for the year in which its concession is approved, credited to a liability account, of the current value of the commitment assumed (NRV 8ª PCA Non-profit entities).

6.2. Particular criteria applicable to expenses incurred for the organization of future events

Expenses related to the organization of future events (exhibitions, congresses, conferences, etc.) will be recognized in the entity's income statement as an expense on the date in which they are incurred, unless they were related to the acquisition of assets for disabled, rights to organize the aforementioned event or any other concept that meets the definition of an asset. (NRV 8ª PCA Non-profit entities).

6.3. Monetary and non-monetary aid of the entity

Monetary aid is the amount of monetary benefits granted directly to individuals or families, as well as entities, and carried out in compliance with the entity's own purposes. Also included is the amount of monetary benefits that are performed under arrangement through entities or centres outside the entity; as well as the amount of aid related to international cooperation. Indicative mention is made of subsidies, scholarships, maintenance and accommodation, prizes, social cooperation and health care. (DRC Subgroup 65 PCA Non-profit entities).

Non-monetary aid is the amount of non-monetary benefits granted to individuals or families, as well as entities, and carried out in compliance with the entity's own purposes. It also includes the amount of benefits of a non-monetary nature that are carried out under an agreed arrangement through entities or centres outside the entity; as well as the amount of aid related to international cooperation. They also include the expense derived from the disposals of a non-monetary asset without remuneration.

The compensation of expenses for collaboration benefits are the expenses produced by volunteers and other collaborators as a consequence of the activities developed in the entity; transportation, food and clothing costs are cited as examples. For these purposes, a volunteer is understood to be one that collaborates with the entity for the development of programs and activities that constitute its own purpose and does not receive remuneration of any kind, either in money or in kind.

The reimbursements of expenses to the governing body are the amounts that are delivered to the members of the governing body as a result of the reimbursement of expenses, duly justified, that the execution of their function rewards them.

6.4. Income derived from the fulfilment of the entity's purposes

The following rules will be taken into account in accounting for income in compliance with the entity's purposes (NRV 8th PCA Non-profit entities):

a) Income from deliveries of goods of goods or provision of services will be valued at the agreed amount.

b) User or affiliate fees will be recognized as income in the corresponding period. The fees of associates and affiliates are periodic amounts and a determined amount, received in installations by persons affiliated or associated with the entity. User fees are amounts received from users by way of participation in the cost of the entity's own activity. Indicative fees are quoted for participation in congresses, courses, seminars, as well as those derived from deliveries of goods, social benefits or welfare. (DRC Accounts 720 and 721)

c) Income from non-profit making to attract resources, sponsors and collaborations will be recognized when the campaigns and events occur. Fundraising promotions are income derived from fundraising campaigns in their different forms, such as joint ventures or other similar income other than sponsorship. The income of sponsors and collaborators are amounts received from sponsors and business collaborations in order to contribute to the realization of the purposes of the entity's own activity. (DRC Accounts 722 and 723)

d) In any case, the necessary periodifications must be carried out.

Similarly, the Adapted Accounting Plan of Sports Federations establishes that federal licenses and income from fees from clubs and other sports associations are recognized as income.

In this sense, it is important to highlight the definition of income in the conceptual framework that establishes that they are increases in net worth, as long as they do not originate from new contributions, monetary or not, to the founding endowment or social fund.

Therefore, they must be differentiated from contributions to the founding endowment or social fund. As a foundational endowment or social fund, only the contributions made and the surplus destined to increase them can be included. (DRC Accounts 100 and 101) In this sense, it is relevant to distinguish the contributions that are made without any consideration by the entity and that therefore meet the definition of net worth, as a residual element, from those in which the entity has had or has to fulfil obligations derived from quotas, which must be recognized as income. All of this, without prejudice to distinguishing between contributions to the foundation endowment or social fund and subsidies, donations and legacies, as indicated in the following section.

If the entity carries out commercial activities, the sales and other ordinary income from the aforementioned activity will be reflected in the item "Sales and other ordinary income from commercial activity", which must be created for this purpose, after item 1. "Income from own activity", integrating into the operating result. (NECA 6th).

VII. TAX ADVANTAGES

The special tax regime contemplated in Law 49/2002 for non-profit entities can only be applied to those non-profit entities that are included in art. 2 that meet the requirements of art.3 and who have chosen said regime through the corresponding census declaration.

7.1. Special tax regime

The special tax regime for non-profit entities is optional and is binding only to the extent that the option is carried out within the terms and manner established by the Regulations.

The special tax regime contemplated in Law 49/2002 can only be applied to non-profit entities included in art.2 that meet the requirements of art. 3 and have opted for

said regime through the corresponding census declaration. To request this special tax regime for said entities, if the required requirements are met, a census declaration (form 036) must be presented, which has effect in the tax year that ends after the date of presentation of the application. This regime will be applicable in subsequent years as long as it is not waived, and the necessary requirements continue to be given.

After presenting the census declaration in which the application of the special tax regime is chosen, in the case of taxes with a tax period, the special tax regime will be applicable to the tax period that ends after the date of presentation of the census declaration and for successive activity, as long as the entity does not renounce the regime and meets the requirements. In the case of taxes without a tax period, the special tax regime will become applicable to the taxable events produced after the date of presentation of the census statement.

7.2. State taxes

In general, all non-profit entities (covered by Law 49/2002 or partially exempt) are required to file a declaration of Corporation Tax. They are also required to declare their income exempt and non-exempt. However, partially exempt entities are exempt from said obligation if the following conditions are met (art. 124.3 LIS):

- Your total income does not exceed 75,000 Euros per year.
- Income related to non-exempt income does not exceed the figure of 2,000 Euros per year.

All non-exempt income they obtain is subject to withholding.

According to art.6 of Law 49/2002, of December 23, 2002, the following income obtained by non-profit entities are exempt from Corporation Tax:

1. Income derived from the following income:

a) Donations received to collaborate in the purposes of the entity, including contributions or donations of endowment, at the time of its constitution or at a later time, and financial aid received under the agreements of business collaboration contemplated in article 25 of Law 49/2002 and by virtue of the advertising sponsorship contracts referred to in Law 34/1998, of November 11, General Advertising.

b) The fees paid by associates, collaborators or benefactors, provided that they do not correspond to the right to receive a benefit derived from a non-exempt economic exploitation.

c) Subsidies or grants, except those destined to finance the realization of non-exempt economic exploitations.

2. Those coming from real estate assets of the entity, such as dividends and shares in profits of companies, interests, royalties and rents.

3. Those derived from acquisitions or transfers, for any deed, of goods or rights, including those obtained in the circumstance of the dissolution and liquidation of the entity.

4. Those obtained in the exercise of exempt economic exploitations.

5. Those that, in accordance with tax regulations, must be attributed or attributed to non-profit entities and that come from exempt income included in any of the preceding sections.

Furthermore, according to art.29.3 of the LIS, the entities to which the tax regime established in Law 49/2002 will be taxed at 10 percent.

7.3. Regional and local taxes

Article 15 provides for the exemption in the Real Estate Tax, in the Tax on Economic Activities and in the Tax on the Increase in Value of Urban Land.

The property owned by non-profit entities is exempt from the Real Estate Tax, except for those affected by economic operations not exempt from Corporation Tax. In other words, the following properties from which non-profit entities are legal owners are exempt:

a) Those that are not linked to economic exploitations,

b) And those that are affected by economic exploitations whose income is exempt from Corporation Tax in accordance with the provisions of article 7 of Law 49/2002. That is to say, they are economic exploitations of those included in said article 7, as long as they are developed at the time of fulfilling their specific object or purpose (Del Amo, 2015).

Consequently, the previous legal regime excluded the exemption in three important cases:

a) goods transferred to third parties through compensation;

b) property not affected by the activities that constitute its corporate purpose or specific purpose; and

c) goods that are not used mainly in the development of economic exploitations that do not constitute their specific object or purpose.

The exemption contemplated in Law 49/2002 is much broader, when considering art. 15.1: "The property of which ownership belongs to these entities will be exempt from the Real Estate Tax, in the terms provided in the regulatory regulations of the Local Treasury, non-profit entities, except those related to economic operations not exempt from Corporation Tax" .

Therefore, the current regime only excludes from the exemption assets subject to economic operations not exempt from Corporation Tax. Specifically, the exception relating to goods transferred to third parties by way of compensation has been removed, so that the exemption extends to leased assets.

Therefore, for the exemption in the IBI provided in section 1 of art. 15 of Law 49/2002 it is necessary to comply with the following requirements, Moreno, 2019) .:

✓ That they are non-profit entities to which the special tax regime of Law 49/2002 applies.

✓ That they have chosen to apply said regime by filing the corresponding census declaration with the AEAT.

✓ That it is real estate whose ownership corresponds to the non-profit entity and that are not subject to economic operations not exempt from Corporation Tax.

✓ That the competent City Council must be informed so that the exaction of the IBI in the relevant exercise can be applied under the rules of the special tax regime.

Both the General Sub-Directorate of Local Taxes and the jurisprudence have interpreted the exception to the exemption from the IBI of non-profit entities established in section 1 of art. 15 of Law 49/2002: “except for those affected by economic operations not exempt from Corporation Tax”.

The exception to the exemption refers to immovable property of the non-profit entities that are attached (consequence of the self-management of the means of production and human resources, either one or both, in order to intervene in the production or distribution of goods and services) in the tax period, to said entities, with economic exploitations not exempt from Corporation Tax, for which activities they must be taxed according to articles 8 and following of Law 49/2002 (Moreno, 2019).

They are, among others, the provision of services for the non-profit making and management of social action (childhood, the elderly, people with disabilities, alcoholics and drug addicts, etc.), hospitalization or health care, scientific research and technological development, goods of cultural interest, museums and libraries, musical and theatrical performances, parks and other natural spaces, professional education and training and sports services (Del Amo, 2015).

Non-profit entities are exempt from the Economic Activities Tax for the exploitations referred to in article 7, indicated above. However, said entities must present a registration statement for the tax registration and a declaration of withdrawal in the event of cessation of the activity.

Also, the corresponding increases are exempt from the Tax on the Increase in Value of Nature Urban Lands when the legal obligation to satisfy said tax falls on a non-profit entity. In the case of deed transfers for land or constitution or transfer of real rights with limited use of the same, carried out for consideration by a non-profit entity, the exemption will be restricted to such land as long as they meet the requirements and assumptions regarding special tax regime provided for in this Law.

VIII. CONCLUSIONS

Throughout this assignment, we can reach the following conclusions in relation to the objective of this task (find differences between non-profit entities and the rest);

In the accounting field, it should be noted that the current legislation on accounting information of Spanish non-profit organizations establishes requirements that include the preparation of the annual accounts, in similar and even deeper terms than businesses; and, in addition, the preparation of the budget and its liquidation.

Like the other entities, the annual accounts of non-profit entities must be prepared in a clear way so that the information provided is understandable and useful. The annual accounts must include relevant and reliable information on the activities of non-profit entities; the nature of the accounts; the surplus for the year (difference between the income and expenses accrued in the period), the entity's self-financing activities; and the total variation of the entity's net worth.

As defined in its substantive regulation and in the conceptual accounting framework of the 2011 PGC, the financial statements or annual accounts of foundations and associations of public utility are three, the balance sheet, the income statement and the legal report, unlike from the rest of the entities that also include the statement of cash flows and the statement of changes in equity.

On the other hand, the criteria for presenting the financial statements are those included in the PGC, except for assets and liabilities not affected by a market activity, which are not classified according to the normal operating cycle, but rather based on and according to the expected time frame for completion. With regard to the income statement, which will collect the surplus for the year; the amount of income or expenses attached directly to the equity; transfers or reclassifications made to the surplus for the year; or variations in the foundational endowment or social fund. As indicated, in addition to all income and expenses, the new income statement reflects the changes in net worth that are caused by operations directly related to increases or decreases in the founding endowment or social fund. The intended objective is to show the economic fund of the transaction that, unlike contributions to the capital of mercantile companies, does not seek its recovery plus profitability, but to provide economic viability to a specific project, to pursue the achievement, where the aforementioned funds could be consumed

Regarding the particular criteria applicable to income and expenses, the following should be noted:

- Long term expenses: Aid granted firmly by the entity and other long-term commitments will be recorded in the income statement of the year in which its grant is approved, credited to a liability account, for the current value of the commitment taken
- Particular criteria applicable to disbursements incurred by the organization for future events: Expenses related to the organization of future events (exhibitions, congresses, conferences, etc.) will be included in the entity's income statement as an expense on the date which are incurred, unless it can be accounted for as an asset.

• Monetary and non-monetary aid from the entity: subsidies, scholarships, or prizes are collected here, and non-monetary aid must be differentiated from monetary aid.

• Income derived from the fulfilment of the purposes of the entity: here the following criteria will be taken into account: Income from deliveries of goods, goods or services will be valued at the agreed amount, User or affiliate fees will be recognized as income in the period to which they correspond; The income from non-profit making to attract resources, sponsors and collaborations will be recognized when the campaigns and events take place; and in any case, the necessary periodifications must be carried out.

On the other hand, in the tax field, the special regime is contemplated in Law 49/2002 for non-profit entities, being applicable only to those non-profit entities that are included in art. 2 that meet the requirements of art.3 and that have opted for said regime through the corresponding census declaration. Furthermore, the special tax regime for non-profit entities is optional and only binds to the extent that the option is exercised within the terms and manners established by the Regulations.

In relation to the taxation of non-profit entities, the main novelties are the IS. Thus, in terms of state taxes, within the scope of the IS, certain exemptions are contemplated, in addition, they will be taxed at a 10% rate. As for premises, the 2002 legislator decided to maintain the exemptions provided for in Law 30/1994, expanding its scope. In this way, all those assets subject to this tax that are owned by non-profit entities will be exempt from the IBI, except for those affected by economic operations not exempt from Corporation Tax.

We find the partial exemption in the IS for those entities whose income does not reach 75,000 Euros per year, and whose income deriving from non-exempt income does not exceed the figure of 2,000 Euros per year. In addition, certain income such as donations and donations received to collaborate in the purposes of the entity, including contributions or donations as endowment or quotas paid by associates, collaborators or benefactors, are exempt, provided they do not correspond to the right to receive a benefit derived from a non-exempt economic exploitation.

The property owned by non-profit entities is exempt from the Real Estate Tax, except for those affected by economic operations not exempt from Corporation Tax. the current regime only excludes from the exemption the assets assigned to economic exploitations not exempt from Corporation Tax. However, for this, certain requirements

must be met, such as being before non-profit entities to which the tax regime of Law 49/2002 applies; that they have chosen to apply to said regime by filing the corresponding census declaration with the AEAT; that the property owned by the entity is not affected by economic operations with non-exemption from Corporation Tax; and that the competent City Council must be informed so that the exaction of the IBI in the relevant exercise can be applied under the rules of the special tax regime.

Likewise, economic exploitations developed by these entities will be exempt from the IAE when they have been qualified as exempt by the Law itself.

As a novelty, and in accordance with the purpose of promoting the activity carried out by these entities for the benefit of the general interest, the exemption was incorporated in the IIVTNU when the legal obligation to satisfy the tax falls on a non-profit entity, as well as in the donations made in favour of the beneficiary entities of the patronage.

Lastly, it should be noted that, if a non-profit entity competes in the market with other for-profit entities, the State aid that it may receive (in this case, in the form of tax benefits in local taxes), is liable to act distorting the market since certain tax advantages are offered to certain entities, while the rest must compete in disadvantageous conditions. In this way, public aid to certain companies is a subjective criterion since the determination of this type of entity is made taking into account the general good. In practice, public aid such as tax breaks is favouritism for certain types of organizations, when compared to other companies that, for example, sell substitute goods or services. All this generates a distortion in competition since certain companies have a series of advantages and more beneficial starting or tax points.

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