

State aid for foundations and their supervision

Finland has about 2,900 foundations within the scope of the Foundations Act (109/1930). The National Board of Patents and Registration grants permission to establish foundations, approves their by-laws and is responsible for supervising that the administration of a foundations complies with the law and the by-laws of the foundation. The state also supports foundations' activities financially. Tax subsidies are one key form of support. The tax authorities have regarded possibly about 90% of foundations as non-profit corporations as defined in the Income Tax Act (1535/1992). In this case the taxation of a foundation, like any other corporation regarded as non-profit, is lighter than for other taxpayers, since depending on the composition of income, activities are either entirely or partly tax-free. Furthermore, if a non-profit foundation or other corporation is considered to be engaged in socially significant activities as defined in the Act on Tax Relief for Certain Non-Profit Corporations (680/1976), tax under the Income Tax Act can be waived completely or reduced.

The audit sought to determine whether Parliament and the Government have the preconditions to exercise the effective guidance and supervision of foundations and whether the state achieves the intended social impacts efficiently and adequately through tax benefits given to foundations, other public support and statutory supervision, without excessively harming other actors' operating conditions.

The audit found that authorities have not studied whether tax subsidies and supervision achieve the intended social impacts efficiently and adequately. Sufficient attention has not been paid to possible competitive disadvantages. The National Audit Office considers that the regulation of foundations and non-profit corporations should be reformed, since regulation no longer meets requirements and does not ensure competitive neutrality.

The information base concerning foundations is weak, since statistics, research and official registers produce little and fragmented information on foundations and their finances and activities. Authorities should cooperate to create a system to collect information on foundations as a basis for decision-making, so that different parties can adequately evaluate the utility and general interest of foundations' activities.

The Foundations Act restricts foundations' right to engage in business operations. The National Board of Patents and Registration has seen that the by-laws of a newly established foundation comply formally with the provisions in the Foundations Act. It has granted permission to establish foundations whose business operations are so extensive in relation to other activities that the real purpose of a foundation has clearly been to engage in business operations. A foundation's activities can also change subsequently so that it engages in business operations, regardless of its by-laws or charter.

Authorities' supervisory task under the Foundations Act has been interpreted in different ways. In the opinion of the National Board of Patents and Registration, the task it has been assigned is to perform the ex post supervision of regularity, based primarily on financial audit, but not the supervision of propriety. The supervision it has conducted has been quite limited even with regard to regularity, however, since it has mainly checked that foundations submit to it the documents prescribed in the Foundations Act.

The need to reevaluate the Foundations Act is evident. In order to ensure competitive neutrality and owing to the extent to which foundations actually engage in business operations, restrictions on business operations should be removed from the Foundations Act. In reforming the Foundations Act it is also necessary to reconsider the scope of authorities' supervision task. Supervision costs should be covered in full with charges levied on foundations.

Since the middle of the 1990s tax subsidies for non-profit corporations have been estimated as being on the order of 100 million euros a year. On the basis of the audit this estimate is much too low. Information on the allocation of tax subsidies is also lacking. The financial significance of tax subsidies, the scope of the tax base and the transparency of administration and markets require more detailed information on the amount, allocation and impacts of tax subsidies.

The provisions in the Income Tax Act concerning the taxation of non-profit corporations and the Act on Tax Relief for Certain Non-Profit Corporations have remained practically unchanged since the mid-1970s. The state has subsequently assumed more financial responsibility for many tasks, as legislation in different sectors has been reformed or new legislation has been enacted. Tax subsidies and other public support for activities should be coordinated.

Section 81:1 of the Constitution calls for an Act containing provisions on tax liability and principles for levying taxes. When it comes to defining public utility, the provisions in the Income Tax Act are too general, vague and open to interpretation, however. The key significance of the Act's provisions has in fact been for taxation and legal practices. The possibilities of the National Board of Taxes to steer and supervise the taxation of non-profit corporations and to ensure uniform and fair tax treatment for taxpayers as well as the benefits of tax recipients have also been decisively hampered. The National Audit Office draws serious attention to audit findings according to which the taxation of non-profit corporations has been subject to lobbying and pressure, focused on both the National Board of Taxes and officials making individual tax decisions.

The Income Tax Act requires that a non-profit corporation must operate solely and directly for the public good. In practice the Income Tax Act has been applied in such a way that corporations whose activities are almost exclusively business operations and whose non-profit activities are quite limited have also been regarded as non-profit. According to a rough calculation that was made during the audit, five large foundations that provide grants spent more or less the same amount of money on grants and other public utility purposes as they received in the form of benefits from more favourable tax treatment compared with other taxpayers. If tax subsidies for foundations are considered proper, in the opinion of the National Audit Office legislation should be revised so as to prescribe what can be considered adequate compensation for the tax revenues lost by society.

Section 23:3 of the Income Tax Act allows non-profit corporations to engage in tax-free business operations, in addition to which income from the rental of property and housing is either tax-free or taxed more lightly than for other taxpayers. Furthermore, in practice the Income Tax Act has been applied in such a way that economic

activity that would be regarded as business operations if it were conducted in company form can be considered tax-free public utility activity when conducted by a foundation or association. On the basis of the audit, tax relief - whether it depends on legislation or tax and legal practice - leads to competitive disadvantages, but they are poorly known and have not been adequately studied in developing taxation.

Non-profit corporations increasingly operate on the same markets as businesses. There is consequently a greater risk that non-profit corporations' tax benefits will cause more and more competition-distorting effects as well as distortions that could not have been taken into consideration when the Income Tax Act was enacted. In the opinion of the National Audit Office, the competition-distorting effects of tax subsidies for non-profit corporations should be studied thoroughly, also taking into account the European Union's state aid rules.

On the basis of the Act on the Public Disclosure and Confidentiality of Tax Information (1346/1999), key information concerning tax subsidies and tax relief is confidential. Even information on the non-profit status of a corporation is confidential. As a result of confidentiality, markets are not transparent and competition-distorting effects are not brought to light adequately. The National Audit Office considers that, owing to public financial support in the form of tax subsidies and tax relief as well as its intended nature, which is to be in the general interest, it is not justified for the taxation of non-profit corporations to be subject to the same confidentiality rules that apply to other taxpayers.