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# OFFICIAL GAZETTE OF THE ITALIAN REPUBLIC

FIRST PART

Rome - Friday, 2 January 1998

Legislative Decree of 4 December 1997, No. 460.

## Reform of the Tax Laws Governing Non-Commercial bodies and Socially-Useful Non profit Organizations

### THE PRESIDENT OF THE REPUBLIC

Having seen Articles 76 and 87, fifth paragraph, of the Constitution;

Having seen Article 3, paragraph 186, 187, 188, 189 of the law of 23 December 1996, No. 662, delegating the Government to create the tax laws governing non-commercial bodies and socially-useful non profit bodies;

Having seen the preliminary resolution of the Counsel of Ministers, adopted in the reunion of 4 July 1997;

Having seen Article 3, paragraph 1, of the law of 31 July 1997, No. 259, which set the date of 30 November 1997 as the deadline for the exercise of the legislative delegations derived from the cited Article of law No. 662 of 1996;

Having seen the resolution of the President of the Senate of the Republic, in agreement with the President of the Chamber of Deputies, adopted in conformity with Article 3, paragraph 15 of law No. 662 of 1996 as cited, granting an extension of twenty days of the deadline for the expression of the opinion of by

the Parliamentary Commission set up in conformity with Article 3, paragraph 13, of the same law No. 662 of 1996;

Having heard the opinion of the above-mentioned Parliamentary Commission;

Having seen the resolution of the Counsel of Ministers, adopted in the meeting of 14 November 1997;

On the proposal of the Minister of Finances, together with the Minister of the Treasure, the Budget and Economic Planning;

### ISSUES

the following legislative decree:

#### *Section 1*

#### MODIFICATION OF THE INCOME AND VALUE-ADDED TAX LAWS GOVERNING NON-COMMERCIAL BODIES

#### Art. 1

#### *Qualification of the bodies and determination of the criteria for identifying the exclusive and main purpose of the activity*

1. In the consolidation act on income taxes, approved by decree of the President of the Republic on 22

December 1986, No. 917, in Article 87, paragraph 4 is replaced by the following:

"4. The exclusive or main purpose of the resident body is determined by law, by the articles of association or by-laws, if existing, in the form of a public act or certified or registered private document. Main purpose signifies the activity essential for the carrying out of the primary purposes indicated by the law, the articles of association or the by-laws.

4-bis. In the absence of the articles of association or the by-laws in the above-stated forms, the main purpose of the resident body is determined on the basis of the activity effectively performed in the territory of the State; this provision is applied in any case to non-resident bodies."

#### Art. 2

##### *Occasional Public Collections of Funds and Contributions for the Carrying on of Activities by Convention*

1. In Article 108 of the consolidation act on income taxes, approved by the decree of the President of the Republic on 22 December 1986, No. 917, concerning the total income of non-commercial bodies, after paragraph 2, the following is added at the end:

"2-bis. The following do not contribute in any case to the income of non-commercial bodies as in letter c) of paragraph 1 of Article 87:

a) funds that have come to the above-stated bodies as a result of public collections carried out occasionally, including those made through offers of goods of moderate value and services to backers, accompanying celebrations, holidays or publicity campaigns;

b) contributions paid by public administrators to the aforesaid bo-

dies for the carrying on of activities by convention or in the process of being accredited as in Article 8, paragraph 7, of the legislative decree of 30 December 1992, No. 502, in replacement of Article 9, paragraph 1, letter g), of the legislative decree of 7 December 1993, No. 517, activities having social goals carried out in conformity with the institution purposes of the bodies themselves".

2. The activities indicated in Article 108, paragraph 2-bis, letter a), of the consolidation act of income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, as modified by paragraph 1, remaining in force the system of exclusion from the value-added tax, are exempt from any other tax.

3. By decree of the Minister of Finances, to be issued as per Article 17, paragraph 3, of the law of 23 August 1988, No. 400, limits and conditions may be set in order that the performance of the activities as per article 108, paragraph 2-bis, letter a), of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, may be considered occasional.

#### Art. 3

##### *Determination of Income and Separate Accounting*

1. The following modifications have been made to article 109 of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, concerning the determination of the income of non-commercial bodies:

a) paragraphs 2 and 3 are replaced by the following:

"For commercial activity carried on, non-commercial bodies are obliged to keep separate accounting.

3. For the identification of assets relative to the enterprise the provisions as per Article 77, paragraphs 1 and 3-*bis* apply.

3-*bis*. The expenses and other negative components referring to goods and services heterogeneously qualified for the exercise of commercial and other activities, are deductible for the portion of their amount that corresponds to the ratio between the amount of receipts and other revenue that contribute to forming company income and the total amount of all the receipts and earnings; for the buildings utilised heterogeneously the cadastral income or the rent, financial as well, are deductible for the portion of their total that corresponds to the aforesaid ratio.”;

b) Paragraph 4 *bis* is replaced by the following:

“4-*bis*. The bodies subject to public-accounting provisions are exonerated from the obligation to keep separate accounting if the procedures provided for by law in compulsory public accounting by the bodies themselves are followed”.

#### Art. 4.

##### *Lump-Sum System for Determining Income*

1. In the consolidation act on income taxes approved by the decree of the President of the Republic on 22 December 1986, No. 917, the following is added after Article 109:

“Art. 109-*bis* (*Lump-sum system of the non-commercial bodies*). – 1. Except for what is provided, for amateurs sports associations, by the law of 16 December 1991, No. 398 and, for the non profit organizations and the pro-loco, as per Article 9-*bis* of the decree-law of 30 December 1991, No. 471, converted, with modifications, by the law of 6 February 1962, No. 66, the non-commercial

bodies admitted to simplified accounting as per Article 18 of the decree of the President of the Republic of 29 September 1973, No. 600, can opt for the lump-sum determination of business income, applying to the total of revenue acquired in the performance of commercial activities the coefficient of income corresponding to the category to which they belong according to the following table and adding the total of the positive components of the income as per Articles 54, 55, 56 and 57;

a) performance of services:

1) up to 30,000,000 lire, 15 per cent coefficient;

2) from 30,000,001 to 360,000,000 lire, 25 per cent coefficient;

b) other activities;

1) up to 50,000,000 lire, 10 per cent coefficient;

2) from 50,000,001 to 1,000,000,000 lire, 15 per cent coefficient.

2. For the taxpayers who perform services and other activities at the same time the coefficient is determined in reference to the total earnings from the prevalent activity. In the absence of a distinct recording of earnings the activities of performance of services are considered prevalent.

3. The lump-sum system provided for in the present Article is extended from year to year when the limits indicated in paragraph 1 are not exceeded.

4. The option is exercised in the annual income-tax return and takes effect from the beginning of the tax period during which it is exercised until it is revoked and, in any case, for a three-year period. The option is revoked in the annual income-tax declaration and takes effect from the beginning of the tax period during which the declaration itself is presented.

5. The bodies which undertake the exercise of a commercial enterprise exercise the option in the declaration to be presented as per Article 35 of the decree of the President of the Republic of 26 October 1972, No. 633, and subsequent modifications.”.

Art. 5.

*Association-type Bodies*

1. The following modifications are made to Article 111 of the consolidation act on income taxes, approved by decree of the President of the Republic of 22 December 1986, No. 917, concerning the activity carried out by association-type bodies:

a) Paragraph 3 is replaced by the following:

“3. For political, union and trade, religious, relief, cultural, amateur sports, social-promotion and extra-scholastic associations, the activities carried out in direct accomplishment of the institution’s purposes, carried out for payment of specific compensation to members, associates or participants, of other associations which carry out the same activity and which by law, regulation, article of association or by-laws belong to a single local or national association, respective associates or participants and members registered by the respective national organizations and the sale to third parties of the association publications are not considered commercial.”;

b) after paragraph 4, the following are added at the end:

“4.bis. For the social-promotion associations included among the bodies listed in Article 3, paragraph 6, letter e) of the law of 25 August 1991, No. 287, whose purposes of assistance are recognized by the Ministry of the Interior, the providing of foods and drinks by bars and si-

milar businesses at the locations where the institution activity is carried out, and the organization of tourist trips and stays are not considered commercial, even if carried out for payment of specific compensation, as long as the aforesaid activities are strictly complementary to those performed in direct accomplishment of the institutional purposes and performed for those subjects indicated in paragraph 3.

4-ter. The organization of touring excursions and stays as per paragraph 4-bis is not considered commercial even if carried out by political, union and trade associations, as well as associations recognized by the religious sects with which the State has stipulated pacts, agreements or accords, as long as it is performed on behalf of those subjects indicated in paragraph 3.

4-quater. For union and trade organizations the sale of publications, even as an exception to the limit as per paragraph 3, concerning collective labour contracts, as well as assistance given mainly to members, associates or participants in the application of said contracts and labour legislation, performed for compensation which in both cases does not exceed the costs directly associated therewith are not considered performed in the exercise of commercial activities.

4-quinquies. The provisions in paragraph 3, 4-bis, 4-ter and 4-quater apply on the condition that the associations involved conform to the following clauses, to be included in the respective articles of associations or by-laws drawn up as a public act or in a certified or registered private document:

a) the distribution, even indirectly, of profits or operating surpluses as well as funds, reserves or capital during the life of the association, unless the destination or distribu-

tion thereof is required by law, is prohibited;

b) the transfer of the assets of the body, in case of its dissolution for any reason whatsoever, to another association with similar purposes, once the supervisory body as per Article 3, paragraph 190 of the law of 23 December 1996, No. 662, has been heard, is obligatory, unless a different destination is required by law;

c) uniform discipline of the relationship between members of the association and procedures for the purpose of guaranteeing the effectiveness of said relationship, expressly excluding the temporary nature of the participation in the association and providing for the associates or participants who are of age the right to vote for approval and modifications of the by-laws and regulations for the appointment of the executive bodies of the association;

d) the obligation to draw up and approve a profit-and-loss and an income statement in accordance with the statutory provisions;

e) free election of the administrative bodies, principle of the single vote as per Article 2532, second paragraph, of the Civil Code, sovereignty of the meeting of partners, associates or participants and the criteria for their admission and exclusion, criteria for and appropriate forms of publicizing the meetings, the relative resolutions, balance sheets or profit and loss statements;

f) Non-transferability of membership fees or contributions except for transfers because of death and impossibility of modifying the value of said fee or contribution.

*4-sexies.* The provisions as per letters c) and e) for paragraph 4-*quinquies* do not apply to religious associations recognized by the sects with which the State has stipulated pacts, agreements or accords, nor to

political, union and trade associations."

2. In article 4 of the decree of the President of the Republic of 26 October 1972, No. 633, concerning the fiscal year of enterprises for value-added tax purposes, the following modifications have been made:

a) in the fourth paragraph, second sentence, concerning the treatment of some transfer of goods and performances of services carried out by associative-type bodies, the words: "and sports" are replaced by the following: "amateur sports, social promotion and extra-scholastic training of the person"; in the same paragraph, the third sentence is deleted;

b) in the fifth paragraph, letter a) concerning the treatment of publications produced by associative-type bodies, the words: "and sports" have been replaced by the following: "amateur sports, social promotion and extra scholastic training of the person";

c) after the fifth paragraph, finally, the following have been added:

"For the associations of social promotion included among the bodies as per Article 3, paragraph 6, letter e), of the law of 25 August 1991, No. 287, whose public-assistance purposes are recognized by the Ministry of the Interior, the providing of foods and drinks, even if performed for payment of specific compensation, carried out by bars and similar businesses in the places where the institutional activity is performed, is not considered commercial, as long as the aforesaid activities are strictly complementary to those performed in direct accomplishment of the institutional purposes and performed for the same subjects indicated in the second sentence of the fourth paragraph.

The provisions as per paragraph four, second and sixth sentences ap-

ply on the condition that the associations involved conform to the following clauses, to be included in their respective articles of association or by-laws drawn up in the form of a public act or a certified or registered private document:

a) the distribution, even indirect, of profits or operating surpluses as well as funds, reserves or capital during the life of the association, unless the destination or distribution thereof is required by law, is prohibited;

b) the transfer of the assets of the body, in case of its dissolution for any reason whatsoever, to another association with similar purposes or association of public utility, once the supervisory body as per Article 3, paragraph 190 of the law of 23 December 1996, No. 662 has been heard, is obligatory, unless a different destination is required by law;

c) uniform discipline of the relationship between members of the association and procedures for the purpose of guaranteeing the effectiveness of said relationship, expressly excluding the temporary nature of the participation in the association and granting the associates or participants who are of age the right to vote for approval and modifications of the by-laws and regulations and for the appointment of the executive bodies of the association;

d) the obligation to draw up and approve a profit-and-loss and an income statement in accordance with the statutory provisions;

e) free election of the administrative bodies, principle of the single vote as per Article 2532, second paragraph, of the Civil Code, sovereignty of the meeting of partners, associates or participants and the criteria for their admission and exclusion, criteria for and appropriate forms of publicizing the meetings, the relative resolutions, balance sheets or profit and loss statements;

f) Non-transferability of membership fee or contribution except for transfers because of death and impossibility of revaluing said fee or contribution.

The provisions as per letters c) and e) of the seventh paragraph do not apply to religious associations recognized by the sects with which the State has stipulated pacts, agreements or accords, nor to political, union and trade associations."

3. Within six months from the date the present decree takes effect, the associations created prior to the aforesaid date prepare or adjust their by-laws in conformity with Article 111, paragraph 4-*quinquies*, of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, as modified by paragraph 1, letter b) and in conformity with Article 4, seventh paragraph of the decree of the President of the Republic of 26 October 1972, no. 633, as modified by paragraph 2, letter b).

4. For the political, union and trade associations, the deadline as per paragraph 3 is twelve months from the date the present decree takes effect.

#### Art. 6.

##### *Loss of the Qualification as a Non-commercial Body*

1. In the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, the following is added after article 111,

Art. 111-*bis* (*Loss of the qualification as a non-commercial body*). - Independently of the statutory provisions, the body loses the qualification as a non-commercial body when it carries on mainly commercial activities for an entire tax period.

2. The following parameters are also taken into account in determining commercial qualification:

a) predominance of capital assets related to commercial activity, after amortizations, over the remaining activities;

b) predominance of earnings from commercial activity over the normal value of transfers or services performed regarding institutional activities;

c) predominance of income from commercial activity over institutional earnings, the latter meaning contributions, financial aid, donations and membership fees;

d) predominance of the negative components involved in commercial activity over the remaining expenses.

3. The change in qualification operates as of the tax period in which the conditions legitimating the benefits no longer held and involves the obligation to include all assets making up the capital of the body in the inventory as per article 15 of the decree of the President of the Republic of 29 September 1973, No. 600. Entry of assets must be carried out within sixty days from the beginning of the tax period in which the change in qualification takes place according to the criteria set forth in the decree of the President of the Republic of 23 December 1974, No. 689.

4. The provisions of paragraphs 1 and 2 do not apply to the ecclesiastical bodies recognized as legal entities for civil purposes".

2. In the decree of the President of the Republic of 26 October 1972, no. 633, governing the value-added tax, in article 4, the following is added after the last paragraph:

"The provisions concerning loss of the qualification as non-commercial body as per article 111-*bis* of the consolidation act on income taxes,

approved by decree of the President of the Republic of 22 December 1986, No. 917, also apply to the value-added tax."

#### Art. 7

##### *Non resident Non-commercial bodies*

1. In article 114 of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, concerning the non-commercial bodies non-resident on Italian territory, in paragraph 2, the words: "without keeping separate accounting thereof the provisions of paragraphs 2 and 3 of article 109 apply" are replaced by paragraphs 2, 3 and 3-*bis* of article 109".

#### Art. 8.

##### *Book-keeping of Non-commercial Bodies*

1. In article 20 decree of the President of the Republic of 29 September 1973, No. 600, concerning the bookkeeping of non-commercial bodies, the following is added after the first paragraph:

"Independently of the drawing up of the annual profit and loss and income statements, the non-commercial bodies that effectuate public collections of funds must, within four months of the end of the financial year, draw up a special and separate statement kept and conserved as per article 22, which must show, clearly and transparently, the entries and expenses regarding each of the celebrations, holidays or publicity campaigns indicated in article 108, paragraph 2-*bis*, letter a), consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917



The bodies subject to the lump-sum determination of income as per paragraph 1 of article 109-bis of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December, No. 917, which have obtained receipts no higher than 30 million lire in the preceding calendar year for performance of services, or 50 million lire in the other cases, are absolved of the book-keeping obligations as per article 18, according to the provisions of paragraph 166 of article 3 of the law of 23 December 1996, No. 662."

#### Art. 9.

##### *Temporary Benefits for the Transfer of Capital Assets*

The free transfer of companies or assets to non-commercial bodies, by deed submitted for registration by 30 September 1998, is exempt from inheritance and gift, mortgage and cadastral taxes, taxes on added value of buildings and their relative substitute tax and does not give rise, for income-tax purposes, to the realization or distribution of capital gains or losses, including those relative to surpluses and including the value of goodwill, nor does it constitute a requirement for the taxation of contingent assets of the transferring body on the condition that the body declare in the act that it intends to use the assets directly for the carrying out of its activity. When the transfer is that of the sole company of the transferring entrepreneur, the latter is required to free the tax-deferred reserves or funds if previously constituted by means of a payment of a substitute personal, corporate, local and value-added tax of 25 percent, according to the procedures determined by decree of the Minister of Finances. For the active residue balances constituted as per the

law of 29 December 1990, No. 408, and 30 December 1991, no. 413, containing tax provisions for the revaluation of assets, the freeing of reserves and funds and for the obligatory revaluation of company real estate, the substitute tax is set at the rate of 10 percent and the tax credit provided for by article 4, paragraph 5, of the aforesaid law no. 408 of 1990 and article 26, paragraph 5 of the aforesaid law No. 413 of 1991 is not due; the reserves and funds indicated in letters b) and c) of paragraph 7 of article 105 of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, are subject to a tax substituting the increase in tax adjustment with the rates of 5 percent and 10 percent respectively.

2. The non-commercial body that utilizes real estate as per the first sentence of paragraph 2 of article 40 of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, at the date of taking effect of the present decree can, by 30 September 1998, opt for the exclusion of said real estate from the assets of the company, by payment of a sum as a substitute tax for the corporate income tax, the local income tax and the value-added tax, for 5 percent of the value of said real estate, determined by the criteria as per article 52, paragraph 4, of the consolidation act of provisions concerning the registration tax, approved by decree of the President of the Republic on 26 April 1986, No. 131, in case said assets come from personal assets, and 10 percent in case of purchase by the company. By asset coming from capital is meant the property of the body itself not purchased in the course of the business carried on independently of the year

of purchase and the period of time between purchase and the use thereof in the business.

3. The procedures for presentation of the declaration of choice of option and payment of the substitute taxes provided for in paragraphs 1 and 2 are set by decree of the Minister of Finances, to be published in the Official Gazette within sixty days of the date of coming into effect of the present decree.

## Section II

### PROVISIONS REGARDING SOCIALLY- USEFUL NON PROFIT ORGANIZATIONS

#### Art. 10.

#### *Socially-Useful Non profit Organizations*

Socially-useful non profit organizations (ONLUS) are associations, committees, foundations, co-operatives and other private bodies, with or without legal personality whose by-laws or articles of association, drawn up in the form of public deed or certified or registered private document expressly provide for:

a) carrying on activities in one or more of the following areas:

- 1) welfare and health-care assistance;
- 2) health care;
- 3) charity;
- 4) education
- 5) training;
- 6) amateur sports;
- 7) protection, promotion and improvement of items of artistic and historical interest in accordance with the law of 1 June 1939, No. 1089, including libraries and assets by decree of the President of the Republic of 30 September 1963, No. 1409;
- 8) protection and improvement of nature and the environment, ex-

cluding the habitually-performed activity of collection and recycling of special and dangerous urban wastes as per article 7 of the legislative decree of 5 February 1997, no. 22;

9) Promotion of culture and art;

10) defence of civil rights;

11) scientific research of particular social interest carried on directly by foundations or assigned thereby to universities, research and other foundations that carry it on directly, in areas and according to procedures to be defined by special governmental regulation issued in conformity with article 17 of the law of 23 August 1988, No. 400;

b) the exclusive pursuit of purposes of social solidarity;

c) carrying on activities different from those mentioned in letter a) except for those directly connected therewith is prohibited;

d) the distribution, even indirectly, of profits and operating surpluses as well as funds, reserves or capital during the life of the organization, unless the destination or the distribution are required by law or are carried on behalf of other ONLUS which, by law, statute or regulation are part of the same and unified structure is prohibited;

e) the obligation to use the profits or the operating surpluses for the realization of the institutional activities and those directly related thereto;

f) the transfer of the assets of the body, in case of its dissolution for any reason whatsoever, to other socially-useful non profit organizations or for purposes of social utility, once the supervisory body as per Article 3, paragraph 190 of the law of 23 December 1996, No. 662, has been heard is obligatory, unless a different destination is required by law;

g) the obligation to draw up and approve an annual profit-and-loss and an income statement;

h) uniform discipline of the relationship between members of the association and procedures for the purpose of guaranteeing the effectiveness of said relationship, expressly excluding the temporary nature of the participation in the association and granting the associates or participants who are of age the right to vote for approval and modifications of the by-laws and regulations and for the appointment of the executive bodies of the association;

i) use in the name or in any distinctive sign whatsoever or communication addressed to the public of the locution "socially-useful non profit organization" or the acronym "ONLUS".

1. goals of social solidarity are understood to be pursued when the transfer of goods and the performance of services relative to the statutory activities in the areas of health-care, education, training, amateur sports, promotion of culture and art and the defence of civil rights are not rendered on behalf of members, associates or participants, as well as the other subjects indicated in letter a) of paragraph 6, but directed towards:

a) persons disadvantaged due to physical, psychological, financial, social or family conditions;

b) components of foreign groups, limited to humanitarian aid.

1. The goals of social solidarity are understood to be realized likewise when among those benefiting from the statutory activities or the organization there are its own members, associates or participants or the other subjects indicated in letter a) of paragraph 6, if they find themselves in the conditions of disadvantage as per letter a) of paragraph 2.

2. Apart from the conditions provided for in paragraphs 2 and 3, the institutional statutory activities carried on in the areas of welfare and

social-health, and of charity, of protection, promotion and improvement of items of artistic and historical interest as per the law of 1 June 1939, No. 1089, including libraries and property as per the decree of the President of the Republic of 30 September 1963, No. 1409, of protection and improvement of nature and the environment, excluding the habitually-performed activity of collection and recycling of special and dangerous urban wastes as per article 7 of the legislative decree of 5 February 1997, No. 22, scientific research of particular social interest carried on by foundations in areas and according to procedures to be defined by special governmental regulation issued in conformity with article 17 of the law of 23 August 1988, No. 400, as well as activities of promotion of culture and art for which financial contributions are recognised by the central administration of the State. are understood to be realized.

b) the statutory activities of health-care, education, training, amateur sports, promotion of culture and art and defence of civil rights, as per numbers 2), 4), 5), 6), 9), and 10) of paragraph 1, letter a) carried on in the absence of the conditions provided for in paragraphs 2 and 3, as well as the activities accessory by nature to institutional statutory ones, insofar as they are complementary thereto are considered directly connected to the institutional ones. The carrying on of the connected activities is permitted on the condition that, in each performance and in each of the areas listed in letter a) of paragraph 1, said activities do not predominate over the institutional ones and that the relative earnings do not exceed 66 percent of the total expenditures of the organization.

6) The following are, in any case, considered indirect distribution of profits or operating surpluses:

a) the transfer of goods and the performance of services to members, associates or participants, to founders, to components of the administrative or supervisory bodies, to those who for whatever reason work for the organization or belong thereto, to subjects who make donations on behalf of the organization, to their relatives within the third degree and to their relatives within the second degree, as well as to the companies directly or indirectly controlled by or connected thereto, carried out under more favourable conditions due to their status. In the case of activities carried on in the areas as per numbers 7) and 8) of letter a) of paragraph 1, the advantages granted to members, associates or participants and to subjects that make donations, and to members of their families, having a purely honorary meaning and modest financial values are exceptions;

b) The acquisition of goods or services for compensations that are higher than their normal value without valid financial reasons;

c) the payment of fees to the components of administrative and supervisory bodies of individual yearly compensation higher than the maximum compensation provided for by the decree of the President of the Republic of 10 October 1994, No. 645, and the decree law of 21 June 1995, No. 239, converted by the law of 3 August 1995, No. 336, and subsequent modifications and additions, for the chairman of the board of auditors of the stock companies;

d) payment to subjects different from the banks and authorized financial intermediaries of interest due, depending on loans of any type, 4 points above the official discount rate;

e) payment to salaried employees of wages or salaries 20 percent above those provided for in the collecti-

ve labour contracts for the same positions.

7. The provisions in letter *h*) of paragraph 1 do not apply to foundations, and those referred to in letters *h*) and *i*) of the same paragraph 1 do not apply to the bodies recognized by the religious sects with which the State has stipulated pacts, agreements or understandings.

8. The volunteer-service bodies as per the law of 11 August 1991 No. 266, entered in the registers set up by the regions and autonomous provinces of Trent and Bolzano, the non-governmental organizations recognized as qualified in conformity with the law of 26 February 1987 No. 49, and the social co-operatives as per the law of 8 November 1991, No. 381 are with respect to their structures and goals, considered ONLUS in any case. The provisions of greater favour relative to volunteer-service bodies, non-governmental organizations and social co-operatives as per quoted laws no. 266 of 1991, no. 49 of 1987 and no. 381 of 1991 still hold.

9. The ecclesiastical bodies of the religious sects with which the State has stipulated pacts, agreements or understandings and the social-promotion associations included among the bodies as per article 3, paragraph 6, letter e) of the law of 25 August 1991, No. 287, whose welfare purposes are recognized by the Minister of the Interior, are considered ONLUS limited to the carrying out of the activities listed in letter a) of paragraph 1; except for the regulation in letter c) of paragraph 1, to the same bodies and associations are also applied the provisions facilitated by the present decree, on the condition that the bookkeeping provided for in article 20-bis of the decree of the President of the Republic of 29 September 1973, No. 600, introduced by article 25, paragraph 1 be kept separately.

10. Public bodies, commercial companies different from co-operatives, the granting bodies as per the law of 30 July 1990, no. 281, political parties and movements, union organizations, employer and trade associations are not considered ONLUS in any case.

Art. 11.

*Registry of the ONLUS  
and Loss of the Benefits*

1. The only registry of the ONLUS is set up in the Ministry of Finances. Except for the provisions contemplated in the regulations for actuation of article 8 of the law of 29 December 1993, no. 580, concerning the institution of the company registry, approved by the decree of the President of the Republic of 7 December 1995, No. 581, the subjects who undertake the carrying on of the activities provided for in article 10, notify thereof, within thirty days, the regional management of revenue of the Ministry of the Finances in whose district their fiscal domicile is located, in conformity with the specific form approved by decree of the Ministry of Finances. The aforesaid notification is made within thirty days from the date of taking effect of the present decree by the subjects that, on the aforesaid date, have already been carrying out the activities provided for in article 10. Any subsequent modification that might bring about the loss of ONLUS status must be communicated to the same management.

2. Effectuation of the communications as per paragraph 1 is the necessary condition for benefiting from the benefits provided for by the present decree.

3. By one or more decrees of the Ministry of Finances to be issued, within six months of the date of taking effect of the present decree, as per article 17, paragraph 3, of the law of 23 August 1988, no. 400, the procedures for performing the verification of the continued existence of the formal requisites for the use of ONLUS name are set forth, as well as the cases of total or partial loss of the benefits provided for in the present decree and any other provision necessary for the actuation thereof.

Art. 12.

*Income-tax benefits*

1. In the consolidation act on income taxes, approved by decree of the President of the Republic of 22 December 1986, No. 917, after article 111-bis, introduced by article 6, paragraph 1, of the present decree, the following is added:

Art. 111-ter (*socially-useful non profit organisations*). – 1. For the socially-useful non profit organisations (ONLUS), except for the co-operatives, the carrying on of institutional activities for the exclusive purposes of social solidarity does not constitute the performance of commercial activity.

2. The proceeds from the carrying on of the directly connected activities do not contribute to the taxable income.”

Art. 13.

*Donations*

1. The following modifications are made to the consolidation act on income taxes, approved by decree of the President of the Republic of 22 December 1986, No. 917:

a) the following modifications are made to article 13-bis:

1) in paragraph 1, on tax deductions for expenses sustained, after letter i) the following is added at the

end: "i-bis) donations in money, for an amount no higher than 4 million lire, on behalf of the socially-useful non profit organisations (ONLUS), as well as membership fees, for an amount no higher than 2 million 500 thousand lire, paid by the members of the mutual-aid societies that operate exclusively in the sectors as per article 1 of the law of 15 April 1886, no. 3818 for the purpose of ensuring the members financial aid in the cases of illness, inability to work or old-age, or, in case of death, aid to their families. The deduction is allowed on the condition that the payment of said aid and contributions is made via a bank or post office or via the other systems of payment provided for by article 23 of the legislative decree of 9 July 1997, No. 241, and according to further procedures qualified to make it possible for the Financial Administration to carry out effective audits, which can be established by decree of the Ministry of Finances to be issued in conformity with article 17, paragraph 3, of the law of 23 August 1988, No. 400.";

2) in paragraph 3, in reference to the proportional deduction for individual partners in non-commercial partnerships, concerning the expenses sustained by the said partnership, the words: "For the expenses as per letters a), g), h) and i)" are replaced with the following: "For the expenses as per letters a), g), h), i) and i-bis)";

b) in article 65, paragraph 2, concerning the socially-useful expenses deductible for determining business income, after letter c-*quinquies*) the following are added at the end:

"c-*sexies*) donations in money, for an amount no higher than 4 million lire or 2 percent of declared business income, on behalf of the ONLUS,

"c-*septies*) the expenses relative to the use of employees, hired with no

time limit, utilized for the carrying out of services performed on behalf of ONLUS, with the limit of five per thousand of the total amount of the expenses for services performed by salaried employees, as shown in the income tax return.";

c) in article 110-*bis*, paragraph 1, concerning the tax deductions for expenses sustained by non-commercial bodies, the words: "expenses indicated in letters a), g), h) and i) of paragraph 1 of article 13-*bis*" are replaced by the following: "expenses indicated in letters a), g), h), i) and i-*bis* of paragraph 1 of article 13-*bis*";

d) in article 113, paragraph 2-*bis*, concerning the tax deductions for expenses sustained by non-resident companies and commercial-entities, the words: "expenses indicated in letters a), g), h) and i) of paragraph 1 of article 13-*bis*" are replaced by the following: "expenses indicated in letters a), g), h) and i) and i-*bis*) of paragraph 1 of article 13-*bis*";

e) in article 114, paragraph 1-*bis*, concerning tax deductions for expenses sustained by non-resident non-commercial bodies, the words: "expenses indicated in letters a), g), h) and i) of paragraph 1 of article 13-*bis*" are replaced by the following: "expenses indicated in letters a), g), h), i) and i-*bis*) of paragraph 1 of article 13-*bis*".

2. The foodstuffs and pharmaceuticals, towards which the production and exchange activity of the company is directed, which, as an alternative to the usual elimination from the commercial circuit, are transferred free of charge to the ONLUS are not considered devoted to purposes alien to the exercise of the business in conformity with article 53, paragraph 2, of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917.

3. The goods towards whose production and exchange the business activity is directed, which are different from what is provided for in paragraph 2, are not considered devoted to purposes alien to the exercise of the business in conformity with article 53, paragraph 2, of the consolidation act on income taxes approved by decree of the President of the Republic on 22 December 1986, No. 917, when these are given free of charge to the ONLUS. The free granting of those goods, for an amount corresponding to the specific cost non higher than 2 million lire in total, sustained for production or purchase, is considered a donation for the purposes of the limit as per article 65, paragraph 2, letter *c-sexies*), of the aforesaid consolidation act.

4. The provisions of paragraphs 2 and 3 apply on the condition that prior notification of the individual grants be given, by means of registered letter with return receipt, to the competent revenue office and that the ONLUS benefiting thereby, attests to its obligation to use the goods directly in conformity with the institution's purposes in a special declaration to be filed in the granting company's records and, under penalty of loss of the tax benefits provided for by the present decree, carry out the effective utilization; by the fifteenth day of the subsequent month, the granting entity must enter in the registers provided for the value-added tax or in a special statement, which takes the place of said registers, the quality and quantity of the goods granted free in each month. For the giving of easily perishable goods and of modest value the body is exonerated from prior notification. By decree of the Ministry of Finances, to be issued in conformity with article 17, paragraph 3, of the law of 23 august 1988, no. 400, further conditions,

which subordinate the application of the provisions referred to can be set forth.

5. Deductibility from taxable income of donations to non-governmental organizations as defined in the law of 26 February 1987, No. 49, provided for by article 10, paragraph 1, letter *g*), of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, is allowed on the condition that the subject that gives the donation does not take advantage of the tax deductions as per article 13-*bis*, paragraph 1, letter *i-bis*), of said consolidation act.

6. Deductibility from taxable income of the donations provided for in article 65, paragraph 2, letters *a*) and *b*), of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, no. 917, is allowed on the condition that the subject making the donation does not take advantage, for the same donation, of the tax deductions provided for by letter *c-sexies*, of said article 65, paragraph 2.

7. Deductibility from taxable income of the donations provided for by article 114, paragraph 2-*bis*, letters *a*) and *b*), of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, is allowed on the condition that the donating subject does not take advantage, for the same donation, of the tax deductions provided for by paragraph 1-*bis*, of said article 114.

#### Art. 14.

##### *Provisions Regarding the Value-Added Tax*

1. The following modifications are made to the decree of the President of the Republic of 26 October 1972, No. 633, concerning the discipline of the value-added tax:

a) in article 3, third paragraph, first sentence, concerning the identification of subjects benefiting from advertising operations which are not considered the performance of services, the following are included after the words: "social solidarity: as well as the socially-useful non profit organisations (ONLUS);";

b) the following modifications are made to article 10, first paragraph, concerning the tax-exempt operations:

1) in number 12), after the words: "study or scientific research", the following modifications are added at the end: "and to the ONLUS";

2) in number 15), after the words: "carried out by authorized companies" the following are added at the end: "and by ONLUS";

3) in number 19), after the words: "mutual-aid societies with legal status" the following are added: "and by ONLUS";

4) in number 20), after the words: "rendered by institutes or schools recognized by public administrations" the following are added: "and by ONLUS";

5) in number 27-ter), after the words: or by bodies having social welfare as their purpose" the following are added: "and by ONLUS";

c) in article 19-ter, concerning the deduction for non-commercial bodies, in the second paragraph, the words: "as per article 20" are replaced by the following: "as per articles 20 and 20-bis".

#### Art. 15.

##### *Certification of Compensation for Value-Added Tax Purposes*

1. The obligations provided for by the second title of the decree of the President of the Republic of 26 October 1972, No. 633 remaining, the ONLUS, limited to the operations referring to the institutional activi-

ties, are not subject to the obligation of certification of compensation by means of fiscal receipt or ticket.

#### Art. 16.

##### *Provisions Concerning Source Withholding*

1. The withholding as per article 28, second paragraph, of the decree of the President of the Republic of 29 September 1973, No. 600 is not applied to the contributions paid to the ONLUS by the public bodies.

2. On capital income as per article 41 of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, no. 917, paid to the ONLUS, withholding is made as a tax and article 5, paragraph 1, of the legislative decree of 1 April 1996, No. 239, modifying the tax regime of interest, awards and other benefits of bonds and the like, public or private, does not apply.

#### Art. 17.

##### *Exemptions from the Registration Tax*

1. In the Table attached to the decree of the President of the Republic of 26 October 1972, No. 642, concerning the acts, documents and registers absolutely exempt from the registration tax, the following is added after article 27 at the end:

"Art. 27-bis - I. Acts, documents, claims, contracts, as well as copies even if declared in conformity, statements, certifications, declarations and attestations brought into being or requested by the socially-useful non profit organisations (ONLUS)."

#### Art. 18.

##### *Exemptions from the Government Concession Tax*

In the decree of the President of the Republic of 26 October 1972,



No. 641, concerning the discipline of the Government Concession Tax, the following is added after article 13: Art. 13-bis - (Exemptions) - 1. Acts and measures concerning the socially-useful non profit organizations (ONLUS) are exempt from the government concession taxes."

Art. 19.

*Exemptions from Inheritance and Gift Taxes*

1. In article 3, paragraph 1, of the consolidation act of provisions concerning inheritance and gift taxes, approved by the legislative decree of 31 October 1990, No. 346, relative to transfers not subject to taxation, after the words: "other purposes of public utility" the following are added at the end: ", as well as those in favour of the socially-useful non profit organisations (ONLUS)".

Art. 20.

*Exemptions from the Value-Added Tax on Real Estate and from the Relative Substitute Tax*

1. In article 25, first paragraph, letter c), of the decree of the President of the Republic of 26 October 1972, No. 643, concerning the discipline of the value-added tax on real estate, relative to exemption from the tax on the increased value of real estate acquired free of charge, after the words: "public utility", the following are added: ", as well as by socially-useful non profit organisations (ONLUS)".

2. The substitute tax on the municipal one on added value of real estate as per article 11, paragraph 3, of the decree law of 28 March 1997, no. 79, converted, with modifications by the law of 28 May 1997, No. 140, is not owed by the socially-useful non profit organisations.

Art. 21.

*Exemptions from Local Taxes*

1. Municipalities, provinces, regions and the autonomous provinces of Trent and Bolzano can deliberate on the reduction or exemption from payment of taxes that pertain to them and responsibilities connected therewith concerning the ONLUS.

Art. 22.

*Registry-Tax Benefits*

1. The following modifications have been made to the fee, first part, enclosed in the consolidation act on provisions concerning the registration tax, approved by decree of the President of the Republic on 26 April 1986, No. 131:

a) in article 1, concerning the treatment of transferring deeds against payment of real-estate property and of the transferring deeds or those constituting property rights, after the seventh sentence, the following is added at the end: "if the transfer takes place on behalf of socially-useful non profit organisations (ONLUS) where the conditions as per note II-*quater*) apply: 250,000 lire."; in the same article, after note II-*ter*), the following is added at the end: "II-*quater*). On the condition that the ONLUS declare in the deed that it intends to use the goods directly for the carrying on of its activities and that it carry out the effective direct use within 2 years of acquisition. In case of false declaration or failure in effect to use the property for the carrying on of its activity the tax at the ordinary rate is owed as well as an administrative sanction of 30 percent of the tax itself.";

b) after article 11 the following is added at the end: "Art. 11-bis - I. Articles of association and statutory

modifications concerning the socially-useful non profit organisations: 250,000 lire.”.

Art. 23.

*Exemption from  
the Entertainment Tax*

1. The entertainment tax is not owed for the entertainment activities indicated in the fee enclosed with the decree of the President of the Republic of 26 October 1972, No. 640, carried out occasionally by the ONLUS as well as by the associative bodies as per article 111, paragraph 2, of the consolidation act on income taxes, approved by decree of the President of the Republic on 22 December 1986, No. 917, as modified by article 5, paragraph 1, letter a), coinciding with celebrations, holidays or publicity campaigns.

2. The exemption applies on the condition that notification is made of the activity referred to in paragraph 1, before the beginning of each manifestation, to the office in charge of verification whose territorial jurisdiction applies. Conditions and limits in order that the performance of the activities referred to in paragraph one can be considered occasional can be set forth by decree of the Ministry of Finances, to be issued in conformity with article 17, paragraph 3, of the law of 23 August 1988, No. 400.

Art. 24.

*Benefits for Charity Lotteries,  
Bingos, Draws and Banks*

1. In article 40, first paragraph of the royal decree law of 19 October No. 1933, converted, with modifications, by the law of 5 June 1939, No. 973, concerning reform of the laws on public lotteries, the following modifications have been made:

a) to number 1) concerning the authorisation to promote lotteries, after the words: “non profit making bodies,” the following are added: “socially-useful non profit organisations (ONLUS),”;

b) to number 2), relative to the authorization to promote bingo, after the words: “non profit making bodies,” the following is added: “ONLUS,”;

c) to number 3), relative to the authorization to promote charity draws or banks, after the words: “non profit making bodies,” the following is added: “ONLUS,”.

Art. 25.

*Provisions concerning Bookkeeping  
and Formal Obligations  
of the Socially-Useful Non Profit  
Organisations*

1. In the decree of the President of the Republic of 29 September 1973, no. 600, after article 20, the following is added;

“Art. 20-bis (*Bookkeeping of the socially-useful non profit organisations*). – 1. The socially-useful non profit organisations (ONLUS) different from co-operatives, on penalty of loss of tax benefits provided for them, must:

a) in relation to the totality of their activity, keep systematic and chronological bookkeeping for the complete and precise expression of the operations carried out in every accounting period, and adequately represent in a special document, to be drawn up within four months of the end of the annual fiscal year, the economic and financial and capital situation of the organization, distinguishing the directly connected activities from the institutional ones, with the obligation to keep said bookkeeping and the relative documentation for a period of no less than what is indicated by article 22;

b) in relation to the directly connected activities perform the bookkeeping provided for by the provisions in articles 14, 15, 16, and 18; assuming that the annual earnings do not exceed 30 million lire, relative to the performance of services, or 50 million lire in the other cases, the bookkeeping requirements can be met according to the provisions as per paragraph 166 of article 3 of the law of 23 December 1996, No. 662.

2. The obligations as per paragraph 1, letter a), are considered to be met when the bookkeeping consists of the journal and the inventory book, kept in conformity with the provisions as per articles 2216 and 2217 of the Civil Code.

3. The subjects referred to in paragraph 1 which have not obtained receipts for more than 100 million lire in one year in the performance of institutional and related activities, modified annually according to the procedures provided for by article 1, paragraph 3, of the law of 16 December 1991, No. 398, in place of the bookkeeping provided for in the first paragraph, letter a), can keep the statement of the earnings and the total expenses, in the terms and means as per article 20 for the subsequent year.

4. In place of the bookkeeping provided for in paragraph 1, letter a), the volunteer-services organizations enrolled in the registers set up by the regions and the autonomous provinces of Trent and Bolzano in conformity with article 6 of the law of 11 August 1991, no. 266, the recognized non-governmental organizations qualified as per the law of 26 February 1987, no. 49, can keep the statement of profits and losses in the terms and manners as per article 20.

5. If the receipts exceed a total of two billion lire for two consecutive years, modified annually according to the procedures provided for by ar-

ticle 1, paragraph 3, of the law of 16 December 1991, no. 398, the balance sheet must include an auditors' report signed by one or more auditor in the register of auditors."

2. For the subjects as per article 10, paragraph 9, the provisions of paragraph 1 apply only to the activities referred to in said article 10, paragraph 1, letter a).

#### Art. 26.

##### *Postponement regulations*

The provisions relative to non-commercial bodies and, in particular, the regulations of articles 2 and 9 of the present decree apply to the ONLUS.

#### Art. 27.

##### *Illegal Use of the Name Socially-Useful Non Profit Organisations*

1. The use in the name and in any distinctive sign or communication addressed to the public of the words "socially-useful non profit organisation" or of other words or locutions, in foreign languages as well, that can constitute a deception is prohibited to subjects other than the ONLUS.

#### Art. 28.

##### *Sanctions and liability of the legal representatives and the administrators*

1. Independently of any other sanction provided for by the tax laws;

a) the legal representatives and members of the administrative bodies of the ONLUS, who take advantage of the benefits as per the present decree in absence of the requisites as per article 10, or who violate the statutory provisions as per letters c) and d) of paragraph one of the same article are punished with an admi-

nistrative sanction of from 2 million to 12 million lire;

b) the subjects as per letter a) are punished with an administrative sanction from 200 thousand lire to 2 million lire if they fail to send the communications provided for in article 11, paragraph 1;

c) anyone who violates the provision of article 27, is punished with the administrative sanction of 600 thousand to 6 million lire.

2. The sanctions provided for by paragraph 1 are imposed, in conformity with article 54, first and second paragraph, by decree of the President of the Republic of 29 September 1973, No. 600, by the revenue office in whose territory the ONLUS fiscal domicile is located.

3. The legal representatives or the members of the administrative bodies of the organizations that have taken undue advantage of the benefits provided for by the present legislative decree, granting third parties or allowing third parties to obtain undue savings in taxes, are obliged together with the taxable body or the subject that fails to pay the taxes due, to pay the relative sanctions and interest accrued.

#### Art. 29.

##### *Solidarity Bonds*

1. For the issuing of bonds to be called "solidarity bonds" the difference between the interest rate effectively used and the reference interest rate determined by decree of the Minister of Labour, together with the Minister of Finances, is recognized as a cost deductible from

business income for tax purposes, provided that the funds collected, the object of separate accounting, are used for financing the ONLUS.

2. With the same decree as per paragraph 1 the subjects qualified to issue the aforesaid bonds, the conditions, the limits, including the maximum ones relative to the interest rates actually used and any other provision necessary for carrying out the present article have been established.

#### Art. 30.

##### *Date of Coming into Effect*

1. The provisions of the present decree come into effect on 1 January 1998 and, relative to income taxes, apply as of the tax period subsequent to that which is under way on 31 December 1997.

The present decree, bearing the seal of the State, shall be in the Official Set of Laws of the Italian Republic. It is the obligation of anyone concerned to observe it and see to it that it is observed.

Issued in Rome on 4 December 1997

## SCALFARO

*PRODI, Prime Minister*

*VISCO, Minister of Finances*

*CIAMPI, Minister of the Treasury, the Budget and Economic Planning*

Seen by the *Minister of Justice*: FLICK