

## The reform of the Third Sector

### Expert's opinion

#### Audit of TSOs financial statements

**Michele Milano**

Partner Ria Grant Thornton

By reforming the third sector and introducing the Code of the Third Sector, the Italian legislator has reviewed and gathered different business and non-business entities, which were previously regulated under different accounting and tax rules. The reform of the third sector introduced a number of obligations, including the appointment of a supervisory board (similar to the Board of Statutory Auditors in case of business entities) and the appointment of an external auditor, when certain limits are exceeded. In the Code of the third sector, the financial statements audit is specifically regulated under art. 31, whose para. 1 establishes that recognised or...

[read more](#)



### Overview

#### Third Sector - Attention and dedication

**Giulio Tedeschi**

Partner Bernoni Grant Thornton

The contribution of the voluntary activity carried out by Third Sector organizations to support specific disadvantageous situations in the society is unquestionable. Without such contribution, many difficult situations would get even worse, where the government is unable to intervene. Players in the third sector are all those who provide (most of the times, silently) or intend to provide resources, also as (voluntary)...

[read more](#)

### Focus on

#### Amendments to the tax provisions of the Code of the third sector

**Sergio Montedoro**

Partner Bernoni Grant Thornton

Law no. 122 dated 4 August 2022 (published in the Official Gazette no. 193 dated 19 August 2022), converting the so-called "Simplification" decree (Law Decree no. 73 dated 21 June 2022) introduced important modifications to the Code of the third sector under Legislative Decree no. 117/2017 (hereinafter, CTS). The modifications concern some aspects regulated by the CTS, such as the regulation of social enterprises, the fulfilments preceding the submission of the registration request with the National register of the third sector, control procedures for voluntary work organizations (OdV) and social promotion associations (APS), and the postponement...

[read more](#)



## Overview

### Third Sector - Attention and dedication

**Giulio Tedeschi**

*Partner Bernoni Grant Thornton*

The contribution of the voluntary activity carried out by Third Sector organizations to support specific disadvantaged situations in the society is unquestionable.

Without such contribution, many difficult situations would get even worse, where the government is unable to intervene.

Players in the third sector are all those who provide (most of the times, silently) or intend to provide resources, also as (voluntary) donations, contributions, or time without expecting any return, through activities in favour of beneficiaries also with the intermediation of third sector organizations.

This is a developing sector that deserves attention and dedication.

This TopHic edition will discuss some typical aspects of the third sector.

In particular, the Expert's opinion article will discuss financial statements issues, as they are now subject to a specific regulation under OIC accounting standard no. 35, which is specifically addressed to third sector organizations.

The Focus on article will discuss tax aspects that regard not only third sector organizations, but also their relevant consequences for donors (for example, in terms of deductibility of voluntary donations).

Third sector is very extended and has been specifically regulated only recently. It now requires entities to pay attention to the legal form, the organization and the coverage of risks: in fact, according to the most recent data, the Third Sector is worth approximately 5% of GDP and involves 5.5 million volunteers.

Legislative Decree no. 117 dated 3.7.2017 has introduced the regulatory framework for the third sector, consisting in a systematic discipline that represents a consolidated act, called "Code of the third sector".

The first articles of the Code, regarding the aim and general principles, help us better understand the third sector.

In fact, it provides to the systematic reorganization and revision of the current rules on third sector organizations, in order to support the independent initiative of citizens that contribute – even as associations – to pursue the general good, to increase civic activism, cohesion and social protection, favouring participation, inclusion, and the full development of persons, to enhance the growth and employment potential, in compliance with articles 2,3,4,9,18 and 118, para. four of the Italian Constitution.

As regards the regulation general principles, it recognizes the social value and function of third sector organizations, of associationism, of voluntary activities and of the culture and practice of donation as expression of participation, solidarity and pluralism; it promotes their development, spontaneity and autonomy and it favours their original contribution to pursue civic, solidaristic and social utility aims, also through a collaboration with the Italian government, with regions and with local institutions.



According to the most recent research, third sector is made up of about 360 thousand entities that are being structured. It was estimated that more than 50% of entities have been created over the last 15 years: this demonstrates how this sector is still under development, at least as regards the legal aspects and their built-in fragilities.

In fact, research showed that approximately 12 thousand entities cease to exist each year, due to a shortage of economic or organizational resources.

As a further specification, third sector organizations are defined as voluntary work organizations, social promotion associations, philanthropic entities, social enterprises, including social cooperatives, TSO associations, mutual aid associations, recognised or non-recognised associations, foundations and other private entities set up to pursue not-for-profit civic, solidaristic, and social utility aims by performing, as their exclusive or main activity, one or more general interest activity as voluntary action or donation of money, goods or services, or as mutual aid or production or exchange of goods or services and which are entered with the national register of the third sector (art. 4 of Legislative Decree no. 117).

Some research shows a very mixed reality from a legal perspective; the majority of TSOs are incorporated as associations, but there are also social cooperatives or foundations.

Of course, we do not intend to underrate a crucial aspect that is the sourcing of the needed financial resources and the organization and provision of activities to support the needs of beneficiaries, as well as the commitment and the not-for-profit purpose of volunteers.

In this development phase, it is also important to think about the specific needs in order to choose the most appropriate legal form, governance and effective organization (as concerns the management of funds, of personnel and of volunteers, as well as risk management) of the TSO to meet such needs.

Therefore, it is crucial to implement modern and effective management processes in order to develop professionals being able to liaise with the external environment, in particular with the Public Administration in order to collect more funds (now, including those from the NRRP).

The capacity to manage risks is also important, i.e., the capacity to choose the most appropriate coverage through proper policies in a context where the insurance world has still to adapt to, since for-profit insurance policies are often used also for TSOs. Mandatory coverages set under the code of the third sector include accidents, sickness, civil responsibility and volunteers. Other important aspects to be considered are: the attention to frail persons that take part in the activities, welfare to attract and retain qualified workforce, cyber risk for those who retrieve and process data, and reputational risk. All this also means having respect for donors.



As already mentioned, the world of TSOs is very mixed and has specific characteristics, but it also requires complying with many regulatory as well as corporate and organizational aspects.

It is a real pleasure to mention that many professionals and employees of our organizations are active in the third sector, either as volunteers, or as members of entities, or as consultants, but most of all as people who silently dedicate part of their free time to assist people in need.

Season's greetings  
and happy new year  
from all of us at





## Expert's opinion

### Audit of TSOs financial statements

**Michele Milano**

*Partner Ria Grant Thornton*

By reforming the third sector and introducing the Code of the Third Sector, the Italian legislator has reviewed and gathered different business and non-business entities, which were previously regulated under different accounting and tax rules.

The reform of the third sector introduced a number of obligations, including the appointment of a supervisory board (similar to the Board of Statutory Auditors in case of business entities) and the appointment of an external auditor, when certain limits are exceeded.

In the Code of the third sector, the financial statements audit is specifically regulated under art. 31, whose para. 1 establishes that recognised or non-recognised associations and foundations of the third sector must appoint an external auditor or audit company registered with the proper roll if they exceed two of the following limits for two consecutive fiscal years:

- Assets higher than 1.100.000 Euro;
- Revenues, rentals, income, proceeds however called: 2.200.000 Euro;
- Average number of employees per year higher than 12.



TSOs must appoint a supervisory board when they exceed two of the following limits for two consecutive fiscal years:

- Assets higher than 110.000 Euro;
- Revenues, rentals, income, proceeds however called: 220.000 Euro;
- Average number of employees per year higher than 5.

A further update introduced by the reform concerns the preparation of the financial statements, the relevant set of forms to provide and their filing with the national unique register of the third sector.



Article 13 of the Code of the third sector provides that third sector organizations must prepare their financial statements made up by the balance sheet, the income statement and the report to the financial statements indicating financial statements items, the economic and management performance of the organization and how the organization's aim is being pursued. Organizations whose revenues, rentals, income, proceeds however called are lower than 220.000 Euro can prepare their financial statements on a cash flow basis. TSOs' financial statements must therefore be prepared in compliance with the set of documents defined by the decree of the Minister of labour and social policies dated 5 March 2020, which introduced specific reporting schemes and a mandatory minimum reporting requirement.

The above Ministerial Decree dated 5 March 2020, besides adopting financial statements schemes, also clarifies some aspects regarding audit that are not specified in the Code of the third sector: the auditor's report is issued pursuant to art. 14 of legislative decree no. 39/2010 and therefore, the audit standards to be adopted are Italian ISA; audit is carried out on the balance sheet, the income statement and the report to the financial statements; the auditor's report also includes an opinion on the consistency of the financial statements with the relevant report section explaining the economic and financial performance of the organization and how the organization's aim is being pursued, as well as on the compliance of the same report's section with the law provisions and the statement on significant errors.

Moreover, in February 2022, the Italian accounting standard setter (OIC) issued OIC accounting standard no. 35, aimed to regulate the criteria for the representation of the balance sheet, of the income statement and of the report to the financial statements of TSOs, with particular reference to their structure and content, as well as the criteria for the identification and evaluation of some typical cases of TSOs.

In this changing moment, the legislator also provided the necessary clarifications concerning the filing of the financial statements by TSOs (note no. 17146 dated 15 November 2022 issued by the Ministry of labour). Specifically, TSOs incorporated before 2022 and registered with the national register of the third sector in 2022 must file the financial statements of the previous FY (2021) with the register, after approval of the registration request.

Specifically, it has been clarified that those entities considered as temporary TSOs (voluntary work organizations, social promotion associations, NPOs) must comply with Ministerial Decree no. 39/2020 starting from the financial statements relevant to FY 2021, which must be filed with the register within 90 days after the registration, according to circular letter no. 9/2022, through the Register electronic channel (note no. 5941 dated 5 April 2022).





On the other hand, with reference to entities that are subject to the transparency obligations under the Code of the third sector only after their registration with the National register of the third sector (and, subsequently, after qualifying as TSOs), an obligation to file the financial statements (and their subsequent publication) would imply a retroactive value of such provision, thus lacking a proper regulatory coverage. Therefore, a voluntary filing remains admissible for such organizations.

On the one hand, such updates rest on TSOs' administration structure, as they need to adopt precise and analytic accounting systems needed for the preparation and filing of the financial statements according to the new rules; on the other hand, the existence of a set of rules and technical instructions allow stakeholders to evaluate the effective use of financial resources by organizations in social interest activities and makes it easier for financing bodies to evaluate, analyse, and compare different TSOs.

In such a context, the role of the auditor and of the supervisory board must be considered not only as a "control" function, but also as an opportunity to express and strengthen the economic and financial situation of TSOs, as well as their performance, in terms of transparency and responsibility.

**GET CONNECTED !**

Follow us on



Instagram



## Focus on

### Amendments to the tax provisions of the Code of the third sector

**Sergio Montedoro**

*Partner Bernoni Grant Thornton*

Law no. 122 dated 4 August 2022 (published in the Official Gazette no. 193 dated 19 August 2022), converting the so-called “Simplification” decree (Law Decree no. 73 dated 21 June 2022) introduced important modifications to the Code of the third sector under Legislative Decree no. 117/2017 (hereinafter, CTS).

The modifications concern some aspects regulated by the CTS, such as the regulation of social enterprises, the fulfilments preceding the submission of the registration request with the National register of the third sector, control procedures for voluntary work organizations (OdV) and social promotion associations (APS), and the postponement of the term for the adjustment of organizations’ by-laws to 31.12.2022.

The most important modification, which has been awaited for a long time by not-for-profit organizations, concerned the tax regulation. Specifically, tax amendments concerned the following articles:

- Art. 79 CTS on the qualification as business or non-business organization;
- Art. 82 CTS on direct and indirect taxes and local taxes;
- Art. 83 CTS on deductions of voluntary donations;
- Art. 84 -85 CTS on the tax regime of voluntary work organizations (OdV) and social promotion associations (APS);
- Art. 87 CTS on bookkeeping obligations.

#### Amendments to art. 79 CTS (income taxes)

The CTS defines TSOs as non-business entities provided that activities carried out are included among those free-of-charge general interest activities listed under art. 5 of the CTS. On the other hand, business TSOs are those whose revenues from general interest activities exceed, in the same fiscal year, revenues from non-business activities.

Specifically, an entity is qualified as non-business if the ratio between the considerations paid by users for the services provided by the organization added to the PA contributions (numerator) and effective costs (denominator) is lower than or equal to 1. In other words, if the considerations paid by users/associates/third parties added to public contributions (deriving from conventions and certifications) do not exceed the organization’s effective costs.





Art. 26, para. 1, letter a), number 1) of the “Simplification” Decree defines “effective costs”, providing that they must be determined by including direct costs and all those costs pertaining to general interest activities and, among these, indirect and general costs, including financial and tax costs.

The legislator has further amended art. 79 by modifying the percentages relevant to the tolerance threshold set to verify the maintenance of the qualification as a non-business organization. General interest activities are considered as non-business if revenues do not exceed by over 6% (previously, 5%) the relevant costs for each tax period for more than 3 consecutive tax periods (previously, 2). Therefore, for example, general interest activities carried out by a TSO continue being considered as non-business if the revenues from the same activities do not exceed by more than 6% the relevant costs for three consecutive fiscal years provided that such revenues are lower than or equal to the relevant costs in the fourth fiscal year. In the fourth fiscal year, revenues from general interest activities can again exceed by less than 6% the relevant costs and this does not imply a different nature of such activities, provided that this happens for no more than three consecutive fiscal years.

In order to support organizations in the first application phase of the new regulation, it is also provided that the change from non-business TSO to business TSO in the first two fiscal years from the European authorization will have effects starting from the tax period following that in which such change occurs. Generally, in fact, the change of qualification has immediate effects. It must be specified that article 79 will come into force starting from the fiscal year following that in which the EU authorization is obtained.

#### **Amendments to art. 82 (indirect and local tax)**

Art. 82 of CTS regulates some concessions on indirect and local tax applicable to TSOs. It provides that flat-rate registration taxes and cadastral tax are applicable to memorandums of association and amendments to the by-laws. The scope of the regulation has been extended, as it provides – for all TSOs – for the application of the flat-rate registration tax also to acts, contracts, conventions, and any other document relevant to the general interest activities carried out based on certifications, contracts or conventions with the Public Administration, the European Union, with foreign public administrations, or with other international public bodies.

Lastly, the regulation provides, by adding para. 5-bis to article 82, for the exemption from the tax on the value of foreign financial investments (IVAFE) for financial products, current accounts and savings passbooks held abroad by TSOs, including social cooperatives, but excluding social enterprises incorporated as companies.



### **Amendments to art. 83 CTS (Deductions of voluntary donations)**

Art.83 of the CTS regulates some facilities recognized as tax deductions following the provision of voluntary donations by individuals or legal persons in favour of TSOs.

As concerns individuals, para. 1 of art. 83 provides for an IRPEF deduction equal to 30% of the amounts donated – either in cash or in kind – to TSOs, for a total amount not exceeding 30,000 € in each tax period. Such deduction is increased to 35% when the donation in cash is addressed to voluntary work organizations (OdV). With regard to legal persons, donations in cash or in kind can be deducted within 10% of the total stated income.

Before such amendments, deductions were applicable only to non-business TSOs as under art. 79, while after the amendments introduced by the “Simplifications” Decree, they are applicable to all TSOs (including social cooperatives and excluding social enterprises incorporated as companies) and to business TSOs. Para. 3 of article 83 specifies that deductions are applicable to the donor, provided that donations received are used by TSOs to carry out their activity exclusively aimed at civic, solidaristic and social utility purposes – while they were previously applicable provided that TSOs stated their non-business nature pursuant to article 79, para. 5 when registering with the National register of the third sector; this provision has been abolished.

### **Amendments to art. 84 (Tax regime for OdV and philanthropic organizations)**

Article 84 provides some “decommercialization” cases, such as: the sale of goods acquired free of charge from third parties for financing purposes; the sale of goods manufactured by recipients and volunteers (provided that the sale is managed directly by the OdV); the occasional provision of food and beverage during meetings, shows and celebrations. Paragraphs 2 and 2-bis provide for an IRES exemption for income deriving from real estate used exclusively for the performance of non-business activities by voluntary work organizations. The scope of this last provision has been extended also to philanthropic organizations (the previous version provided for the application of the regulation also to voluntary work organizations that, after their transformation into philanthropic organizations, registered with the specific section of the national register of the third sector).



### **Amendments to art. 85 (tax regime of social promotion associations and mutual aid organizations)**

Art. 85 was amended starting from its heading, specifying that the tax regime under analysis is addressed not only to social promotion associations, but also to mutual aid organizations. Para. 1 provides that non-business activities are those carried out to pursue the institutional aim and against the payment of specific considerations. Art. 26, para. 1 letter e) number 2) specifies that the above activities are considered as non-business if they are performed in favour of associates and their cohabiting family members, and to other social promotion associations (previously not included) which carry out the same activities and that are part of a single local or national organization – pursuant to law provisions, regulation, memorandum or articles of association –, as well as their associates and members.

### **Amendments to art. 87 CTS (Bookkeeping and storage of accounts of TSOs)**

Art. 87 of the CTS regulates bookkeeping obligations for TSOs, which are relevant to specific activities. Non-business third sector organizations, which do not apply the regime provided under art. 86 for voluntary work organizations and social promotion associations must keep analytic accounts relevant to the activities performed and, in particular, accounts specifically pertaining to the activities carried out through business procedures. Accounts must include the journal and the inventories book, to be kept in compliance with the provisions under art. 2216 and 2217 of the Italian Civil Code. In general, depending on the specific activity carried out, TSOs must keep chronological and systematic accounts that fully and analytically represent the entity's operations at any time and distinguish general interest activities from other activities. Moreover, they must store such accounts and the relevant documentation, at least up to the conclusion of the assessments relevant to the corresponding tax period.

The amended regulation has extended the obligations also to fund raising activities, when these are carried out through business procedures. Amendments also regarded paragraph 5, concerning the exemption from the obligation to certify received considerations through relevant receipts. Such exemption was extended also to the electronic transmission of data relevant to considerations. It is specified that failure to comply with bookkeeping obligations implies the lapse of the tax benefits provided for TSOs.



STATUS QUO LIMITS YOU

Audit | Tax | Advisory



**Status Go™**  
LIFTS YOU.

Ready for fresh thinking that  
moves you forward?

**Welcome to Status Go.**

[grantthornton.global](https://www.grantthornton.global)

