

U.S. INTERNATIONAL GRANTMAKING

Country Information

Croatia

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I. Summary

A. Types of Organizations

Croatia is a civil law country with three primary forms of not-for-profit, nongovernmental organizations (NGOs):

- Associations
- Foundations
- Funds

Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include political parties, trade unions, economic interest associations, institutions, and religious organizations.

B. Tax Laws

NGOs are generally exempt from paying profit tax, including on foreign grants and donations. Tax is imposed, however, if the NGO engages in for-profit activity and exemption from the tax would, in the view of the Tax Administration, confer upon the NGO an “unjustified privileged position” in the market. Businesses and other legal entities may deduct donations to NGOs for a broad range of public benefit activities up to 2% of gross income, although the threshold may be raised under certain circumstances.

The VAT is required to be collected by entities, including NGOs, that have turnover exceeding 85,000 kuna (approximately US\$15,000) in a given year. Certain transactions are exempt from VAT, including purchases of goods and services with cash donations received from foreign donors, but only for particular types of organizations.

II. Applicable Laws

- *Constitution on the Republic of Croatia*, Offl. Gazette No. 41/2001
- *Law on Associations*, Offl. Gazette No. 88/2001
- *Law on Foundations and Funds*, Offl. Gazette Nos. 36/1995, 64/2001
- *Law on Profit Tax*, Offl. Gazette No. 177/2004
- *Law on VAT*, Offl. Gazette Nos. 47/1995, 106/1996, 164/1998, 105/1999, 54/2000, 73/2000, 127/2000, 48/2004, 82/2004
- *Law on Humanitarian Assistance*, Offl. Gazette No 96/2003
- *Law on Social Care*, Offl. Gazette Nos. 73/1997, 27/2001, 59/2001, 82/2001, 103/2003
- *Law on Personal Income Tax*, Offl. Gazette No. 177/2004

III. Relevant Legal Forms

A. General Legal Forms

Croatian law creates three pertinent NGO legal forms: the association, foundation, and fund. Associations are far more numerous than foundations or funds.

Association

An association is a voluntarily established organization of natural or legal persons formed and operated to advance purposes stated in its founding charter (also called a constitution or statute) without the intention of gaining profit. [[Law on Associations arts. 2\(1\), 11](#)] An

association is governed by its members, either directly or through elected representatives. [Law on Associations art. 6(1)] It can seek “to protect and promote issues of public or mutual interest, environmental, economic, humanitarian, informative, cultural, ethnic and national, educational, social, professional, sports, technical, health care, scientific and other interests and goals,” but not unlawful purposes. [Law on Associations arts. 2(1), 18] An association, unlike a foundation or a fund, is not restricted to generally beneficial or charitable purposes [1]

Foundation

A foundation is property permanently assigned to serve some "generally beneficial" or "charitable" purpose. [Law on Foundations art. 2] "Generally beneficial" includes cultural, educational, scientific, spiritual, moral, sports, health care, and environmental purposes. "Charitable" is defined as support to persons in need. [Law on Foundations art. 2] The beneficiaries need not be the general public; a foundation is considered generally beneficial even if its activities benefit only members of a particular profession, nationality, religion, or other group. [Law on Foundations art. 2] The foundation cannot be created for unlawful or immoral purposes, or “if there is no serious reason for the establishment of a foundation, particularly if the purpose of the foundation is obviously lacking seriousness.” [Law on Foundations art. 6] A foundation is generally created by a donor's "letter of establishment" and administered by a director or a governing body pursuant to rules set forth in the foundation's charter (also called a statute). [Law on Foundations arts. 12-13, 18-21] A foundation may be established by one or more domestic or foreign, physical or legal, persons.

Fund

A fund is a foundation with a fixed lifespan no greater than five years. [Law on Foundations arts. 2, 32] Property assigned to the one-time fulfillment of a generally beneficial or charitable purpose does not qualify as a fund. [Law on Foundations art. 32] A regular foundation can be converted into a fund under certain circumstances. [Law on Foundations art. 33]

Unless otherwise specified, references to "foundations" in this Note include funds.

B. Public Benefit Status

The Law on Humanitarian Assistance, enacted in 2003, confers public benefit status on a subset of Humanitarian Organizations. The legal consequences of public benefit status, however, are minimal at present.

The threshold issue is what qualifies as a Humanitarian Organization. The law defines a Humanitarian Organization as a not-for-profit legal person whose statutory objectives include providing humanitarian assistance. [Law on Humanitarian Assistance art. 2] "Humanitarian assistance" in turn is defined by example, including collected material goods and funds, expert and lay psychosocial assistance (psychological assistance and

assistance in social acclimatization) as well as services intended for persons in reduced circumstances as defined by special regulations, for victims of natural and other kinds of catastrophes, and for persons whose earnings do not exceed the national poverty level. [Law on Humanitarian Assistance art. 1(1)]. This assistance must be provided free of charge to the user. [Law on Humanitarian Assistance art. 1(2)] In order to receive status as a Humanitarian Organization, an NGO must be authorized to provide humanitarian assistance by the Ministry of Health and Social Welfare. An NGO can provide humanitarian assistance without the Ministry's authorization, but it will not qualify as a Humanitarian Organization. [Law on Humanitarian Assistance, art. 4]

A broad subset of Humanitarian Organizations can qualify for public benefit status, specifically those that provide humanitarian assistance in order to look after the health of the population; to ensure and improve the quality of living, especially in terms of accommodation, lodging and nourishment; to provide education; to assist in reconstruction of residential, public and other buildings; and to work with children and youth as well as with persons with learning disabilities. Assistance must not be limited to recipients who are members of the organization. [[Law on Humanitarian Assistance art. 3\(1\)](#)]

Notwithstanding the reference to "special legal status," Humanitarian Organizations with public benefit status currently have the same legal benefits as Humanitarian Organizations without such status, with one possible exception: organizations with public benefit status may have a special right to demand pertinent information from the government. [[2](#)]

IV. Specific Questions Regarding Local Law

A. Inurement

An association cannot perform any activities for the purpose of gaining profit for its members or third parties. This prohibition covers both for-profit and not-for-profit activities. Any profit that the association generates must be used exclusively to advance the purposes set forth in its charter. [[Law on Associations art. 5](#)] The law does not regulate the compensation, awards, or expense reimbursements that the association pays.

A foundation's property can be used only to advance the foundation's purposes, which must be generally beneficial or charitable. [[Law on Foundations art. 16](#)] The value of the property must not be decreased or wasted in the course of advancing the purpose. [[Law on Foundations art. 16](#)] The property should be managed consistent with the foundation's Letter of Establishment or its charter. [[Law on Foundations art. 31](#)] A foundation's director is entitled to appropriate compensation plus reimbursement of expenses. [[Law on Foundations art. 13](#)] Members of a foundation's governing body cannot be persons to whom the benefits of a foundation are assigned. [[Law on Foundations art. 21](#)] Members of this body are entitled to reimbursement of necessary expenses but not ordinarily to compensation. [[Law on Foundations art. 22](#)] If the foundation's charter permits it,

members of the body can be compensated, but only from the foundation's income, not the principal, and only with the approval of the Central State Office for Administration. [[Law on Foundations art. 22](#)] Neither compensation nor reimbursement of expenses to members of a foundation's governing body is permitted if it would significantly impede realization of the purpose of a foundation. [[Law on Foundations art. 22](#)]

B. Proprietary Interest

An association is permitted to return donations and assets upon dissolution if its founding charter allows it. The same is true for foundations, though their property is in theory "permanently" assigned. [[Law on Foundations art. 27](#)] Accordingly, U.S. grantmakers conducting equivalency determinations should ensure that the prospective grantee's governing documents expressly prohibit donors from retaining proprietary interests.

C. Dissolution

Under Croatian law, the assets of a dissolved NGO are generally distributed according to the NGO's founding document.

Upon an association's dissolution, its assets are distributed according to the charter. [[Law on Associations art. 34\(1\)](#)] The law requires that the charter set forth a plan for distributing property in the event of dissolution, but does not restrict the terms of the plan. [[Law on Associations art. 11\(3\)](#)] Thus, nothing in the law prevents an association from transferring its property to an individual, a for-profit entity, or some other non-charitable transferee. [3] Two exceptions: first, assets received from state or local governmental authorities must be returned to the governmental entity. [[Law on Associations art. 34\(2\)](#)] Second, if an association is terminated by a court ruling or bankruptcy, the court can, in its discretion, convey the assets to an organization pursuing similar purposes. [[Law on Associations art. 34\(4\)](#)]

Upon dissolution of a foundation, its assets are ordinarily distributed in accord with its Letter of Establishment or its governing charter; or, if that is not possible, to another foundation pursuing similar purposes. If neither of those distributions is possible, the property is assigned to a generally beneficial or charitable purpose that is similar to the will of the founders of the terminated foundation. [[Law on Foundations art. 27](#)] Nothing in the law prevents a founder from directing the transfer of the property to individuals or for-profit entities.

In summary, Croatian law does not mandate that the assets of an NGO, upon its dissolution, be distributed to not-for-profit organizations advancing charitable, religious, scientific, literary, or educational purposes, or to a government instrumentality. Thus, when making an equivalency determination, a U.S. grantmaker should ensure that the potential grantee's governing documents prohibit impermissible liquidating distributions.

D. Activities

1. General Activities

Associations and foundations are legal entities and are generally subject to the rights and obligations of other legal entities. [[Law on Associations art. 2\(2\)](#); [Found. Art. 2](#)]

An association is generally permitted to conduct those activities that advance the purposes set forth in its charter. [[Law on Associations art. 5\(1\)](#)] Activities that do not advance those purposes may lead to criminal penalties. [[Law on Associations art. 39\(1\)](#)] [\[4\]](#)

An association is not restricted to generally beneficial or charitable purposes. It must be formed without the intention of making a profit, but it can engage in for-profit activities so long as the profits are devoted exclusively to advancing purposes set forth in its charter. It can attempt to influence legislation, but must not participate in a political campaign for public office.

A foundation must pursue generally beneficial or charitable purposes. It can undertake for-profit activities relating to its property as well as certain fundraising activities. It can attempt to influence legislation, but must not participate in a political campaign for public office.

2. Public Benefit Activities

A Humanitarian Organization has public benefit status if it provides, free of charge, humanitarian assistance in order to look after the health of the population; to ensure and improve the quality of living, especially in terms of accommodation, lodging and nourishment; to provide education and to assist in reconstruction of residential, public and other buildings; in gathering and in organized work with children and the youth as well as with persons with learning disabilities, their membership not being a prerequisite to get assistance....

[[Law on Humanitarian Assistance art. 3\(1\)](#)] See Section III(B), above, for additional detail.

3. Economic Activities

An association must be formed “without the intention of gaining profit” [[Law on Associations art. 2\(1\)](#)]. It may, however, “engage in activities for the purpose of gaining profit,” but any resulting profit must be devoted exclusively to advancing the purposes set forth in the association’s charter [[Law on Associations art. 5\(2\)](#)]. The law also expressly forbids an association from undertaking any activities, whether for-profit or not-for-profit in nature, for the purpose of providing profits to its members or third parties. [[Law on](#)

Associations art. 5(4)] Other provisions of Croatian law regulate an association's participation in particular forms of for-profit activity. [5]

A foundation can conduct economic activities related to its property--for instance, lease its land or license its patents. It can also organize certain fundraising activities: humanitarian shows, occasional lotteries, production and sales of publications and badges, and the like. [Law on Foundations art 16] For a foundation, as for an association, the law does not seem to limit the proportion of resources devoted to for-profit ends.

E. Political Activities

The law does not restrict an NGO's attempts to influence legislation. It can speak and publish its views, criticize state officials and state actions, lobby legislators concerning legislation, and encourage members and others to communicate with public officials. Nothing in the law limits the proportion of its budget that the NGO can devote to attempts to influence legislation. Accordingly, a U.S. grantmaker should examine a proposed grantee's governing documents as well as its activities to ensure that problems do not arise under U.S. law.

An NGO cannot legally participate in a political campaign for public office, other than serving as an election observer. Under Croatian election law, political activity is the exclusive province of political parties. [Offl. Gazette Nos. 116/1999, 109/2000]

F. Discrimination

The Croatian constitution forbids discrimination based on race, gender, language, religion, or other stipulated grounds. [Const. art. 14] The laws addressing associations and foundations do not require non-discrimination. The foundation law, in fact, expressly authorizes foundations that benefit members of a particular national, linguistic, cultural, or religious group. [Law on Foundations art. 2] Prudence therefore suggests that a U.S. grantmaker should ensure that a prospective grantee's governing documents and practices prohibit racial discrimination before making a grant to a Croatian educational institution.

G. Control of Organization

Nothing in Croatian law prevents a Croatian NGO from being controlled by another organization. A Croatian association or foundation might be established (but not owned) by a for-profit entity, which would continue to control it; this situation would generate additional IRS scrutiny. A Croatian association or foundation, likewise, could be controlled but not owned by an American grantor charity; this situation would have to be disclosed in the affidavit.

V. Tax Laws

A. Income and Profits Tax

Associations and foundations are generally exempt from Croatian profit tax, including on foreign grants and donations. The tax may be incurred, however, if an organization performs for-profit activity and if exemption from the tax would give the organization an “unjustified privileged position in the market.” The law is silent on what constitutes an “unjustified privileged position,” so the Tax Administration operates with discretion in this sphere. If an organization is found to have crossed the “unjustified privileged position” threshold, that particular for-profit activity is taxed at the regular business rate of 20 percent.

B. Deductibility of Charitable Contributions

Businesses and other legal entities may deduct donations to NGOs for a broad range of public benefit activities, including cultural, scientific, educational, health, humanitarian, sport, religious and other activities, up to 2% of gross income, although the threshold may be raised if the donation was made on the basis of the decision of the relevant ministry for the pursuit of specific programs and actions.

C. Value Added Tax

The VAT is required to be collected by entities, including associations and foundations, whose turnover exceeds 85,000 kuna (about US\$15,000) in a given year. [VAT Act art. 22] The general VAT rate is 22% [VAT Act art. 10]. However, some specific products and services (including scientific journals, most books and CD-ROMs, milk, bread, and some medicines) are zero rated, while some services related to tourism are subject to a 10% rate [VAT Act art. 10a].

Croatian law provides a few VAT exemptions relevant to NGOs. The import of humanitarian aid is exempt. [VAT Act art. 12(1)] Humanitarian organizations as well as amateur sport clubs need not pay VAT for the import of goods given as donations or purchased out of foreign monetary donations, or for deliveries of goods and services paid for out of foreign monetary donations. [VAT Act arts. 12(12), 13(5)] As of May 8, 2004, however, comparable VAT exemptions no longer apply to any other type of organizations, except the above mentioned. Other organizations now must pay the full VAT. [Off. Gazette No. 55/2004]

D. Double Tax Treaties

The United States and Croatia have not entered into a double-tax treaty. Individuals and entities paying Croatian profit tax, however, can receive a credit for profit tax paid

elsewhere, up to the amount that would otherwise be due in Croatia. [Profit Tax Act art. 21]

VI. Knowledgeable Contacts

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Footnotes

[1] Croatian law also allows foreign NGOs and other entities to engage directly in activities in Croatia under certain circumstances. A foreign association can operate in Croatia if it heeds the Croatian law on associations. [Law on Associations art. 8] It must first seek registration from the government's state administration office. Applying for registration requires, among other things, providing copies of registration records from the association's home country and the association's governing statute (translated into Croatian), as well as identifying the individual who will represent the association in Croatia. [Law on Associations art. 20] If the administration office does not respond within 30 days, the foreign association is deemed to be registered. [Law on Associations art. 20(3), 17] In addition, foreign legal entities and individuals (not just associations) can provide funds directly to Croatian individuals whom they believe are in need of such assistance, and they can otherwise "perform the activities of social care." [Law on Social Care art. 9] "Social care" is defined as "assistance regarding the basic means of life for the indigent, infirm and other persons." [Law on Social Care art. 3(1)]

[2] The law is ambiguous: the provision conferring this right to demand information refers to Humanitarian Organizations broadly, but it appears in Article 3 of the law, which addresses Humanitarian Organizations with public benefit status. Law on Humanitarian Assistance art. 3(2).

[3] In practice, the assets are generally distributed to association members or passed on to another association.

[4] Under Art. 11(3), the charter must list the association's purposes and activities, but the law appears to make only the purposes binding. That is, an association apparently can pursue purposes set forth in its charter through activities that do not appear in the charter.

[5] An association may publish books and other materials, but only relating to its area of activity. It may sponsor games of chance so long as it heeds the pertinent regulations. [Law on Games of Chance, Offl. Gazette No. 36/1998] It may undertake certain activities

only after receiving a license, such as collecting and distributing humanitarian aid and providing psycho-social services.

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