

# Kosovo

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# **I. Summary**

## **A. Types of Organizations**

On February 17, 2008, the Kosovo Assembly declared Kosovo's independence. In 2009, the legal framework for not-for-profit, nongovernmental organizations (NGOs) established by the United Nations Mission in Kosovo (UNMIK) was replaced by Law 134 on "Freedom of Association in Non-Governmental Organization."

The two recognized forms of domestic NGOs are foundations and associations. In addition, foreign NGOs may conduct activities in the territory of Kosovo, provided that they register and substantially meet specified requirements imposed on domestic NGOs (Articles 11(2) and 7(2), Law on Freedom of Association . Both foreign and domestic NGOs may apply for "public benefit status" (Article 17, Law on Freedom of Association).

Other not-for-profit legal forms, which are outside the focus of this Note, include political parties, trade unions, and other organizations registered under separate laws or regulations.

## **B. Tax Laws**

NGOs with public benefit status are exempt from the corporate tax to the extent their income is used exclusively to further their public benefit purposes (Article 6(1.1), Law on Corporate Income Tax). This includes income derived from donations and grants. An NGO is taxed at the rate of 10% on income from commercial or other activity not exclusively related to its public purpose, reduced by deductions directly related to the expense of carrying out such activity and which are allowed by the Tax Administration (Article 29, Law on Corporate Income Tax). NGOs without public benefit status are taxed on their profits in the same manner as other legal entities.

Both legal persons and individuals are allowed to deduct up to 5% of their taxable income for donations for specified public benefit purposes (Article 9(1), Law on Corporate Income Tax; Article 16(1), Law on Personal Income Tax). The donation must be made to an NGO that has received and maintained public benefit status or to "any other non-commercial organizations that directly perform activities in the public interest and not-for-profit," including medical, educational, and other specified types of institutions (Article 9(2), Law on Corporate Income Tax; Article 16(2), Law on Personal Income Tax). Deductions are not allowed if the contribution will directly benefit a person related to the donor (Article 9(3), Law on Corporate Income Tax; Article 16(3), Law on Personal Income Tax).

A value added tax (VAT) is in effect in Kosovo. Exemptions are provided for the sale or

import of medicines, medical services, pharmaceutical products, and medical and surgical instruments and apparatus, as well as the provision of public education services (Article 12, Law on Value Added Tax).

## II. Applicable Laws

A complete list of Kosovo Laws in English is available at: <http://www.gazetazyrtare.com>.

A complete list of UNMIK Regulations in English language is available at:

<http://www.unmikonline.org/regulations/unmikgazette/index.htm>.

- Constitution of the Republic of Kosovo;  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/ad991.pdf>
- Law No. 03/L-134 on Freedom of Association in Freedom of Association in Non-Governmental Organizations;
- <http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg9922ad991.pdf> Law No. 03/113 on Corporate Income Tax;  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg9922ad991.pdf>
- <http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg0111ad991.pdf> Law No. 03/114 on Value Added Tax;  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg0111ad991.pdf>
- Law No. 03/115 on Personal Income Tax;  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg0217.pdf>  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/reg0217.pdf>  
<http://www.icnl.org/knowledge/library/download.php?file=Kosovo/ad991.pdf>
- [Law No. 2004/ 3 The Anti-Discrimination Law](#);
- [Law on local self government](#);
- [Law on the protection and promotion of the rights of communities and their members in Kosovo](#);
- [Law on citizenship of Kosovo](#);

## III. Relevant Legal Forms

### A. General Legal Forms

Kosovo recognizes two legal forms for domestic NGOs: associations and foundations.<sup>[1]</sup> Both forms may be established for any lawful public or mutual benefit purpose (Article 5, Law on Freedom of Associations).

An association is a membership organization established by at least three domestic or foreign legal or natural persons, at least one of whom has a residence or seat in Kosovo (Article 5, Law on Freedom of Associations).

A foundation is an organization without members that is established to manage properties and assets. A foundation may be created by one or more legal or natural persons, at least one of whom has a residence or seat in Kosovo (Article 5(3), Law on Freedom of Association). A foundation may also be established by a will, bequest, or legacy (Article 6(2), Law on Freedom of Association).

Foreign NGOs may conduct activities in the territory of Kosovo, provided that they register with the Government of Kosovo and substantially meet specified requirements (Articles 11(2) and 7(2), Law on Freedom of Association).

## **B. Public Benefit Status**

An NGO may apply to the Government of Kosovo for public benefit status, which if granted, entitles the organization to certain tax benefits and subjects it to certain reporting requirements (Article 17, Law on Freedom of Association). An NGO organized and operated to undertake one or more of the following as its principal activity may apply for public benefit status: humanitarian assistance and relief, support for persons with disabilities, charity, education, health, culture, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, the promotion of gender equality, or any other activity that serves the public benefit (Article 17(1), Law on Freedom of Association).

NGO activities are considered to be of public benefit only if significant benefits are provided free of charge or at less than fair market value to disadvantaged individuals or groups (Article 17(2), Law on Freedom of Association). An NGO with public benefit status must file annual financial and programmatic reports in order to retain that status (Article 18(1), Law on Freedom of Association). The financial reports of all NGOs with annual income or expenditures in Kosovo over roughly €100,000 must be submitted with “an opinion, signed by an independent auditor, as to whether the financial statements presented fairly, in all material aspects, the organization's financial position for the reporting period” (Article 18(9), Law on Freedom of Association).

# **IV. Specific Questions Regarding Local Law**

## **A. Inurement**

NGOs are prohibited from distributing any net earnings or profits to any person. An NGO's assets, earnings, and profits may not be used to provide direct or indirect benefit to any founder, director, officer, member, employee, or donor of the NGO (Article 4, Law

on Freedom of Association). NGOs are allowed to pay “reasonable compensation” to such persons for work performed for the organization (Article 4, Law on Freedom of Association).

## **B. Proprietary Interest**

No specific legal provisions address the proprietary interest issue, which is still an evolving area under local law.

## **C. Dissolution**

If an NGO received tax or fiscal benefits, donations from the public, or government grants, then upon the organization's dissolution, any assets remaining after the discharge of liabilities shall be distributed to another NGO with the same or similar purposes, as identified in the organization's governing documents or through a decision of the organization's highest governing body. If no NGO is designated by either of these means, then the Government of Kosovo shall determine the NGO entitled to receive these assets (Article 21(3), Law on Freedom of Association).

All other NGOs must distribute assets remaining after satisfying their liabilities “in accordance with the [NGO's] statutes or a decision by the highest governing body” and in accordance with the provision governing private inurement (Article 21(4), Law on Freedom of Association).

## **D. Activities**

### **1. General Activities**

NGOs in Kosovo may engage in any lawful activities, including economic activities and certain political activities. [http://www.gazetazyrtare.com/e-gov/index.php?option=com\\_content&task=view&lang=en&id=333](http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&lang=en&id=333)<http://www.gazetazyrtare.com/>

### **2. Economic Activities**

An NGO may engage in economic activities, provided that the earnings are intended and used solely to promote the organization's not-for-profit purposes (Article 16(2), Law on Freedom of Association). Although there are no explicit legal provisions on this matter, in practice the Government of Kosovo generally allows NGOs to engage in economic activities only to the extent they do not constitute the principal activities of the organization.

## **E. Political Activities**

NGOs may not engage in fundraising or campaigning to support political parties or candidates for political office (Article 15, Law on Freedom of Association). However, this prohibition does not appear to extend to involvement in lobbying or other kinds of political activities.

## **F. Discrimination**

The Constitutional Framework guarantees all persons in Kosovo the right to all fundamental freedoms without discrimination on any grounds, and the rights and protections set forth in numerous international conventions and declarations on human rights are incorporated into the Constitution (Article 22). Moreover, the Constitution provides comprehensive rights for members of all ethnic communities as well as guarantees for the protection of the national, linguistic and religious identity of all communities (Articles 57-62). The Constitution guarantees that no one shall be discriminated against on the grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status (Article 24). The Constitution confirms that the Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders.

The principles set forth in the Constitutional are effectuated by the Anti-Discrimination Law. The Law applies to both individuals and legal persons in the public and private sectors, and covers any action or failure to act that affects the rights of a person to access employment or education opportunities, among other things (Article 4, The Anti-Discrimination Law). Recipients of public contracts, loans, grants or other benefits are required to execute a statement that they will act in compliance with the Anti-Discrimination Law and will promote a non-discrimination policy in carrying out their obligations under the public award (Article 6, The Anti-Discrimination Law). The Law authorizes claims as well as sanctions for violation of its provisions (Article 9, The Anti-Discrimination Law).

## **G. Control of Organization**

There are no restrictions on the participation of or management by foreign individuals or entities in Kosovar NGOs. Foreign persons may found, be members of, and manage an NGO in Kosovo (Article 5, Law on Freedom of Association). Therefore, it is possible that a Kosovar NGO may be controlled by a for-profit entity or an American grantor charity.

# V. Tax Laws

## A. Tax Exemptions

Registered NGOs with public benefit status are exempt from the corporate income tax to the extent that the income is used exclusively to further the organization's public benefit purposes (Article 6(1.1), Law on Corporate Income Tax). This includes income derived from foreign grants and donations. Income generated from contracts with a non-local contractor for the supply of goods or services to the United Nations or any of its specialized agencies (including UNMIK) is also exempt from the profit tax (Article 6(1.4), Law on Corporate Income Tax). Other legal entities pay profit tax at the rate of 20% on taxable profit. NGOs without public benefit status are taxed on their profits in the same manner as other legal entities.

## B. Deductibility of Charitable Contributions

Donations by legal entities and individuals made for humanitarian, health, educational, religious, scientific, cultural, environmental protection, and sports purposes may be deducted from income up to a maximum of 5% of taxable income (Article 9(1), Law on Corporate Income Tax; Article 6, Law on Personal Income Tax). The donation must be made to an NGO that has received and maintained public benefit status or to "any other non-commercial organizations that directly perform activities in the public interest and not-for-profit," including medical, educational, and other specified types of institutions (Article 9(2.2), Law on Corporate Income Tax; Article 16(2.2), Law on Personal Income Tax). Deductions are not allowed if the contribution will directly benefit a person related to the donor (Article 9(3), Law on Corporate Income Tax; Article 16(3), Law on Personal Income Tax).

An NGO is prohibited from accepting more than €1000 from a single source in a day unless it receives a written exemption. An NGO is required to include in its annual report disclosure of each contribution in currency if total contributions in currency from that source exceed €5000 per year (Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, Sections 4.1, 4.3, and 4.6).

## C. Value Added and Turnover Taxes

The standard VAT rate is 16% (Article 2, Law on Value Added Tax). A zero rate is applied to exports and imports of goods, the supply of goods and services related to international transport of goods and passengers and irrigation, and other enumerated goods (Article 10, Law on Value Added Tax). Imports of medicines, medical services, and medical instruments are VAT exempt (Article 11, Law on Value Added Tax). The provisions of medicines, medical services, and medical instruments, as well as public education services, are also VAT exempt (Article 12, Law on Value Added Tax). <http://www.icnl.org/knowledge/library/download.php?file=Kosovo/ad991.pdf>

[http://www.unmikonline.org/regulations/unmikgazette/02english/E2005regs/RE2005\\_40.pdf](http://www.unmikonline.org/regulations/unmikgazette/02english/E2005regs/RE2005_40.pdf)  
[http://www.unmikonline.org/regulations/unmikgazette/02english/E2005regs/RE2005\\_40.pdf](http://www.unmikonline.org/regulations/unmikgazette/02english/E2005regs/RE2005_40.pdf)

## **F. Double Tax Treaties**

No tax treaties have been entered into between Kosovo and the United States.

## **VI. Knowledgeable Contacts**

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[1] The Assembly of the Republic of Kosovo approved a constitution in April that entered into force on June 15, 2008. The Constitution of the Republic of Kosovo guarantees the right to freedom of association, which includes the right of every individual to establish an organization without obtaining any permission, to be or not to be a member of any organization, and to participate in the activities of an organization (Article 44(1)). In addition, the Constitution provides that the human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights (Article 53).