

# U.S. INTERNATIONAL GRANTMAKING

## Country Information

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### Poland

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#### Table of Contents

- I. Summary
  - A. Types of Organizations
  - B. Tax Laws
- II. Applicable Laws
- III. Relevant Legal Forms
  - A. General Legal Forms
  - B. Public Benefit Status
- IV. IV. Specific Questions Regarding Local Law
  - A. Inurement
  - B. Proprietary Interest
  - C. Dissolution
  - D. Activities
  - E. Discrimination
  - F. Control of Organization
- V. Tax Laws
  - A. Tax Exemption
  - B. Deductibility of Donations to Polish NGOs by Individuals and Corporations Based in Poland
  - C. Value Added Tax
  - D. Double Tax Treaties
- VI. Knowledgeable Contacts

## I. Summary

### A. Types of Organizations

Poland is a civil law country with two primary forms for not-for-profit, nongovernmental organizations (NGOs):

- Associations and
- Foundations

These forms are governed by the [Law on Associations](#) and the Law on Foundations, respectively.

In addition, the [Law on Public Benefit Activity and Volunteerism](#), enacted in 2003, permits Polish NGOs to seek designation as Public Benefit Organizations (PBOs). All associations and foundations (except foundations established by political parties or the State Treasury) are eligible for PBO status.

Several other NGO forms are beyond the scope of this Note because of their limited interaction with U.S. grantmakers, including social cooperatives, church-based corporate entities, and organizations such as the Polish Red Cross established by special laws.

## **B. Tax Laws**

Public Benefit Organizations, which are required to devote all of their income to public benefit activities, are exempt from paying corporate tax. Currently, some 4,000 organizations have PBO status. A comprehensive PBO database is available at [www.pozytek.ngo.pl](http://www.pozytek.ngo.pl).

Associations and foundations that do not qualify for PBO status are exempt from paying corporate tax if their statutory objectives fall in particular categories, including science, education, culture, sports, environmental protection, support for technical infrastructure in rural areas, health care, social care, and charity. These NGOs, however, must pay tax on unrelated business income under certain circumstances. NGOs falling outside those categories--i.e., associations and foundations that neither qualify as PBOs nor pursue the statutory objectives listed in the preceding paragraph--generally must pay corporate tax on their income, including grants.

Poland also subjects certain sales of goods and services to VAT, with a fairly narrow range of exempt activities. If an activity is subject to VAT, that fact may need to be taken into account in determining the size of a grant.

The tax laws provide tax benefits for donors, which may be relevant to an American corporation doing business in Poland in deciding whether to engage in direct corporate grantmaking there.

## **II. Applicable Laws**

- [Polish Constitution](#)
- [Law on Associations \[LOA\]](#)
- Law on Foundations [LOF]
- Law on Economic Activities
- Law on Corporate Income Tax [CIT]
- Implementation Law to the CIT Law
- Law on Personal Income Tax [PIT]
- VAT Law
- [Law on Public Benefit Activity and Volunteerism \[PBA\]](#)

- Implementation Law on Public Benefit Activity and Volunteerism

### III. Relevant Legal Forms

#### A. General Legal Forms

Article 12 of the Constitution of the Republic of Poland (1997) provides, "The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations." This freedom is restricted only by a prohibition against "[p]olitical parties and other organizations whose programs are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programs or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership." [Constitution, Article 13]

##### *Associations*

The Law on Associations defines an association as "a self-governing, lasting (membership) organization, formed of free will and with a nonprofit motive." [LOA Article 2]. Associations must register with the regional Registry Court (also called the National Court Register). [LOA Article 8(2); see also National Court Register, [http://www.ms.gov.pl/krs/informacje\\_ogolne\\_ang.shtml](http://www.ms.gov.pl/krs/informacje_ogolne_ang.shtml)]. Associations may be formed by Polish citizens or by foreigners who are domiciled in Poland. [LOA Articles 3-4]. Nobody can be forced to join an association or prevented from freely withdrawing from one, and an association cannot require members to unconditionally obey its authorities. [LOA Article 6].

A special form, known as the "simplified association," is somewhat easier to create than a regular association. [LOA Article 40]. Simplified associations, however, are not very common, because they are not legal persons and their powers are severely limited. [LOA Articles 40(1), 42(1)] Simplified associations, accordingly, will not be discussed further in this Note.

Finally, the law permits a "union of associations" to be established by a minimum of three associations. In addition to the three or more associations, any other legal persons can also act as founders. Unions of associations are subject to the same rules as other associations. [LOA Article 22].

##### *Foundations*

Foundations in Poland are governed by the Law on Foundations, enacted in 1984. The law does not distinguish between grantmaking and operational foundations. In practice, most Polish foundations are operational, which means that they don't possess significant capital and must fundraise, competing with associations.

The Law on Foundations never defines the term foundation. Thus, the definition must be inferred from various provisions of the Law. Generally speaking, a foundation is a non-membership organization, established by a founder (who provides the initial endowment),

that pursues "economically and socially beneficial objectives subject to the essential interest of the Republic of Poland." [\[LOF Article 1\]](#). A foundation may be formed by Polish citizens or foreigners who are of legal age, or by domestic or foreign legal persons. [LOF Article 2]. A foundation formed under Polish law must be based in Poland. A foundation takes on legal personality when it is registered in the Registry of Foundations, maintained by the district court for Warsaw. [LOF Article 7].

Foundations may be established through a notarized document expressing the wish of a founder to form a foundation, or by a will. [LOF Article 3]. The governing document should state the purpose of the foundation. [LOF Article 3(2)]. Generally, the law does not establish a minimum or maximum value for the initial endowment; however, where a foundation plans to engage in economic activities, a minimum initial endowment of 1,000 PLN (approx. \$300) is required. [\[LOF Article 5\(5\)\]](#).

## ***B. Public Benefit Status***

### ***Associations***

An association may be formed for either mutual benefit or public benefit purposes.

### ***Foundations***

Foundations are subject to a public benefit requirement. A foundation must be formed "to realize economically and socially beneficial objectives subject to the essential interest of the Republic of Poland, such as: health care, development in economy and science, education, culture and fine arts, welfare, environmental protection and protection of historical monuments." [\[LOF Article 1\]](#) Polish courts have often struggled with determining what qualifies as a public benefit purpose, guided by the few examples in the Law on Foundations.

### ***Public Benefit Organization***

In April 2003, the Polish Parliament adopted the Law on Public Benefit Activity and Volunteerism, which among other things establishes "Public Benefit Organizations" ("PBOs"). To qualify as a PBO, a non-governmental organization, including a foundation or association, must conduct at least one of the 25 public benefit activities listed in the law. [\[PBA Article 4\(1\)\]](#). (This list differs in some respects from the examples given in the Law on Foundations ; public benefit, accordingly, may hold different meanings under different statutes. New foundations commonly list activities from both laws to protect their PBO applications.) The Council of Ministers may also designate additional public benefit activities by decree. [\[PBA Article 4\(2\)\]](#).

In addition to pursuing one of the designated activities, an organization must meet the following requirements in order to obtain PBO status:

§ it conducts its statutory activities for the benefit of the whole community or a defined group of individuals in a particularly difficult living or financial situation in relation to the rest of the society;

§ the public benefit activities are the only statutory activities of the organization (although, in case of membership-based organizations, activities serving the members are also allowed);

§ it does not conduct economic activities, or its economic activities are limited to the fulfilment of statutory activities;

§ its entire income is allocated to its public benefit activities;

§ it has a statutory collegial body for monitoring or supervision that is separate from the management board and not supervised by the management board; and

§ the statutes or other internal acts of the organization prohibit certain types of self-dealing and conflicts of interest described in the law.

[PBA Article 20].

To apply for PBO status, an organization must submit an application form, a financial report, and its organizational statute to the National Court Register. [PBA Article 22]

In general, PBO status qualifies an organization to receive certain benefits defined in the law, provided that it meets accountability requirements. It must prepare annual reports and make them publicly available; prepare financial statements and publish them in the Polish Official Journal; submit to periodic government inspections; and, if required by the Ministry of Finances, conduct an external audit. [PBA, Articles 23, 28-34] An organization obtains PBO status on the day it is notified by the State Court Register that it has fulfilled the criteria for such status. [PBA Article 22]

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

### ***A. Inurement***

Neither the Law on Associations nor the Law on Foundations expressly deals with inurement. However, Article 34 of the Law on Associations states that proceeds from economic activities of an association must serve the association's statutory goals and not be shared among the association's members. A court has also ruled that a foundation may not pay dividends to its founder or to members of its board. Many aspects of inurement, however, are not comprehensively governed by foundation or association law.

A PBO must devote its entire income to public benefit activities. [PBA Article 20(5)]. An activity, regardless of whether the organization charges a fee for it, cannot qualify as a public benefit activity if the employees who perform it are paid more than 150% of the average monthly remuneration in the business sector during the previous year. [PBA Article 9] In addition, a PBO's statutes must prohibit certain transactions with members, employees, and their relatives: lending money to them; securing obligations for them; ceding property to them

under privileged terms; purchasing goods from them under privileged terms; or using property for their sake, unless such use directly stems from a statutory goal of the organization. [\[PBA Article 20\(7\)\]](#)

## ***B. Proprietary Interest***

The Law on Associations, the Law on Foundations, and the Law on Public Benefit Activities all are silent on the question of proprietary interest.

## ***C. Dissolution***

### ***Associations***

When an association is dissolved, whether by its own resolution or by the court, the remaining assets are distributed pursuant to the association's statute or its liquidation resolution. [\[LOA Articles 36, 38\]](#). In the absence of such a directive, the court appropriates the assets to a social purpose. [\[LOA Article 38\]](#).

### ***Foundations***

A foundation is dissolved if its purposes have been achieved or if its financial assets have been exhausted. [\[LOF Article 15\]](#). If its statute does not specify how assets are to be distributed upon dissolution, the court decides, taking into account the purposes served by the foundation. [\[LOF Article 15\(4\)\]](#).

### ***Public Benefit Organizations***

A PBO is dissolved according to the rules of the underlying form, whether association or foundation. If an association or a foundation loses its PBO status but continues operating, it must promptly spend, on public benefit activities, all income it received through its earlier public fundraising as a PBO. If any such funds remain six months after the organization loses PBO status, the Minister for Social Security will order the funds ceded to a PBO with similar activities.

## ***D. Activities***

### **1. General**

#### ***Associations***

An association is free to define its purposes, operational program, and organizational structure and to pass internal resolutions about its operations. [\[LOA Article 2\(2\)\]](#). It is limited in its purposes and activities only by other laws intended to ensure national security, public order, protection of public health and morals, and the protection of rights and freedom of others. [\[LOA Article 1\(2\)\]](#).

#### ***Foundations***

A foundation may be formed only for "economically and socially beneficial objectives subject to the essential interest of the Republic of Poland, such as: health care, development

in economy and science, education, culture and fine arts, welfare, environmental protection and protection of historical monuments." [\[LOF Article 1\]](#).

### ***Public Benefit Organizations***

A PBO must perform public benefit activities listed in the law or designated by the Council on Ministers. [\[PBA Article 4\]](#)

## **2. Economic activities**

### ***Associations***

An association may conduct economic activities, so long as it heeds the rules imposed by other regulations. [\[LOA Article 34\]](#). For example, an association must register with the Court register of business entities before undertaking economic activities. [Law on Economic Activities, Article 7.1]. In theory, an association could be formed primarily for economic purposes, though excessive economic activity would render it ineligible to become a PBO. Proceeds from an association's economic activities must serve to realize its statutory goals and not be shared among its members. [\[LOA Article 34\]](#). As will be discussed below, certain statutory activities that an association carries out for fees are not considered economic activities.

### ***Foundations***

A foundation may conduct economic activities "within the scope necessary to achieve its aims." [\[LOF Article 5\]](#). The statute of the foundation, however, must authorize the economic activities. A foundation formed for the purpose of working for a cleaner environment, for example, cannot sell books or charge fees for seminars on the topic, or even contract with the government to undertake clean-up efforts, unless the foundation statute allows for it. [\[LOF Article 11\]](#). Like an association, a foundation must register with the Court register of business entities before undertaking economic activities. [Law on Economic Activities, Article 7(1)]. As will be discussed below, certain statutory activities that a foundation carries out for fees are not considered economic activities.

### ***Public Benefit Organizations***

A PBO can undertake economic activities only if they help fulfill its statutory goals. [\[PBA Article 20\(4\)\]](#) As will be discussed in the next section, certain statutory activities that a PBO (whether association or foundation) carries out for fees are not considered economic activities.

### ***Payments Received for Public Benefit Activities***

The Law on Public Benefit Activities and Volunteerism provides that certain statutory activities carried out for fees by a non-governmental organization (including an association or foundation, with or without PBO designation) are not considered economic activities. [\[PBA Article 6\]](#). These are known as "payable public benefit activities," and are defined as public benefit activities (listed in [PBA Article 4](#)), designated in the statutes of the organization, for which payment is received. [\[PBA Article 8\]](#). They may include the sale of goods or services manufactured or provided by individuals who are direct beneficiaries of a public benefit activity (e.g., sale of goods made by a handicapped person), or the sale of goods donated for

the purpose of benefiting the public. [\[PBA Article 8\]](#). Any profit gained from payable public benefit activities must be used exclusively to implement public benefit or statutory activities. [\[PBA Article 8\]](#).

Under either of the following conditions, however, an activity otherwise eligible for payable public benefit status will be considered an economic activity:

§ The fee charged is greater than the calculated direct cost that would be expected for an activity of that type, or

§ the remuneration of physical persons employed to perform “free of charge” statutory activities and payable activities exceeds 150% of an average monthly remuneration in the sector of companies in the previous year, as published by the President of the Central Statistics Office. [\[PBA Article 9\(1\)\]](#).

### **3. Political Activities**

In July 2005, a new law regulating lobbying activities was enacted. This law distinguishes between professional/commercial lobbying and the activities of NGOs. NGOs are not obliged to obey the law's strict lobbying restrictions. Other limits on political activities may apply, however, depending on an NGO's organizational form.

#### ***Associations***

There are no limitations on the political activities of associations. The preamble of the Law on Associations lists the opportunity to participate actively in public life as one of the inherent purposes of associations. [\[LOA Preamble\]](#). The law explicitly grants associations “the right to voice their opinion on public issues” regardless of their stated goals or activities. [\[LOA Article 1\(3\)\]](#).

#### ***Foundations***

The Law on Foundations provides a list of examples of permissible activities, which does not include political activities. [\[LOF Article 1\]](#). However, political activities may be subsumed under the category of “socially beneficial” purposes. [\[LOF Article 1\]](#). Although no explicit regulations prohibit foundations from engaging in political activities, foundations are only permitted to engage in activities specified in their governing documents. Therefore, a foundation wishing to engage in political activities would presumably be required to state that intention in its statute.

#### ***Public Benefit Organizations***

Political activities are not explicitly listed as public benefit activities in the law, though the list does include "promotion and protection of human and civic rights and freedoms, work to support the development of democracy."

### ***E. Discrimination***

The Polish Constitution prohibits "limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or

property." [\[Constitution, Article 233\(2\)\]](#) According to local experts, this provision appears to prohibit racial discrimination in education.

## ***F. Control of Organization***

### ***Associations***

In principle a legal person may only be a supporting member of an association, and cannot control it.

### ***Foundations***

In general, no restriction exists on the control of foundations by other organizations. All foundations should prepare and make publicly available their annual reports, including narrative and financial components. It is possible that a Polish foundation may be controlled by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

### ***Public Benefit Organizations***

PBOs are governed by the rules applicable to the underlying form, whether association or foundation.

## **V. Tax Laws**

### ***A. Tax Exemption***

A PBO is exempt from corporate income tax (as well as real estate tax, civil actions tax, stamp duty, and court fees) on all income devoted to the public benefit objectives listed in the law. [\[PBA Article 24\(1\)\]](#) Because the law limits PBOs to those activities [\[PBA Article 20\]](#), it appears that PBOs are generally exempt from corporate tax altogether, with one possible exception: a PBO that unlawfully engaged in activities beyond those listed in the law might be liable for tax on those activities immediately, even before the initiation of proceedings to revoke the organization's PBO status.

In addition, there is an exemption from the corporate income tax for income of organizations whose statutory objectives consist of activities in the fields of:

- science, technology and education, including tuition of students;
- culture;
- physical education and sports;
- environmental protection;
- supporting public projects in building roads and telecommunication networks and water supply systems in rural areas;
- charity;
- health care and social welfare;
- occupational and social rehabilitation of the disabled; and
- religious worship. [\[CIT Article 17\(1\)\(4\),\(5\)\]](#).

An NGO (other than a PBO) must pay corporate tax on all income, including grants, devoted to any objectives not listed above. Thus, the taxability of some grant income depends on how it is spent.

The corporate tax treatment of endowments has been a pressing concern to foundations in Poland. In 2002, Poland's Supreme Court reversed a [ruling of the Supreme Administrative Court](#) which required that monies invested by foundations in securities be subject to corporate income tax.

The Implementation Law on Public Benefit Activities and Volunteerism allows Public Benefit Organizations to invest in a range of securities, including stock market shares, if managed by a professional investment company. Profits accumulated are not subject to tax, provided that they are used exclusively to implement public benefit or statutory activities.

In addition, foundations and associations (and legal entities in general) are not subject to the heritages and donations tax in Poland.

## ***B. Deductibility of Donations to Polish NGOs by Individuals and Corporations Based in Poland***

Both personal and corporate income taxpayers can deduct certain donations from their taxable basis. A donation is deductible if the recipient organization conducts public benefit activities (as defined in the Public Benefit Activity Law), regardless of whether the organization holds PBO status. The limits on deductibility are 6% of taxable income for physical persons [PIT Article 26(1)(9)] and 10% for corporations [CIT Article (18)(1)(1)].

There are no strict limitations regarding the type of organization to which donations may be made; the only restriction is that a donation, in order to qualify for tax exemption, may not be made to natural persons; entities engaged in production of alcoholic beverages, fuels, tobacco, electronic devices, precious metals; or entities engaged in trade of precious metals. [PIT Article 26(5), CIT Article 18(1a)]. Organizations receiving donations from legal persons are obliged to make this information public (including the identity of the donor) if a single donation exceeds 15,000 PLN, or if the cumulative value of a donor's donations during a year exceeds of 35,000 PLN (approx. 10,000 US\$). [CIT Article 18(1d)].

The Law on Public Benefit Activities and Volunteerism creates a new form of tax incentive that benefits PBOs. It permits a personal income taxpayer to allocate 1% of his or her tax payment to a Public Benefit Organization, up to 1% of his or her income in a fiscal year. [PBA Article 27, PIT Article 27d].

## ***C. Value Added Tax***

There are no exemptions from VAT for specific kinds of persons or organizations. However, certain goods and services are exempt from VAT, including the following:

- Services in the field of scientific, technical, and economic information only

- Research and development services
- Services in the field of education
- Services in the field of health protection and social welfare
- Statutory services provided by member organizations, not classified otherwise
- Wheelchairs and rehabilitation goods for the handicapped
- Imported services, which are paid for by donations from foreign countries' governments or international organizations, including NATO and EU

[VAT Law]

Under recent changes to the VAT law, donations will sometimes be taxed. The Ministry of Finance has said that income from a donation will be taxed whenever the NGO converts the donation into something that will be sold. For example, if a donation is spent to print tickets that will be sold, the donation will be taxed (the organization has to pay 22% of the donation); if the donation is spent to purchase meals that are given without charge to children, by contrast, it will not be taxed. The interpretation of this rule is still unclear (its introduction is officially justified by the requirements of the 6th EC Directive on VAT). Much will depend on the decisions of local tax offices.

#### ***D. Double Tax Treaties***

Poland has entered into double tax treaties with a number of countries, including the United States. When such a treaty is in existence, dividends, interest, and royalties arising in one country and paid in another are subject to tax only in the country where paid.

## **VI. Knowledgeable Contacts**

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