

U.S. INTERNATIONAL GRANTMAKING

Country Information

Kosovo

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I. Summary

A. Types of Organizations

On February 17, 2008, the Kosovo Assembly declared Kosovo's independence. [1] The legal framework for not-for-profit, nongovernmental organizations ("NGOs") was established, however, by the United Nations Mission in Kosovo (UNMIK).

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 with the Government of Kosovo and substantially meet specified requirements imposed on domestic NGOs (Section 3, NGO Regulation). Both foreign and domestic NGOs may apply for "public benefit status" (Section 10, NGO Regulation).

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 UNMIK regulations. There is also a Law on Institutions of Culture (Regulation 2006/44 On the Promulgation of the Law on Institutions of Culture adopted by the Assembly of Kosovo (2006), which is beyond the purview of this Note.

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 (Section 6(a), Corporate Income Tax Regulation). This includes income derived from donations and grants. An NGO is taxed at the rate of 20% on income from commercial or other activity not related to its public purpose, reduced by deductions directly related to the expense of carrying out such activity (Section 29, Corporate Income Tax Regulation). 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 (Section 9, Corporate Income Tax Regulation; Section 16, Personal Income Tax Regulation). 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 (Section 9.2, Corporate Income Tax Regulation; Section 16.2, Personal Income Tax Regulation). Deductions are not allowed if the contribution will directly benefit a person related to the donor.

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 (Section 12, VAT Regulation). Effective January 1, 2006, the VAT Regulation was amended to remove the VAT rebate formerly granted to NGOs with public benefit status on goods imported and used for public benefit purposes (Section 1, Regulation No. 2005/40 Amending the VAT Regulation).

II. Applicable Laws

- Constitution of the Republic of Kosovo;
- Regulation No. 1999/3 on the Establishment of Customs and Other Related Services in Kosovo, August 21, 1999;
- Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organizations in Kosovo, November 15, 1999 (“NGO Regulation”);
- Regulation No. 2001/11 on Value Added Tax in Kosovo, May 31, 2001 (“VAT Regulation”);
- Regulation No. 2001/23 on the Pilot Program for Imposition of Taxes on Immovable Property in Kosovo, September 29, 2001 (“Real Property Tax Regulation”);
- Regulation No.2002/17 Amending UNMIK Regulation 2001/11, as amended, on Value Added Tax in Kosovo;
- Regulation No. 2002/3 on Profit Taxes in Kosovo, February 20, 2002 (“Profit Tax Regulation”);
- Regulation No. 2003/29 on Taxes on Immovable Property in Kosovo, September 5, 2003, as amended by Regulations 2004/7, March 31, 2004, and 2004/24, July 26, 2004 (“Immovable Property Tax Regulation”);
- Regulation No. 2004/1 on the Customs Code of Kosovo, January 30, 2004;
- Regulation 2004/2 on the Deterrence of Money Laundering and Related Criminal Offences, February 4, 2004;
- Regulation No. 2004/13, May 28, 2004, Amending UNMIK Regulation No. 1999/3 on the Establishment of Customs and Other Related Services in Kosovo;
- Regulation No. 2005/40, August 8, 2005, Amending UNMIK Regulation No. 2001/11 on Value Added Tax in Kosovo;
- 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;
- Administrative Direction 1999/1 Implementing UNMIK Regulation No. 1999/3 on the Establishment of the Customs and Other Related Services in Kosovo, August 31, 1999;
- Administrative Direction 2000/10 Implementing UNMIK Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organizations in Kosovo, May 9, 2000; and
- Administrative Direction 2002/9 Implementing UNMIK Regulation No. 1999/22 on the Registration and Operation of Non-Governmental Organizations in Kosovo, March 29, 2002.

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>

III. Relevant Legal Forms

A. General Legal Forms

Kosovo recognizes two NGO legal forms for domestic organizations: associations and foundations. [2] Both forms may be established for any lawful public or mutual benefit purpose (Section 2.1, NGO Regulation).

An association is a membership organization established by at least three domestic or foreign legal or natural persons, at least one of whom is a resident of or situated in Kosovo (Section 2.2, NGO Regulation).

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 is a resident of or situated in Kosovo (Section 2.3, NGO Regulation). A foundation may also be established by a will, bequest, or legacy (Section 2.5, NGO Regulation).

Foreign NGOs may conduct activities in the territory of Kosovo, provided that they register with the Government of Kosovo and substantially meet specified requirements (Section 3, NGO Regulation).

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. 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, 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 (Section 10.1, NGO Regulation).

Educational and health-related activities constitute public benefit activities only if significant benefits are provided free of charge or at less than fair market value to disadvantaged individuals or groups. Economic development constitutes a public benefit activity only if it is undertaken primarily for the benefit of disadvantaged individuals or groups (Section 10.2, NGO Regulation). An NGO with public benefit status must file annual financial and programmatic reports in order to retain that status (Section 10.3, NGO Regulation; Section 5, Administrative Direction 2000/10). The financial reports of public benefit NGOs with annual income or expenditures in Kosovo over roughly €127,823 must be reviewed by an independent auditor (Section 5.9, Administrative Direction 2000/10).

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 (Section 1.3, NGO Regulation). NGOs are allowed to pay "reasonable compensation" to such persons for work performed for the organization (Section 1.3, NGO Regulation).

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 (Section 11.1, NGO Regulation).

D. Activities

1. General Activities

NGOs in Kosovo may engage in any lawful activities, including economic activities and certain political activities (Sections 2.1, 8, 9.2, NGO Regulation).

2. Economic Activities

An NGO may engage in economic activities, provided that the earnings are intended and used to promote the organization's not-for-profit purposes (Section 9.2, NGO Regulation). 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 (Section 8, NGO Regulation). However, this prohibition does not appear to extend to involvement in lobbying or other kinds of political activities.

F. Discrimination

The Constitution 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 (Chapter 2, 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 (Chapter 3). 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 (Chapter 2, 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 Constitution 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. 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. The Law authorizes claims as well as sanctions for violation of its provisions.

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. 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 profit tax to the extent that the income is used exclusively to further the organization's public benefit purposes (Section 5(a), Profit Tax Regulation). 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 (Section 5(d), Profit Tax Regulation). 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 (Section 9, Corporate Income Tax Regulation; Section 16, Personal Income Tax Regulation). 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 (Section 9.2, Corporate Income Tax Regulation; Section 16.2, Personal Income Tax Regulation). Deductions are not allowed if the contribution will directly benefit a person related to the donor.

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 15%. A zero rate is applied to export transactions, transactions within the former Republic of Yugoslavia, and transactions related to the international transportation of goods and persons (Section 10, VAT Regulation). Registration is required of all legal entities with an annual turnover of more than €100,000. Goods and supplies funded by grants made to UNMIK by governments and NGOs for humanitarian or reconstruction programs in Kosovo are exempt from VAT (Section 11(c), VAT Regulation). Imports of medicines, medical services, and medical instruments are VAT exempt (Section 11(f), VAT Regulation). The provisions of medicines, medical services, and medical instruments, as well as public education services, are also VAT exempt (Section 12, VAT Regulation). NGOs with public benefit status are not entitled to rebates on VAT paid for imported goods even if the goods are to be used for their public

benefit activities ([Regulation No. 2005/40](#) of 8 August 2005 Amending UNMIK Regulation No. 2001/11 on Value Added Tax in Kosovo).

D. Property Tax

A tax is levied on all immovable property in Kosovo. The Municipal Assembly of each municipality in Kosovo sets a tax rate of between .05% and 1% of the market value of immovable property on an annual basis. The taxpayer is in the first instance the property owner; however, where the owner cannot be determined or located, the lawful occupier or user, or actual user, of the property is held liable for the tax (Immovable Property Tax Regulation Sections 3-6).

NGOs with public benefit status are exempt from property tax, provided that they use the property exclusively for their public benefit purposes. Exemption is also extended to foreign donor agencies carrying on work in the fields of humanitarian aid, reconstruction, civil administration, or technical assistance, as well as religious institutions approved by the municipalities in agreement with the Tax Administration, if their property is used for religious purposes. Exemptions from the tax are not applicable to property used or held for use in commercial activity for the production of income (Immovable Property Tax Regulation Section 7).

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] A June 1999 United Nations Security Council Resolution had placed Kosovo under a transitional administration, the UN Interim Administration Mission in Kosovo (UNMIK), pending a determination of Kosovo's future status. All legislative and executive authority was vested in UNMIK, to be exercised by the Special Representative of the United Nations Secretary-General (SRSG) (Section 1, Regulation 1999/1). In 2001, a Constitutional Framework establishing "Provisional Institutions of Self-Government" (PISG) was put in place; these institutions included a legislature and executive branch institutions that exercised governmental authority, except in areas reserved to the SRSG. In succeeding years UNMIK increasingly devolved responsibilities to the PISG. A UN-led process began in late 2005 to determine Kosovo's future status. Negotiations held intermittently between 2006 and 2007 on issues related to decentralization, religious heritage, and minority rights ended without an agreement between Serbia and Kosovo.

[2] 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, Para. 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).