

Russia

Current as of March 2011 | [Download print version](#) (in PDF)

Comments on any information relating to this note may be addressed to [Elaine Scudder](#).

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. [Specific Questions Regarding Local Law](#)
 - A. [Inurement](#)
 - B. [Proprietary Interest](#)
 - C. [Dissolution](#)
 - D. [Activities](#)
 - E. [Political Activities](#)
 - F. [Discrimination](#)
 - G. [Control of Organization](#)
 - H. [Government Reporting Requirements and Control over Foreign Funding](#)
- V. [Tax Laws](#)
 - A. [Tax Exemptions](#)
 - B. [Deductibility of Charitable Contributions](#)
 - C. [Value Added Tax](#)
 - D. [Property Tax](#)
 - E. [Customs Duties](#)
 - F. [Double Tax Treaties](#)
- VI. [Knowledgeable Contacts](#)

I. Summary

A. Types of Organizations

The Russian Federation (Russia) recognizes a large number of organizational forms of non-governmental, non-commercial organizations (NCOs). The Civil Code and the Federal Law on Non-commercial Organizations (NCO Law) establish the primary NCO legal framework and recognize a variety of NCO forms, including public associations, foundations, institutions, non-

commercial partnerships, and autonomous non-commercial organizations. [1] The Federal Law on Public Associations builds upon this framework and carves out a sub-category of NCOs called "public associations" which consist of public organizations, mass movements, public foundations, public institutions, and several other forms. [2]

International grantmakers commonly encounter five forms:

- (i) public associations,
- (ii) foundations,
- (iii) institutions,
- (iv) non-commercial partnerships, and
- (v) autonomous non-commercial organizations.

B. Tax Laws

The Tax Code of the Russian Federation provides that certain types of income shall not be included in an NCO's tax base for the purpose of calculating its "tax on profits" (hereinafter referred to as income tax). Russian law exempts, for example, income derived from "donations" and "grants." Criteria for transactions to be recognized as such are defined in both tax and civil legislation.

NCOs pay tax on income generated from their economic activities in the same manner as commercial entities, without any benefits. Gratuitous transfer of property to NCOs for the purposes of implementation of their primary statutory activity, and which does not relate to economic activity, is not subject to VAT. Goods and services provided on a gratuitous basis as part of charitable activities in compliance with applicable laws are exempt from VAT.

Legal entities do not receive any federal tax deductions or credits for grants or donations to NCOs, including charities. Individuals may deduct up to 25% of their taxable income for monetary donations (in-kind contributions are not deductible), but the pool of eligible recipients is limited almost exclusively to state-owned or state-subsidized organizations.

Russia's structure adds another layer of complexity, as Russia is a federation with 89 territorial jurisdictions. In theory, regional and local legislation should be consistent with federal law, but in practice inconsistencies have emerged. Local laws may provide benefits to NCOs beyond those offered under federal law. [3] This Note primarily focuses on federal legislation, but it would also be prudent to review the regional and local legislation where a prospective grantee is registered to obtain a full understanding of the applicable regulations.

II. Applicable Laws

- Constitution of the Russian Federation, December 12, 1993.
- Civil Code of the Russian Federation, Part I, Federal Law No. 51-FZ, November 30, 1994 as amended.
- Civil Code of the Russian Federation, Part II, Federal Law No. 14-FZ, January 26, 1996, as amended.
- Federal Law No. 7-FZ, "On Non-Commercial Organizations," January 12, 1996, as amended (NCO Law).
- Federal Law No. 135-FZ, "On Charitable Activities and Charitable Organizations," August 11, 1995, as amended (Charities Law).
- Federal Law No. 82-FZ, "On Public Associations," May 19, 1995, as amended (Law on Public Associations).
- Federal Law No. 95-FZ, "On Gratuitous Assistance," May 4, 1999, as amended (Law on Gratuitous Assistance).
- Federal Law No. 275-FZ, "On Procedure of Establishment and Use of Endowment for Designated Purpose by Non-commercial Organizations" of December 30, 2006 (Law on Endowments).
- Resolution of the Government of the Russian Federation # 485 of June 28, 2008 regarding the list of international organizations whose grants (free aid) obtained by Russian organizations shall be tax exempt and shall be accounted for as taxable income of taxpayers – recipients of such grants/ as amended (Resolution).
- Federal Law No. 3266-1, "On Education," July 7, 1992, as amended.
- Tax Code of the Russian Federation No. 146-FZ, July 31, 1998, as amended.

III. Relevant Legal Forms

A. General Legal Forms

Russian law contains a large number of legal forms of NCOs, resulting in a complex and oftentimes contradictory regulatory framework. The primary requirements are that NCOs, whatever their type, do not have the generation of profit as their primary objective and do not distribute any such profit among their participants ([Article 50\(1\), Civil Code](#)).

In the context of international grantmaking, common forms include

- (i) public associations,
- (ii) foundations,
- (iii) institutions,
- (iv) non-commercial partnerships, and

(v) autonomous non-commercial organizations.

A public association is the form most comparable to an "association" as used in international parlance. [\[4\]](#) A public association is a membership-based organization of individuals associated on the basis of common interests and goals stipulated in the organization's charter ([Article 117, Civil Code](#); Article 8, Law on Public Associations; and Article 6, NCO Law). Public associations register at various jurisdictional levels (international, national, inter-regional, regional, and local) depending on the territorial scope of their activities (Article 21, Law on Public Associations).

Foundations are property-based, non-membership organizations created by individuals and/or legal persons to pursue social, charitable, cultural, educational, or other public benefit goals ([Article 118\(1\), Civil Code](#); Article 7, NCO Law; and Article 10, Law on Public Associations).

The institution (*uchrezhdeniye*) is a form encountered in Russia and several other countries of the Former Soviet Union. Like foundations, institutions do not have members. Unlike foundations, the institution does not acquire property rights in the property conveyed to it ([Article 120, Civil Code](#), and Article 20, NCO Law). Moreover, the founder is liable for any obligations of the institution that it cannot meet on its own ([Article 120, Civil Code](#); Article 9(2) NCO Law; and Article 35, Law on Public Associations). Because of the founder's inability to shield itself from the institution's liabilities, private founders tend not to use private institutions and generally seek other legal forms to undertake their activities. Public institutions are generally created using state assets. Schools, health care facilities, and cultural organizations are common examples of public institutions.

A non-commercial partnership (NP) (Article 8, NCO Law) is a membership organization pursuing activities for the mutual benefit of members. Therefore, assets which have been transferred to an NP as donations can be used for purposes other than those having public benefit.

An autonomous non-commercial organization (ANO) (Article 10, NCO Law) is a non-membership organization undertaking services in the field of education, social policy, culture, etc., which in practice often generates income by providing its services for a fee.

One should note that a public association, foundation, or institution may also register as a charity pursuant to the Charities Law (Article 7, Charities Law). A charitable organization can be established as an institution only if another charitable organization will be its founder. Other forms of NCOs may register as charities only if "stipulated by the federal laws for charitable organizations." Russian legislation does not specifically permit NPs and ANOs to register as charities.

Registration as a charity subjects an organization to stricter regulation in terms of activities, expenditures, [\[5\]](#) and internal governance in return for limited tax benefits. Federal law currently does not provide any particular benefits that are exclusive to registered charities. Although legislation at the regional and local levels offers tax benefits to charities, they do not necessarily require the organization to be registered as a charity at the federal level.

Certain forms of NCOs, including public organizations, religious organizations, foundations and ANOs, may establish endowments (Article 2, Law on Endowments). An endowment can be established using funds given by a donor(s) to an NCO. Donations to the endowment can only be made in the form of money. The law requires that endowments be managed by a qualified management company under a contract with the NCO owner of the endowment. Income generated from an endowment can be used by an NCO to finance its statutory activities. The minimum term for establishing an endowment is ten years.

Legal Hierarchy

In analyzing the legal structure of NCOs in Russia, it is helpful to keep in mind a hierarchy of legal norms that moves from the general to the particular, beginning with the Civil Code, then the NCO Law, and finally the Law on Public Associations. As a rule, the provisions of the more general laws apply to all NCOs unless a more specific piece of legislation holds otherwise. In regards to tax treatment, Tax Code provisions have priority over provisions in other legislation.

B. Public Benefit Status

Tax benefits under Russian law are primarily tied to the support or performance of particular activities and types of legal entities carrying out such activities specified in the Tax Code. Registration of an NCO as a charity pursuant to the Charities Law provides the organization with a particular status, but this status does not in itself provide any unique tax benefits. Although certain tax benefits are granted for charitable activities, no benefits at present are provided exclusively to registered charities at the federal level. [\[6\]](#)

In April, 2010, amendments were adopted to the NCO Law. These amendments established a new class of “socially oriented organizations” (SOOs) that, in the future, the government intends to afford preferences in obtaining governmental support and, potentially, tax benefits. Article 31(1) of the NCO Law contains a fairly broad list of qualifying purposes for SOOs, including “charitable activities, as well as activities facilitating charities and voluntarism.” Federal and local legislation may establish additional types of activities which would allow non-commercial organizations to qualify as SOOs. These purposes are likely to be considered as having public benefit for the purposes for defining a “donation.” As with charitable status, status of SOO is also not considered a pre-requisite for an organization engaged in socially beneficial activities to receive tax and other benefits. As of January 1, 2011, the Russian Federal government does not provide for any special tax benefits for organizations considered to be socially oriented, or for their supporters.

IV. Specific Questions Regarding Local Law

A. Inurement

NCOs generally cannot distribute profits to insiders ([Article 50\(1\), Civil Code](#)). The Law on Public Associations states that public foundations must use their assets for public benefit, and prohibits founders and managers from using assets for their personal interests (Article 10, Law on Public Associations). In addition, several provisions of the NCO Law are intended to address private inurement and self-dealing by NCO directors and officers. Specifically, an NCO may not remunerate, except for directly related expenses, members of its governing body for the performance of their governance functions (Article 29(5), NCO Law). Fiduciaries of NCOs are required to follow an established procedure of disclosure and recusal in circumstances where there is a conflict of interest with the organization (Article 27, NCO Law).

Institutions pose a unique situation distinct from other NCOs. Founders of institutions by law have broad discretion in extracting surplus property or funds from the institution's asset base and using them at their discretion (Article 296, Civil Code, and Article 35, Law on Public Associations).

Issues of unreasonable compensation and other forms of private inurement are not explicitly addressed in Russian legislation.

B. Proprietary Interest

The Civil Code and NCO Law state that members of public organizations may not assert proprietary interests over property they have contributed to a public organization, including membership fees ([Article 117\(2\), Civil Code](#), and Article 6(2), NCO Law). The Law on Public Associations expands on this slightly with respect to public organizations by explicitly precluding their members from asserting an ownership interest over the assets of the organization (Article 32, Law on Public Associations). Property contributed to a foundation by its founder(s) becomes the property of the foundation (Article 7(1), NCO Law).

Private and public institutions pose particular challenges for issues of proprietary interest, since the founders maintain their property rights and merely assign them to the organization for operational purposes only ([Article 120, Civil Code](#); Article 9, NCO Law; and Article 35, Law on Public Associations). As provided under law, founders of an institution can reserve for themselves, dispose of, or reallocate any surplus or unused property or income earned in the course of the institution's activities (Article 296, Civil Code).

An important caveat also exists regarding donations; to qualify for preferential tax treatment, such income must be provided on a "gratuitous basis" and "for designated purposes," and it must be used by the recipient for such designated purposes. It includes income received for the "maintenance of non-commercial organizations" and for "implementation of their statutory activities." In order for tax benefits to apply, an NCO is "required to maintain separate accounting" for its taxable and non-taxable income and expenditures. Thus, it would be possible

to determine the number and size of an organization's conditioned gifts and thereby determine any proprietary interests that may exist relating to the organization's assets.

Local experts also believe that in the case of grants, the explicit requirement (for tax treatment) that grants be provided on a “non-refundable basis,” necessarily means that a grantor cannot demand the repayment of a grant, even in case of its use for purposes other than those designated.

C. Dissolution

Assets of an institution generally revert back to the founder unless the charter stipulates otherwise. For other NCOs, assets remaining upon liquidation are to be distributed to another NCO that pursues the same objectives for which the liquidating organization was created, in accordance with the NCO’s governing documents, or to charitable purposes (Article 20(1), NCO Law). [\[7\]](#) If it is not possible to use the property in accordance with the organization's governing documents, it reverts to the state (Article 20(1), NCO Law).

Public associations are similarly obligated to distribute remaining assets to advance the organization's objectives, and, in the absence of any indication in the governing documents how this is to be done, the general assembly votes how to distribute the remaining assets (Article 26, Law on Public Associations). In the case of charities, remaining assets must be distributed for charitable purposes under the procedure stipulated in the charity's charter, or, in the absence of such provisions in the charter, as determined by the liquidation commission (Article 11, Charities Law). [\[8\]](#)

D. Activities

1. General Activities

Public associations, with the exception of specialized organizations such as trade unions and political associations, have virtually no restrictions on the activities they may pursue as their primary objectives (Article 5, Law on Public Associations), including mutual benefit activities (Article 6(1), NCO Law, and Article 8, Law on Public Associations). All foundations are required to engage in public benefit activities ([Article 118\(1\), Civil Code](#), Article 7(1), NCO Law, and Article 10, Law on Public Associations). The primary activities of institutions are broadly defined as any social, cultural or other activities of a not-for-profit nature ([Article 120, Civil Code](#), Article 9, NCO Law, and Article 11, Law on Public Associations). Charities are required to promote at least one of the enumerated charitable activities indicated in the law (Article 2, Charities Law).

An NCO may generate profit from economic activities provided that (i) profit-making activities are a secondary objective of the NCO, and (ii) the profits are applied to pursuing the NCO's not-for-profit purposes ([Article 50\(3\), Civil Code](#), and Article 24, NCO Law). Registration as a

charity does not affect or limit the right of an NCO to engage in economic activities (Article 12, Charities Law).

2. Public Benefit Activities

NCOs may carry out activities to serve multiple purposes, including: the pursuit of social, charitable, cultural, educational, scientific, and managerial activities; the protection of health and the development of fitness and sports activities; the satisfaction of spiritual and other non-material needs; protecting the rights and lawful interests of citizens and organizations; resolving disputes and conflicts, providing legal aid; and other purposes directed toward achievement of the public good. (Article 2, NCO Law). Russian laws use a number of terms to define activities for “public benefit purposes.”

Article 582 of the Civil Code uses term “for public benefit purposes” to define a donation. However, neither the Civil Code nor any other current legislation of the Russian Federation specifically defines the notion of “public benefit purposes.” Several Russian laws, however, include closely related concepts. Although these laws use terminology other than “public benefit,” the interpretation of these concepts might be instructive as to what is intended in the definition of “donation.”

In the absence of a clear definition of “public benefit purposes” some Russian legal experts and government officials have equated the concept with the term “charitable purposes” as defined in the Charities Law. [9] For example, a decision of a Moscow court concluded that funds received by a non-commercial organization on a gratuitous basis and used according to its designated purposes – research and analysis of social and economic issues – is nevertheless taxable income because such activities are not recognized as serving “charitable purposes,” which the court treated as synonymous with “public benefit purposes.” [10]

Charitable activities and goals might be understood as falling within a larger category of “public benefit purposes” recognized in the Russian civil legislation. The NCO Law, for example, provides a broad list of purposes for which non-commercial organizations may be formed, [11] including “other purposes directed toward achievement of the public good,” a concept that might be understood as close in meaning to “public benefit purposes.” The Law on Endowments also provides a list of areas that might reasonably be regarded as having public benefit. [12]

More recently, the 2010 amendments to the NCO Law identified activity areas in which NCOs should be primarily engaged in order to become eligible for governmental support (referred to as “socially oriented organizations” (SOOs). [13] These amendments include an extensive list of activity areas largely overlapping those included in the *Law on Charity* and the *Law on Non-Commercial Organizations*. They also provide that federal and local legislation may establish additional types of activities that will allow NCOs to be recognized as SOOs. Again, one could argue that the activity areas that qualify an organization for SOO status have “public benefit purposes,” since social value is presumably the rationale for providing these organizations with government support. At present this is more of an advocacy position based on recent legislation rather than a settled matter of law.

Charities and foundations are restricted to activities of general public benefit (Article 6, Charities Law, Article 10, Law on Public Associations, and Article 7, NCO Law). Charities must engage in charitable activities, which are defined as "voluntary activities of individuals and legal entities involved in the altruistic (gratuitous or on privileged terms) provision to individuals or legal entities of property, including money and the altruistic provision of services or other support" directed towards achieving any of the indicated objectives that generally correspond to public benefit activities (Articles 1 and 2(1), Charities Law). Foundations that are not charities must undertake "public benefit" activities, but, as discussed above, the law does not define the term.

3. Economic Activities

An NCO may not have the generation of profit as its primary purpose, but it may engage in economic activities to the extent they advance the purposes for which the organization was created ([Article 50\(3\), Civil Code](#), Articles 2 and 24(2), NCO Law, Article 37, Law on Public Associations, and Article 12, Charities Law). With some exceptions detailed in Section V below, profit from the economic activities of NCOs, including charities, is taxed in the same manner as for commercial organizations.

E. Political Activities

Neither the Civil Code nor the NCO Law limits the ability of NCOs to engage in political activities. All forms of public associations may participate in advocacy and lobbying activities. Under the law, NCOs generally may also engage in election campaigns for federal and local elections, subject to federal election laws ([Article 27, Law on Public Associations](#)).^[14]

Charities are expressly prohibited from using their assets to support political parties, movements, and campaigns ([Article 2\(2\), Charities Law](#)). In addition, religious organizations, governmental and municipal institutions, international public associations, and international movements are prohibited from making donations to candidates ([Article 58 \(6\), Federal Law No. 19-FZ "On RF President elections," January 10, 2003](#), and [Article 66 \(7\), Federal Law No. 175-FZ "On RF State Duma deputies elections," July 20, 2002, as amended](#)). However, these prohibitions do not appear to extend to involvement in lobbying or other politically-related activities.

F. Discrimination

The Russian Constitution generally guarantees individual rights regardless of sex, race, nationality, language, origin, property or employment status, residence, or religious belief ([Article 19\(2\), Constitution of the Russian Federation](#)). Article 5 of the Federal Law on Education (No. 12-FZ, 13/01/1996) guarantees citizens of the Russian Federation the opportunity to receive an education regardless of race, gender, nationality, language, origin, residence, religion, involvement in public associations, age, or health, among other characteristics.

G. Control of Organization

Article 15 of the NCO Law and Article 19 of the Law on Public Associations permit only those foreign nationals and stateless persons who are “legally domiciled in the Russian Federation” to be founders, members, or participants in public associations or NCOs. Certain persons may not become founders, members or participants, including:

- Foreign nationals or stateless persons whose stay is deemed “undesirable;”
- Persons appearing on a money laundering and anti-terrorist financing watch list maintained by the Russian government;
- Organizations that have been suspended under the Law Countering Extremist Activities;
- Persons found by court decision to show signs of participating in extremist activity; and
- Persons who are currently incarcerated as a result of conviction of a crime.

Public associations, such as public organizations and public foundations, by definition can be created only by natural persons. These organizations cannot be founded by legal persons, but other public organizations may join as members (Articles 18 and 19, Law on Public Associations). By comparison, legal persons, including commercial entities, may found all other forms of NCOs, except public associations.

H. Government Reporting Requirements and Control Over Foreign Funding

Russian Law requires all NCOs to report on all funds received from foreign sources and to detail how these funds are allocated or used (Article 32.3, NCO Law). Foreign grantmakers need not comply with these reporting requirements unless they have a registered subdivision (branch, representative office, or affiliate) (Article 32.4, NCO Law). All NCOs that have received foreign funding are required to post online reports on their activities, which shall contain information submitted in reports to government authorities (Article 32.3.2, NCO Law).

The law also allows the registration authority to terminate any existing program of a foreign non-governmental, non-commercial organization (FNNO) subdivision (NCO Law, Article 32.12). The law does not stipulate the grounds on which the government may make this decision. Finally, the law allows the registration authority to prevent an FNNO's subdivision from transferring funds or other resources to identified recipients, if doing so will “protect[] the basis of the Constitutional system, morality, ... with the aim of defending the country and the state security.” Implementation will reveal how broadly the government construes this language (Article 32.13, NCO Law).

V. Tax Laws

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee. As with other Country Notes, this section does not provide any form of guidance or advice on tax law, and readers should not rely on this Note when making tax-related decisions.

A. Tax Exemptions

The Tax Code of the Russian Federation provides that certain types of income shall not be included in the tax base of NCOs for the purpose of determining profits tax [Article 251(2), Tax Code]. Said income is defined as “receipts for designated purposes” (“целевые поступления”). It must be provided on a “gratuitous basis” and “for designated purposes,” and it must be used by the recipient for such designated purposes. It includes income received for the “maintenance of non-commercial organizations” and for “implementation of their statutory activities.” In order for this tax benefit to apply, the non-commercial organization is “required to maintain separate accounting” for its taxable and non-taxable income and expenditures.

Article 251(2)(1) of the Tax Code specifically lists donations as one type of “receipts for designated purposes.” The Article does not otherwise define the term “donations,” referring instead to its recognition under, and conformity with, Russia’s civil legislation. Therefore, income must conform to the definition of “donation” under the *Civil Code, Article 572*, and as elaborated in related laws, in order to be non-taxable on this basis. [15] The interplay among the *Tax Code*, the *Civil Code* and other civil legislation creates a number of uncertainties in the tax treatment of donations in Russia. [16] The determination of whether income is a non-taxable donation will ultimately depend upon a number of considerations, including the purpose of the donation and its use by the recipient organization.

In order to be recognized as a donation, income must be provided on a gratuitous basis for a designated purpose for the “maintenance of NCOs” and for “implementation of their statutory activities,” and the NCO must use the income for the designated purpose. An NCO that receives a donation must maintain a separate accounting of the donation’s income and expenditures in order to receive this tax benefit.

The term “grant” is listed in Article 251(1)(14) of the Tax Code as one of several types of income that shall not be included in an NCOs tax base for the purpose of profits tax. Like donations, grants are gratuitous transfers made for “designated purposes” and must be used accordingly. Grant recipients must maintain separate accounting of the grant income and expenditures in order to receive this tax benefit. Although there are similarities between grants and donations under Russian law, there are also a number of key differences. A grant may only include monetary and other assets; a transfer of property rights will not constitute a grant. Grants can be provided only for the purposes listed in Article 251(1)(14) of the Tax Code, [17] and thus a grantor should specifically include only one or more of the listed purposes in the grant agreement. Unlike donors, a grantor is obligated to require reports from the recipient on the use of the grant. According to local experts, grantors may impose other requirements on the recipient, so long as the criteria that the grant be gratuitous and non-refundable are maintained.

An otherwise eligible grant may not qualify for tax exemption if the donor is a foreign or international grantmaker. Such a grant is non-taxable only if the grantmaker appears on an official government list approved by the Resolution of the Russian Government (hereinafter referred to as “Resolution”) [Russian Presidential Decree #485, June 28, 2008] The list includes thirteen multinational organizations; with only one such organization being added to this list since the Resolution was issued. The grants of any foreign organization not on the list are

considered taxable income for recipients unless they qualify as non-taxable “donations”. A foreign organization that would like to get onto the list must go through a process of approval. The Resolution provides that accreditation procedures are to be developed by the Russian Government. Such procedures, however, have not yet been developed. Nevertheless, several of the government agencies eligible to propose foreign NGOs to be included on the list submitted their recommendations in spring-summer of 2009. The Government has yet to act on these recommendations. The grants of any foreign organization not on the list are considered taxable income for recipients, unless they qualify as “non-taxable donations.”

Earnings from economic activities of NCOs do not receive any beneficial treatment and are taxed in the same manner as commercial entities. [18] Benefits (e.g., some exemptions from VAT and from income tax on profits generated from economic activities) are allowed for certain religious organizations and public organizations of the disabled.

Certain tax benefits are attached to donations forming an NCO’s endowment, and also to income generated by the endowment. For example, monetary assets received by NCOs from foreign or Russian grantmakers for the purpose of establishing an endowment, and in compliance with the law on endowments, as well as monetary assets received by NCOs from companies carrying management of their endowments, as income from management of endowment, are not included as taxable income for the purposes of income tax for recipients (Article 251.2. 13- 15, Tax Code).

B. Deductibility of Charitable Contributions

Legal entities cannot claim a tax deduction or credit at the federal level for contributions made to NCOs, including charities. Individuals may deduct from taxable income any monetary donations to scientific, cultural, health care, educational, sports-related, and social security organizations up to 25% of their total income (Article 219, Tax Code). However, with the exception of sports organizations, the recipient organization must be state-subsidized or state-owned for the donation to qualify as deductible. Thus, donations to not-for-profit private schools, museums, or health care providers do not qualify for a tax deduction. In addition, Article 219 has been interpreted to require that deductible donations be made directly to the beneficiary organization. Consequently, donations to umbrella organizations or other intermediaries that redistribute the funds to NCOs that actually undertake the specified activity are not tax deductible. Deductions for individuals may be claimed only for monetary donations; in-kind donations are not eligible for tax deductions (Article 219, Tax Code). Donors may not carry forward or accumulate unclaimed tax deductions or other unused tax benefits.

C. Value Added Tax

As a general rule, all organizations, including NCOs, must pay VAT, regardless of whether they engage in entrepreneurial activities. There are two general exceptions. The provision of assets on a gratuitous base to an NCO is not subject to VAT if they are provided for implementation of its statutory goals, unrelated to any commercial operation (Article 39(3)(3), Tax Code). Thus, donations or grants meeting these criteria to NCOs, including those from abroad, would not be

subject to VAT. In addition, the gratuitous provision of goods or services, with the exception of excisable goods, provided in conjunction with charitable activities in compliance with the Charities Law is exempt from VAT (Article 149 (3)(12), Tax Code). This exemption is not limited to registered charities: VAT is not imposed on the provision of goods or services that are provided on a gratuitous basis by any organization in conjunction with charitable activities, as defined in the Charities Law.

Other VAT exemptions are also granted to certain organizations on the goods they purchase as well as services and products they provide, including educational and cultural institutions, health-care providers, and scientific institutions (Article 149(2), Tax Code). Also exempt from VAT are goods (except excisable goods) imported under an approved humanitarian or technical assistance program pursuant to the Gratuitous Assistance Law (Article 150(1), Tax Code), if it is certified by a special commission within the Ministry of Economic Development.

D. Property Tax

The Tax Code grants only a few exemptions from property tax that are relevant to NCOs. Exemptions from property tax are granted on property of (1) religious organizations that use the property for religious activities; (2) national public associations of the disabled under certain circumstances; (3) some kinds of state scientific centers; and (4) cultural and social organizations that use the property to advance culture and the arts, education, physical education and sport, public health, or welfare (Article 381, Tax Code).

E. Customs Duties

As a general rule, no exemptions or reductions in customs duties are extended to goods imported for or by NCOs. An exception does exist, however, under the Law on Gratuitous Assistance. Pursuant to this law, donations of funds, goods, and services (with the exception of excisable goods) imported for not-for-profit and charitable purposes may be exempt from custom duties if they are provided in conjunction with an accredited project or program in the form of gratuitous technical or humanitarian assistance. [\[19\]](#) It is forbidden to sell gratuitous assistance imported pursuant to the Law on Gratuitous Assistance.

F. Double Tax Treaties

There currently is no double tax treaty between the Russian Federation and the United States.

VI. Knowledgeable Contacts

Daria Miloslavskaya, ICNL, LLC: Miloslavskaya@icnlalliance.org

Natalia Bourjaily, ICNL: nbourj@icnl.org

Footnotes

[1] The Russian word “некоммерческая” has been translated multiple ways into English; *inter alia*, “nonprofit,” “non-commercial,” or “not-for-profit.” This Note uses the term Non-commercial Organization throughout but recognizes that these other terms may be used in translations to signify the same concept.

[2] On October 2, 2009, the Council on Codification and Improving Civil Legislation with the President of Russian Federation, approved the Concept Of Development of Civil Legislation, which was prepared in compliance with the President’s Decree # 1108 dated July 18. In December 2010 - January 2011, the draft law of the Federal Law On Introducing Changes to Parts One, Two, Three, and Four of the Civil Code of the Russian Federation, as well as into other legislative acts of the Russian Federation was circulated amongst governmental agencies to solicit their input in order to finalize it for submission to the Russian parliament. The draft proposes various changes to Russia’s regulatory framework, including the framework governing NCO activities. Amongst the key changes affecting NCOs: a reduction of the number of legal organizational forms for NCOs (the following three forms for non-commercial corporate organizations will exist: consumer cooperatives, public organizations of citizens, and associations (unions)); as well as these three forms of non-commercial unitarian (not-membership based) organizations: foundations, institutions and religious organizations. The implementation of this change will require revisions of many laws governing NCOs, as well as the re-registration of the majority of Russian NGOs. The draft also proposes that all legal entities, including businesses, will have to register with the MOJ, instead of the tax authority. Registration of legal entities under the tax authority is very simple, and similar to registration of corporations in US, while the current registration process for NCOs under the ministry of justice is quite complicated.

All non-commercial organizations will be required to have a statutory capital (“assets”) of at least 500,000 rubles (approximately USD \$17,000, the equivalent of capital for companies with limited liability in Russia.)

[3] For example, some regions of the Russian Federation are granting tax deductions to legal entities supporting NCOs, up to 4 percent of the regional profit tax due. Under the tax code, local jurisdictions may offer tax benefits to donors that are legal persons but not to natural persons.

[4] Public organizations are one form of “public associations,” as defined under the Law on Public Associations. Other forms of public associations include: “public foundations” and “public institutions,” which are similar to organizational forms regulated in the NCO Law (foundations and institutions), the key difference being that forms included in the NCO Law can be established by a single founder, while, all public associations should have at least three founders. Public associations in all forms are subject to different reporting requirements and other regulations compared to NCOs established under the NCO Law.

[5] For example, a registered charity must expend at least 80% of charitable donations (in monetary form) it receives within a year after the donation is received (Article 16(4), Charities Law).

[6] Various regional and local authorities have enacted their own regulations that provide additional privileges and tax benefits to charities operating in their territory. Eligibility criteria for these benefits do not necessarily match those for federal tax benefits.

[7] It is presumed that since a foundation does not have a general assembly, the procedures under the NCO Law are applied for a liquidating foundation registered under the Law on Public Associations.

[8] Although there are no explicit limitations on how the liquidation commission can dispose of the assets, it presumably must observe the general provision allowing distribution only to charitable purposes.

[9] *Non-Commercial Organizations in Russia*, Issue # 1, 2006. Article 2 of the *Law on Charity* provides a list of “charitable purposes,” including: social support and protection of individuals, including the improvement of the material situation of low-income people and social rehabilitation of the unemployed, disabled and other persons, who, due to their physical or intellectual characteristics and other circumstances, are unable to independently realize their rights and legal interests; helping the population to overcome the aftermath of natural, ecological, industrial, or other kinds of catastrophes and to prevent accidents; rendering assistance to the victims of natural, ecological, industrial and other kinds of catastrophes and of social, national and religious conflicts, and to victims of reprisals, to refugees and to forced migrants; assistance in strengthening peace and friendship among peoples, and in preventing social, national and religious conflicts; assistance in activities in the spheres of education, science and culture, of art and education, and in the intellectual development of the personality.

[10] Local experts are not aware of any occasions where funding for activities having “charitable purposes,” as defined in the *Law on Charity*, was treated as taxable income by tax authorities on the grounds that the funding was not for “public benefit purposes.”

[11] Article 2 of the NCO Law provides that non-commercial organizations may be created for the following purposes: achieving social, charitable, cultural, educational, scientific or managerial goals; protecting the health of citizens; developing physical education and sports; satisfying spiritual and other non-material needs of citizens; protecting the rights and lawful interests of citizens and organizations; resolving disputes and conflicts; providing legal aid; and other purposes directed toward achievement of the public good.

[12] Article 3 of the *Law on Endowments* provides that creating endowments and disposing of income generated by endowments shall be carried out for use in the following areas, among others: education, science, health care; culture, art, and archive keeping; physical education and sports (excluding professional sports); and social protection and assistance to the needy.

[13] These activity areas should be specified in the charter of the NCO in order for such organizations to be recognized as “socially oriented”.

[14] The NCO law may restrict the ability of NCOs to engage in certain political activities by cutting off their financing. The registration authority can prevent a foreign non-governmental organization’s branch, representative office, or affiliate from transferring funds or other resources to recipients, if doing so will “protect[] the basis of the Constitutional system ... with the aim of defending the country and the state security.” The language of the law could be construed to cover a range of political activities (Article 23(1) of the Law on NCOs).

[15] Simply meeting the definition of a “donation,” as gleaned from the *Civil Code* and other civil laws, is not necessarily dispositive of its status as non-taxable. For example, while any property right may be donated under Article 582 of the *Civil Code*, tax authorities generally do not recognize as non-taxable a transfer of the right to use property free-of-charge.

[16] It is unclear, for example, whether ANOs and NPs can receive donations. On the one hand, the Civil Code allows all NCOs registered under the NCO Law to be recipients of donations. The Civil Code, however, defines a donation as a gift of property or a right “for public benefit purposes.” NPs, by definition, are established primarily for the mutual benefit of members. Of course, it is possible that an NP could undertake activities that serve both the interests of members and “public benefit purposes,” but there is a lack of clarity as to how the authorities will treat these organizations in such situations. There have been at least two cases where the Ministry of Justice determined that NPs were not eligible to receive donations. In one such case, however, this determination was directly overturned on appeal, as the court held that public benefit purposes were lawfully included in the NP’s charter. In 2010 two court decisions supported the notion that NPs could receive donations both from Russian and foreign legal entities and physical persons.

[17] Grants may be provided “for carrying out specific programs in the sphere of education, art, and culture; protection of the health of the population (AIDS, drugs addiction, children’s oncology, including onkogematology, children’s endocrinology, hepatitis, and tuberculosis); environmental protection; protection of individual rights and freedoms, as defined in legislation of Russian Federation; social service to the poor and to socially unprotected groups of citizens; and scientific research;...”

[18] NCOs currently pay income tax at a basic rate of 20% (Article 284, Tax Code).

[19] Humanitarian assistance is defined as health care or social support to help disadvantaged segments of the population as well as victims of natural disasters or other emergencies. Technical assistance is broadly defined and includes equipment and services designed to support economic and social reforms and disarmament (Article 1, Law on Gratuitous Assistance).