

U.S. INTERNATIONAL GRANTMAKING

Country Information

Serbia

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I. Summary

A. Types of Organizations

The enactment of the Constitutional Charter of Serbia and Montenegro in February 2003 resulted in a loose confederation whose prerogatives were never clearly articulated. In May 2006, Montenegro held a referendum on independence. Following the referendum, the Union of Serbia and Montenegro has given way to two fully independent states. This

Note focuses on the NGO legal framework in Serbia; a separate Note addresses the NGO legal framework in Montenegro.

Common not-for-profit organizational forms include the following:

- Associations;
- Foundations;
- Legacies; and
- Funds.

Other not-for-profit legal forms, which are outside the scope of this Note because of their limited interaction with U.S. grantmakers, include political parties, trade unions, chambers of commerce, cooperatives, and private institutions (faculties and universities).

B. Tax Laws

The Income Tax Law generally exempts NGOs from taxation on grants, donations, membership dues, and non-economic sources of income. Under the Law on Property, associations are, however, subject to a 2.5% tax on monetary gifts they receive, provided the following conditions are met: 1) the value of the gift exceeds 9,000 Serbian dinars (approximately USD \$13); 2) the donor is a private person, rather than a state or local government authority; 3) the gift is not covered by a bilateral or multilateral agreement to which Serbia is a party. Property tax is not levied on non-monetary gifts as long as the transfer of those gifts is subject to VAT. Profits from related and unrelated economic activities are exempt up to 300,000 dinars (USD \$4,300), provided that certain conditions are satisfied.

A VAT regime went into effect on January 1, 2005, with a standard tax rate of 18 percent, and a reduced tax rate of 8 percent for certain goods and services. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods. There are limited incentives for philanthropy, and the concept of “public benefit” status is not well developed.

II. Applicable Laws

- [Constitution of Serbia \(2006\)](#);
- [Law on Associations \(2009\)](#);
- [Law on Legacies, Foundations and Funds of the Republic of Serbia \(1989\) \(“Law on Foundations”\)](#);
- [Law on Property \(Available only in Serbian at \[www.mfin.gov.rs\]\(http://www.mfin.gov.rs\)\)](#);
- [Law on the Protection of Ethnic Minorities \(2002\)](#);
- [Enterprise Profit Tax Law \(2001\)](#); and
- [Value-Added Tax Law \(2004\) \(“VAT Law”\)](#)

III. Relevant Legal Forms

A. General Legal Forms

The legal framework in Serbia permits both membership and non-membership NGOs to operate.

Associations. On October 22, 2009, a new Law on Associations came into force. Under this law, an “association” is defined as a “voluntary, non-governmental, and not-for-profit organization composed of natural and/or legal persons, established to pursue mutual or public benefit goals, which are not prohibited by the Constitution and law” (Article 2, Law on Associations). [1]

Foundations, Legacies, and Funds. Serbian law provides for three categories of non-membership, property-based organizations. All must pursue public interest objectives. Categories are based on the type of founders and source of funding: [2]

A “foundation” can be established only by legal persons using “socially owned resources” (i.e., public property or that belonging to a collective). Because the 2006 Constitution no longer recognizes the concept of socially-owned property, the legal status of foundations is currently unclear. According to information from the registry office, very few of them operate. The Ministry of Culture has recently prepared a new draft Law, which is under review and would re-conceptualize the notion of a “foundation.”

A “legacy” can be established only by natural persons using private resources. A legacy may be established *inter vivos* or by a testamentary act.

A “fund” can be established by natural or legal persons using “socially owned resources” or a combination of “socially owned resources” and private assets.

B. Public Benefit Status

The concept of “public benefit” is not well-developed in NGO legislation. For example, the law provides that foundations must serve the public benefit, but it is unclear what criteria registration officials use to make this determination. Moreover, the framework laws and tax laws reflect different concepts of public benefit (see Section V, below).

IV. Specific Questions Regarding Local Law

A. Inurement

The Law on Foundations contains general provisions suggesting that assets must be used for the purposes of the organization, as envisaged by the founder of an organization, but these provisions are vague and limited in scope. The Law on Associations contains more specific provisions on this issue. In addition to a general requirement that the property of an association must only be used to advanced its statutory goals, the law also prohibits any distribution of its property to its founders, members, managers, employees, and persons affiliated with the association.[3] The non-distribution constraint does not pertain to appropriate monetary awards and necessary costs the foregoing persons have incurred in the course of realizing the statutory goals of an association (Article 41, Law on Associations).

B. Proprietary Interest

The Law on Associations precludes founders from having any proprietary interest in the organization; founders and members of an association may not claim any part of the organization's property during its lifetime or in the case of its dissolution. Problems arise under the Law on Foundations, because many foundations and funds were established with "socially owned resources." This was a socialist concept, and it is currently unresolved whether the state or anyone else has a proprietary interest in these assets. In addition, the Law on Foundations does not seem to preclude organizations from returning contributions to founders and/or members upon dissolution.

C. Dissolution

The assets of a dissolved association may only be distributed to another domestic not-for-profit organization (membership or non-membership) pursuing the same or similar statutory goal, as stipulated in the organization's statute (Article 42, Law on Associations).[4] If, at the time of dissolution of an association, it is not possible to transfer the remaining property to an organization designated in the statute, or if the statute is silent on that point, the remaining property will become the property of the Republic of Serbia, which will transfer the right to use it to a municipality in which the dissolved association had its seat (Article 43, Law on Associations).

For legacies and foundations, the rules are much more complex. The organization's statute, founder, manager, the Ministry of Culture, and the local government can influence the distribution of assets under various circumstances. [5] Moreover, there is no explicit limitation on how the remaining assets can be used.

D. Activities

1. General Activities

Registered associations, foundations, and legacies are legal persons and, as such, are permitted to engage in a broad range of activities, provided the activities are enumerated in the organization's charter. Foundations must serve the public benefit, whereas associations may pursue mutual benefit or public benefit purposes.

2. Public Benefit Activities

Associations, under the Law on Associations, may be established for mutual benefit or public benefit purposes (Article 3, Law on Associations). The Law defines activities deemed for public benefit for which an association is eligible to apply for the state, provincial and local governmental support. These include: social security; care for disabled war veterans; care for persons with disabilities; social child care; care for internally displaced persons from Kosovo and Metohija and refugees; promotion of the birthrate; assistance to senior citizens; health care; protection and promotion of human and minority rights; education; science; culture; information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programs and other programs whereby the association pursues public benefit purposes directly and exclusively. The wording of the Law suggests that the list of public benefit activities is illustrative, rather than exhaustive (Article 38, Law on Associations).

By contrast, legacies, foundations, and funds must promote "creativity," humanitarian purposes, or "other goals of public interest" (Article 2, Law on Foundations). The law does not define these terms.

As discussed in Section V, below, tax law provides deductions only for donations that advance medical, educational, scientific, humanitarian, religious, environmental, and "sport" purposes. There is ambiguity, however, as to how the relevant authorities define and apply these terms.

3. Economic Activities

Associations may engage directly in economic activities insofar as the following conditions are met: 1) those activities are related to the organization's statutory goals; 2) they are envisaged in the statute of an organization; 3) they are incidental in terms of their volume, or are carried in volume which is deemed necessary to advance the statutory goals of an association (Article 37, Law on Associations). [6]

The Law on Foundations is rather general on this point: it provides that foundations may generate income from passive investments, gifts, and other sources in accordance with

the law. This presumably indicates that a foundation may also generate income from both related and unrelated economic activities (Article 15, Law on Foundations) – as stipulated in the Enterprise Profit Tax Law.

In addition, tax legislation refers specifically to "NGOs that generate income from economic activities;" no distinction is drawn between related and unrelated economic activities (Article 44, Enterprise Profit Tax Law).

E. Political Activities

None of the applicable laws address the extent to which NGOs may engage in political activities. In fact, many organizations have engaged directly in lobbying campaigns for candidates and parties.

F. Discrimination

The new Serbian Constitution contains provisions prohibiting discrimination on the basis of ethnicity, race, and similar categories (Article 21, Serbian Constitution). Serbia has also enacted a law regarding the protection of ethnic minorities (Official Gazette of FR Yugoslavia, no. 11/2002). Local experts believe that the constitutional provisions bar racial discrimination in both private and public schools, though schools are permitted to engage in affirmative action to benefit certain underrepresented groups, such as Roma, Hungarians, Albanians, and the disabled.

G. Control of Organization

The Law on Associations requires at least three legal or natural persons to establish an association, provided at least one of the founders has a residence or place of business in Serbia. If the foregoing condition is met, no other restrictions are envisaged for foreign legal and natural persons as founders. Both for-profit and not-for-profit legal entities may be founders of an association (Article 2 and 10, Law on Associations).

The Law on Foundations explicitly permits foreign individuals to establish funds, legacies, and foundations; and legal persons (including for-profit entities) to form funds and foundations (Article 20, Law on Foundations).

V. Tax Laws

A. Tax Exemptions

Associations, foundations, legacies, and funds are exempt from income tax on foreign and domestic grants, donations, membership dues, and similar forms of income not

related to the organization's economic activities. Associations are subject to 2.5% taxes on gifts (movable assets and real estate alike) they receive; these taxes are not levied on foundations, legacies and funds. There is some discretion on how to interpret the difference between gifts - which are subject to taxation - and donations - which should be exempt - though cases at the local level have been reported in which the tax police have sought to impose taxes on donations.

Under the Enterprise Profit Tax Law, profit generated by an NGO is exempt from income tax, provided that:

- a) income from economic activities did not exceed a given threshold of 300,000 dinars (or USD \$4,300);
- b) earnings were not distributed to the founders, employees, members of the management board, or any affiliated person thereof;
- c) salaries for the members of the management board and employees do not exceed double the average salary paid by organizations engaged in the same activities in the commercial sector;
- d) all earned profit was used to further the objectives for which the organization was created; and
- e) the NGO's economic activities do not give rise to unfair competition with the private business sector, as defined by the antitrust law.

(Article 44, Law on Enterprise Profit Tax)

B. Deductibility of Charitable Contributions

Corporations may deduct up to 3.5 percent of their income for “medical, cultural, educational, scientific, humanitarian, religious, environmental protection and sport purposes.” With the exception of donations for humanitarian purposes, corporations may claim deductions regardless of whether they engage directly in those activities or donate to a qualifying recipient (NGOs and public institutions alike). In addition, corporations may deduct up to 1.5 percent of income for “investments in cultural purposes.” The Law does not specify whether corporations may claim deductions if they engage directly in cultural activities (Article 15, Law on Enterprise Profit Tax). The Personal Income Tax Law does not address charitable contributions.

It is unclear how these tax provisions relate to public benefit concepts found in the NGO framework legislation. [\[7\]](#)

C. Value Added Taxes

The VAT Law came into effect on January 1, 2005. The Law sets a standard rate of 18 percent and a reduced rate of 8 percent for certain goods and services, including textbooks and monographs (Article 23, VAT Law). As of January 1, 2008, any organization with an annual turnover of less than 4,000,000 dinars (approximately USD \$57,000) is exempt from paying VAT (Amendments to Article 33, VAT Law). Foreign grants and donations are not subject to VAT (Article 55, VAT Law). Further, under amendments to the VAT Law that came into force in July 2005, foreign donors are exempt from paying VAT on humanitarian goods imported to Serbia. The Law does not provide NGOs as such with specific exemptions; however, it does exempt a number of services and supplies commonly provided by NGOs, including services (and, generally, goods related to those services) in medicine, social welfare, culture, education, science, religion, and sports (Article 25, VAT Law).

D. Double Tax Treaties

The United States has no double tax treaty with Serbia.

VI. Knowledgeable Contacts

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Footnotes

[1] The Law permits informal associations to operate. However, the permissibility of informal associations has already sparked some controversy; there is a case pending before the Constitutional Court challenging the constitutionality of the relevant provision. Article 55, Paragraph 2, of the Serbia Constitution of 2006, states: “associations may be established without prior approval, subject to registration with the competent state body, pursuant to law.” By entering into the registry, an association is granted legal entity status.

[2] For purposes of this Note, the term “foundation” will be used in the general sense to refer to all three of these forms under the Serbian law unless otherwise indicated.

[3] “Affiliated persons” are any persons stipulated as such by the law governing commercial corporations (Article 37, Law on Associations).

[4] The only exception to this rule is for associations that, at the time the Law came into force, possessed so called “socially owned” real estate. Upon dissolution, this real estate

reverts automatically to the state (Article 42, Law on Associations). The Constitution of Serbia no longer recognizes the concept of socially owned property, i.e., property that belonged to “everybody and nobody,” and all said property has since been nationalized or transformed into state property.

[5] For a fund, the Municipal Assembly is responsible for transferring management of the fund to another organization or, if there is no such organization, to the Municipal Assembly (Article 32, Serbian Law on Foundations).

[6] The Law does not provide for a more precise definition of any of the foregoing criteria. Rather, their fulfillment it is to be determined by the competent state authority on a case-by-case basis.

[7] For example, foundations must serve the public benefit. However, based on current practices, it is unlikely that a donor could make a tax-deductible contribution to a foundation that pursues a public benefit purpose other than those enumerated in the tax laws.

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