

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; and
- Endowments (Legacies) [1]

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. 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 400,000 dinars (USD \$6,200), 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 still not fully developed.

II. Applicable Laws

- [Constitution of Serbia \(2006\)](#);
- Law on Associations (2009);
- Law on Endowments and Foundations (2010) (“Law on Foundations,” available only in Serbian at <http://www.kultura.gov.rs>);
- Law on Property (2001) (available only in Serbian at www.mfin.gov.rs);
- [Law on the Protection of Ethnic Minorities \(2002\)](#);
- Legal Entity Profit Tax Law (2001); [2] 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). [3]

Foundations, Endowments. On November 23, 2010, a new Law on Endowments and Foundations was passed in Parliament. The law provides for two categories of non-membership, organizations: a “foundation,” which is defined as a “not-for-profit, non membership and non-governmental legal entity pursuing public interest objectives,” and an “endowment,” which is defined as a “not-for-profit, non membership and non-governmental legal entity whose founder designated specific property to support its public or private interest objectives” (Article 2, Law on Foundations). The categories are based not only on the nature of the entity’s goals, but also on the capital requirement.

A foundation and an endowment can be established by legal or natural persons.

There is no capital requirement to establish a foundation. In order to establish an endowment, a minimum capital of 30,000 EURO (approximately USD\$ 42,000) is required. There is an exception: the competent state authority has the discretionary power to allow the establishment of an endowment pursuing a public interest objective if it determines that the organization may accomplish its objectives even without the minimum capital requirement. In addition, the minimum capital requirement does not pertain to endowments whose property was confiscated after the Second World War (Article 12, Law on Foundations).

B. Public Benefit Status

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 Associations and the Law on Foundations each contain a general requirement that the property of an organization must only be used to advance its statutory goals. In addition, the laws also prohibit any distribution of an organization’s property to its founders, members, managers, employees, and persons affiliated with the organization. [4] 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 organization (Article 41, Law on Associations, Article 47, Law on Foundations).

B. Proprietary Interest

The Law on Associations and the Law on Foundations preclude founders from having any proprietary interest in the organization; founders/members of an organization may not claim any part of the organization's property during its lifetime or in the case of its dissolution. This rule does not apply in the case of voluntary dissolution of an endowment pursuing private interest goals (Article 55, Law on Foundations).

C. Dissolution

The assets of a dissolved association or foundation 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, Article 55, Law on Foundations).[5] If, at the time of an organization's dissolution 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, Article 55, Law on Foundations).

D. Activities

1. General Activities

Registered associations, foundations, and endowments 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 and endowments 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 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).

The definition of public benefit in the Law on Foundations largely mirrors the one in the Law on Associations and is also illustrative, rather than exhaustive (Article 3, Law on Foundations). Organizations that pursue these public benefit activities are eligible to apply for state, provincial and local governmental support.

As discussed in Section V, below, compared to the NGO framework regulation, tax law provides for a narrower definition of public benefit. Deductions are provided only for donations that advance medical, educational, scientific, humanitarian, religious, environmental, and “sport” purposes.

3. Economic Activities

Associations, foundations and endowments pursuing public interest objectives 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 out in volume which is deemed necessary to advance the statutory goals of an association (Article 37, Law on Associations, Article 45, Law on Foundations). [6] In addition, an NGO must register one economic activity - the so called major economic activity it seeks to directly engage in - with the Registry of the Agency for Commercial Registry, but may directly engage in other economic activities insofar as they are envisaged in its statute. This rule has been inconsistently applied, as the supervising state authority occasionally has taken a position that an NGO may directly engage only in the economic activity which is registered with the Agency. Fines are levied on NGOs that do not meet the foregoing criteria (Article 72, Law on Associations, Article 62, Law on Foundations).

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, Legal Entity Profit Tax Law).

E. Political Activities

The Law on Foundations prohibits foundations and endowments from being established in order to directly engage in election campaigning, support political parties or candidates in elections, or raise funds for political parties or candidates (Article 6, Law on Foundations). The Law on Associations is silent on this point. 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 puts on equal footing foreign and legal and natural persons as founders. Both for-profit and not-for-profit legal entities may be founders of a foundation (Article 10, Law on Foundations).

V. Tax Laws

A. Tax Exemptions

NGOs 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. In order for an organization to be exempt from taxes levied on gifts, it has to apply for an exemption with the competent tax authority.

Under the Legal Entity 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 400,000 dinars (or USD \$6,200);
- 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 45, Legal Entity Profit Tax Law)

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, Legal Entity Profit Tax Law). 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] For purposes of this Note, the term “foundation” will be used in the general sense to refer to foundations and endowments pursuing public interest purposes under Serbian law, unless otherwise indicated. The term “NGO” will be used to encompass all not-for-profit organizational forms under the Serbian law discussed in the Note.

[2] The Enterprise Profit Tax Law was renamed the Legal Entity Profit Tax Law, and several provisions were changed (Official Gazette of the Republic of Serbia, No. 25/01, 80/02, 43/03, 84/04, 18/10).

[3] 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.

[4] “Affiliated persons” are any persons stipulated as such by the law governing commercial corporations (Article 37, Law on Associations). The Law on Foundations specifically incorporates provisions of the Law on Commercial Corporations in this respect – rather than providing references to those provisions (Article 47, Law on Foundations).

[5] 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.

[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. However, the wording of the Law on Foundations slightly differs in this respect from the Law on Associations. Article 45 of the Law on Foundations provides that a foundation may directly engage in economic activities which are

“incidental in terms of their volume,” without further references to the “volume which is deemed necessary to advance the statutory goals of an organization,” as provided in Article 37 of the Law on Associations. Local experts believe that this change is designed to limit somewhat the discretionary power of the supervising state authority in determining whether a foundation meets the conditions prescribed for its direct economic activities.

[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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