

Czech Republic

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I. Summary

A. Types of Organizations

The Czech Republic is a civil law country with five primary forms of not-for-profit organizations (NPOs):

- associations (*spolek*),
- foundations (*nadace*),
- funds (*nadační fond*),
- registered institutes (*ústav*), and

- social co-operatives (*sociální družstvo*).

In addition to these forms, which are provided for in the Czech Civil Code, there are also Public Benefit Corporations (PBCs) (*obecně prospěšná společnost*). However the law governing PBCs was abolished on January 1, 2014, when the new Civil Code of the Czech Republic entered into force, and no new PBCs may be established after that date.

The above legal entities (with exception of the social co-operative) are considered publicly beneficial taxpayers or not-for-profit organizations (NPOs) if their primary activity is not entrepreneurial (systematically pursuing profit making), as stated in their incorporation documents, statute, bylaws, or according to the decision of a public authority (Income Tax Law Article 17a(1)). The social co-operative, introduced by the new Civil Code in January 2014, is not necessarily included in the class of NPOs, but it will be discussed in this Note because it is a new type of organization that may be a useful tool for social enterprise.

Other not-for-profit legal forms which are outside the focus of this Note, include: religious organizations, political parties, political movements, interest associations of juridical persons, trade unions, and professional chambers, as well as specialized legal forms such as public educational juridical persons, public research institutions, and public universities.¹

B. Tax Laws

Under the Income Tax Law, NPOs are exempt from tax on income from non-commercial activities that during the entire taxation period do not generate a surplus of revenue over related expenses (provided that certain other conditions are met (see Section V.B. below)), as well as income from state subsidies and similar forms of support from public budgets (Income Tax Law Article 18a(1)).

Foundations, funds, registered institutes, and PBCs are generally exempt from the tax on donations or other forms of income received free of charge for certain purposes (see Section V.B. below). This exemption also applies to other public benefit NPOs, assuming that the exempted donation will be used for the organization's public benefit activities (Income Tax Law Articles 15(1) and 20(8)). Accordingly, NPOs as defined above generally do not have to pay income tax on foreign grants. The exemption applies to all NPOs with a seat in a European Union and European Economic Area member states (Income Tax Law Article 19b(2)(b)).

Economic activities and statutory activities that generate a surplus of revenue over related expenses are taxed at a reduced rate, up to a certain limit. Foundations considered as NPOs are exempt from tax on income generated

from their registered endowments if this income is used exclusively for the purpose for which the foundation has been established, and if the use of such income is not used in violation of the Income Tax Law.

The above exemptions from income tax are applicable only if the NPO submits a request to receive the exemptions (Income Tax Law Article 19b(3)).

NPOs are not generally exempt from output VAT on supplies provided to others in pursuit of statutory activities. However, activities of NPOs related to accredited educational activities, the provision of medical and social services, and certain other activities remain exempt from output VAT.

NPOs are also eligible for certain Real Property Tax exemptions. Both legal entities and natural persons may deduct donations to NPOs pursuing certain enumerated public benefit purposes and to organizations that filed and organized "public collections" under the Public Collections Law. (See Section V.A. below)

II. Applicable Laws

- Constitution of the Czech Republic, Act No. 1/1993 Sb., as most recently amended by Act No. 98/2013 Sb.
- The Constitutional List of Freedoms and Rights ("Constitutional Act"), Act No. 2/1993 Sb., as most recently amended by Act No. 162/1998, Sb.
- Civil Code, Act No. 89/2012 Sb. (entered into force on January 1, 2014)²
- Act on Business and Cooperates (Law on Commercial Corporations), No. 90/2012 Sb. (entered into force on January 1, 2014)³
- [Act on Public Benefit Corporations](#) ("Law on PBCs"), No. 248/1995 Sb., as most recently amended by Act No. 231/2010 Sb.⁴
- Act on Public Collections ("Public Collections Law"), No. 117/2001 Sb., as most recently amended by Act No. 142/2012 Sb. (Part 19 - Usage of personal data by public authorities), Act No. 303/2013 Sb. (Part 43 - Limited responsibility of persons), Act 340/2013 Sb. (Part 4 Article 54, Item 20 - Abolishing Part 3 of the Public Collections Law), Act No. 344/2013 Sb. (Part 42, Article 64, Item 21 - Abolishing Part 3 of the Public Collections Law), and Act No. 375/2015 Sb. (Part 17 - Adding a ban of public collection use to entities involved in financial crises)
- Act on Basic Register of Juridical Persons, Self-Employed Natural Persons and Public Authorities ("Law on Basic Registers"), No. 111/2009 Sb., as most recently amended by Act No. 303/2013 Sb. (Part 71 - Registering the Status of Public Benefit),⁵ and Act No. 312/2013 Sb. (Part 6 - On manner of registering data of foreigners)
- Act on Income Tax ("Income Tax Law"), No. 586/1992 Sb., as amended by Act on Changes of Tax Laws, No. 344/2013 Sb. (Part 1) (entered into force on January 1, 2014), as most recently amended by Decision of the

Constitutional Court No. 162/2014 Sb. (Taxation of aged persons), Act No. 247/2014 Sb. (Part 5 - Taxation of establishments caring of children), Act No. 267/2014 Sb. (Part 1 - Broad amendments of taxation details, including insertion of Article 21(f) on taxation of deposits into foundations and registered institutes and Articles 38v and 38W on obligation to report any tax-exempt income exceeding the value of 5 million CZK [about USD 200,000] and penalty for not doing so), Act No. 105/2016 (Part 1 - Introducing the automatic international exchange of financial information), and Act No. 113/2016 Sb. (Part 1 - Changes related to introduction of electronic registering of receives)

- Act on Real Estate Acquisition, No. 340/2013 Sb., as implemented by Regulation No. 419/2013 Sb. (entered into force on January 1, 2014)⁶
- Act on Real Estate Tax, No. 338/1992 Sb., as amended by Act on Changes in Tax Laws, No. 344/2013 Sb. (Part 1) (entered into force on January 1, 2014), Acts No. 23/2015 Sb. (Technical aspects) and 84/2015 Sb. (Part 4 - On tax exemptions for real estates in special industrial zones)
- Act on Value Added Tax ("VAT Law"), No. 235/2004 Sb., as amended by Act on Changes of Tax Laws, No. 344/2013 Sb. (Part 3 - Defining the owner of the land as responsible taxpayer for buildings on the lot), Act No. 196/2014 Sb. (Introduction of a single tax payment authority), Act No. 262/2014 Sb. (Part I - Shifting some basic products to lower tax rate category), Act No. 360/2014 Sb. (Introducing tax regulations for buildings with social support aspects), Act No. 113/2016 Sb. (Part 2 - Changes related to introduction of electronic registering of receives)⁷
- Act on Maternal, Basic, High, Higher Professional, and other Education ("Law on Schools"), No. 561/2004 Sb., as most recently amended by Act 64/2014 Sb. (Part 58 - On details concerning school inspection) and Act No. 82/2015 Sb. (Part 1 - Technical details including education in foreign languages and of foreigners or in a foreign country)
- Act on Higher Education ("Law on Universities"), No. 111/1998 Sb., as most recently amended by Act No. 64/2014 Sb. (Part 23 - Technical details concerning inspection of the Accreditation Commission activities)⁸
- Act on Criminal Responsibility of Juridical Persons ("Law on Criminal Responsibility of Juridical Persons"), No. 418/2011 Sb., as most recently amended by Act No. 141/2014 Sb. (Part 3 - On extension of penal responsibility to acts of raping, child abuse, and usury), and Act. No 86/2015 Sb. (Part 5 - On request of property securing)
- Act on Public Registers of Juridical and Natural Persons ("Law on Public Registers"), No. 304/2013 Sb. (entered into force on January 1, 2014) as most recently amended by Act No. 87/2015 (Part 5 - On obligations of a notary public to file the electronic form of documents)
- Act on Court Fees ("Law on Court Fees"), No. 549/1991 Sb. as most recently amended by Act No. 293/2013 Sb. (Part 2 - Fees for first and repeated registering), Act No. 335/2014 Sb. (Including Article 11(k) on exempt of

associations, foundation, fund, registered institute and PBC from registration fees), and Act No. 87/2015 Sb. (Details on fees for notary public registration activities)

III. Relevant Legal Forms

A. General Legal Forms

As in most civil law countries in Europe, the principal legal forms of not-for-profit organizations (NPOs) in the Czech Republic are associations and foundations. The Czech Republic has several additional forms, including funds, registered institutes, social co-operatives, and public benefit corporations (PBCs).

The Civil Code includes general provisions for the formation, establishment, operation, and termination of any juridical person, as well as for the processes of merging, splitting, or making other changes in legal form. It also defines in general the types, rights, and responsibilities of governing, supervisory, and control bodies of juridical persons (Civil Code Articles 15-22 and 118-209). For each kind of legal form, there are further specific provisions.

The Civil Code addresses three main categories of legal entities: a) corporations (*korporace*), b) fundaciae (*fundace*), and c) registered institutes (*ústav*). The main distinguishing feature of the corporation category is the existence of an active membership. This category includes all commercial companies, including those with a single proprietor, as well as **associations** of natural or juridical persons established for non-commercial purposes and serving the interests of their members or any public interest. Fundaciae, in contrast, include juridical persons without membership, established to take care of the property set aside by their founder(s) to be used for a given purpose. This category includes **foundations** (*nadace*) with a protected endowment (both grant-giving and operational) and **funds** (without an endowment) (*nadační fond*). The third category, **registered institutes**, are similar to fundaciae in that they do not have any members, and may be established for the purpose of rendering activities of certain socially or economically beneficial purposes according to the will of their founder(s).

Two additional legal forms - **public benefit corporations** and **social cooperatives** - are governed by different laws and may be considered NPOs under certain conditions.

The following sections describe all six legal forms in more detail.

Associations

In 2014, the Civil Code introduced a novel Czech term, "*spolek*" (which has the meaning of "association") for the legal form previously known as "*občanské sdružení*" and belonging to the general category of corporations. The association is distinguished as a not-for-profit, non-commercial, corporate entity, which has a certain minimum number of members and serves their interests and/or certain public interests (Civil Code Article 217).⁹

Associations (*občanská sdružení*) that were established according to the now-abolished Act on the Associating of Citizens (No. 83/1990 Sb.) are still considered to be associations under the new Civil Code. By the end of 2015, they must adapt their name to contain the word "*spolek*" or "*zapsaný spolek*," or add the legal form acronym "z.s." as a suffix, unless a court recognizes their existing name as acceptable. By the end of 2016, these "old" associations have to reconcile their bylaws and internal relations with the mandatory provisions of the new Civil Code. Within the same period of time, the highest body of an association (usually the general assembly of its members) may decide instead to change the legal form of the entity to a registered institute or social co-operative.

According to the Civil Code, associations may also form federations or alliances. For that form - an entity whose members are associations - the Civil Code uses the Czech term "*svaz*." However, with regards to regulations, there is no need to distinguish between "*spolek*" and "*svaz*."

Associations are specifically regulated according to Articles 214-302 of the Civil Code. While permitted to engage in both mutual benefit and public benefit activities, associations, like other legal entities, may not be established for the following purposes: violating the rights of other persons or the laws of the Czech Republic; pursuing military objectives; or interfering with activities reserved to the state (Civil Code Article 145).

The Civil Code provides that an association must be established by and remain composed of at least three persons (Civil Code Article 214(1)), and that it cannot be established for a purpose that is explicitly commercial (Civil Code Article 217) in the sense of engaging in entrepreneurship or focusing on profit-generating activity. It also stipulates that a quorum of the highest governing body and all other bodies of an association shall be formed by an absolute majority of all members of the association or the body, respectively (Civil Code Article 252), unless the association's bylaws do not explicitly provide otherwise (Civil Code Article 246(2)).

Provisions related to associations are generally applicable to other types of corporations, as concerns basic provisions of the private law. However, many types of corporate entities have special laws to regulate them, as is the case of business companies (see the Law on Commercial Corporations); political parties

and political movements; trade unions and unions of employers; churches and religious corporations; and vocational chambers and similar legal entities that promote the interests of and enforce rules for certain professions. These special laws either remained in force after the Civil Code entered into force in 2014, or they are considered frozen and not subject to amendment. In the latter case, they do not provide for the establishment of new legal entities of the relevant form, but remain a legal basis to regulate existing entities, unless mandatory provisions of the Civil Code or the Law on Commercial Corporations specify otherwise.

Foundations

Foundations (*nadace*) (Civil Code Articles 306-393) are asset-based organizations established by legal or natural persons, endowed with property to be used to serve a socially or economically beneficial purpose (Civil Code Article 306(1)).

The name of a foundation must include the word "*nadace*." Foundations must possess and maintain a protected endowment with an equity value of at least 500,000 Czech Crowns (approximately USD 20,000). Foundations may form other assets by collecting donations and must use all their income for the purposes defined in the founders' deed.

The foundation's endowment must be maintained, and the governing and supervisory bodies of the foundation are obliged to care for it and all other assets of the foundation. The endowment of a foundation may not be alienated or otherwise used to secure a debt. Any tangible or intangible assets forming a part of the endowment should have the potential to generate some income; this income is exempt from income tax when used for the publicly beneficial purpose of the foundation and not in violation of the law (Income Tax Law Article 19(1)(r)). Other assets of the foundation (including acquired donations) may be used to: pursue statutory purposes; provide financial support (such as grants) to third persons; cover costs of activities otherwise serving the purpose of the foundation; and cover administrative costs. The foundation must account for these expenditures separately (Civil Code Article 357).

Foundations may also be established for a charitable purpose, including support of a closed or otherwise restricted circle of persons (Civil Code Article 306(1)). However, in such a case, the foundation is not considered an NPO, and does not receive income tax benefits applicable to NPOs (see also Section V.A. below). It is forbidden to establish foundations exclusively for the purpose of profit-making. It is also not allowed to establish a foundation to support political parties and political movements or their activities (Civil Code Article 306(2)).

The Board of Directors is the statutory body of the foundation entitled to make all

necessary decisions. It must be comprised of at least three directors (Civil Code Article 362). The first directors are appointed by the founder or executor for a term of five years, unless otherwise determined in the founder's deed (incorporation document). The Board of Directors later maintains its composition according to the regulation provided in the founder's deed, usually by electing its own members (Civil Code Article 365).

While the directors do not have possessory rights to foundation assets, the Board of Directors is generally responsible for maintaining the endowment and any other foundation assets within the duty of care. The Board of Directors is specifically entitled to decide upon enhancing or reducing the equity value of the endowment, unless forbidden by the founder(s) in the incorporation document. The Board of Directors may decide on enrichment of the endowment, if it follows from the annual balance sheets that it is affordable without requiring the use of assets dedicated to another concrete purpose (Civil Code Article 342).¹⁰

The Board of Directors of the foundation may decide to reduce the registered equity value of the endowment, unless the founders' deed explicitly forbids it. However, such reduction must not exceed 20% of the endowment value over a period of five years or below the minimal value of CZK 500,000 (approximately USD 20,645), and the sources generated in this way must not be used directly or indirectly to cover the administrative expenditures of the foundation (Civil Code Article 344-346).

The Board of Directors may also decide to change the legal form of the foundation to that of a fund, if the equity value of the endowment has become lower than the required minimum for a prolonged period of time. This change in legal form requires the approval of the Supervisory Board or the Supervising Officer (Civil Code Articles 382, 391-393).

Foundations may engage in entrepreneurial activities, with the condition that such activities may only be auxiliary, and any profit generated must be used to support the main purpose for which the foundation was established.¹¹ However, the foundation may not become a partner with unlimited liability in a commercial company (Civil Code Article 307).

Anyone may conclude a written contract with a foundation to take certain property into custody as its "**associated fund**" (*přidružený fond*), and to request from the foundation to use this property for a specified purpose related to the statutory purpose of the foundation. The associated fund may bear its own denomination and the contract may include a reasonable charge, for which the foundation provides its custody services. The associated fund must be accounted for and kept separate from other property of the foundation; in case of liquidation it is also treated separately (Civil Code Articles 349-352).

Funds

Funds (*nadační fond*) are also asset-based organizations established by legal or natural persons to pursue a socially or economically beneficial purpose. The name of a fund must include the words "*nadační fond*."

Funds do not have a minimum endowment requirement. The assets of a fund consist of the founder's initial contribution and - later on - accepted donations, which are not required to yield further income. Funds are prohibited from pledging their assets or otherwise using their property to secure a debt. Any legal act aimed to such a use is considered invalid. On the other hand, the property of a fund may be alienated, if it is in accord with its purpose. It may also be used as a careful investment. Funds may be established for a limited period of time, or until their assets are fully consumed for the purpose defined in their incorporation document (Civil Code Articles 394-401).

If explicitly allowed in the founders' deed, the Board of Directors of the fund may decide to change the legal form of the fund to that of a foundation. This requires the prior consent of the Supervisory Board or Supervising Officer. In addition, the creditors of the fund must be given thirty days' notice in order to be able to request sufficient security for their claims (Civil Code Articles 399-400).

Registered Institute

The registered institute (*ústav*) is established by private or public persons for the purpose of carrying out activities that are socially or economically beneficial and accessible to everyone, under conditions well defined in advance (Civil Code Articles 402-418). Like foundations, the registered institute is a non-membership-based organization operating to make use of its own personal and material components. It may not distribute its profits to affiliated persons such as members of its governing and supervisory bodies and employees. The name of the registered institute must contain the words "*zapsaný ústav*" or the legal form acronym "z.ú." as a suffix (Civil Code Article 404).

Registered institutes may operate a business-oriented firm or be engaged in other auxiliary, profit-bearing economic activity under the condition that such activities do not jeopardize the quality, scope, and accessibility of the services provided in the framework of the institute's statutory activities. Any generated profit must be used exclusively to support of the activity for which the registered institute has been established and to cover administration costs (Civil Code Article 403).

In contrast to foundations or funds, the statutory body of a registered institute is

its Executive Director. The Board of Trustees of a registered institute, which is formed similarly to a foundation or fund's Board of Directors, has an oversight role and guarantees the fulfillment of the purpose for which the institute was established. The Board of Trustees has specific rights regarding the alienation of real estate in the registered institute's possession, disposition of owned authorship or industrial rights, establishment of another legal entity, and budgeting and reporting. Such operations may take place only with the Board of Trustees' consent.

With the exception of provisions related to the endowment and equity value, and those specific to the Executive Director and Board of Trustees, the provisions of the Civil Code that relate to foundations also apply to registered institutes (Civil Code Article 418).

Foundations, funds, and registered institutes are exempt from property tax on buildings, and from real estate tax, if the building or land is used to advance their purposes.

Social Co-operative

Title VI of the Law on Commercial Corporations regulates the establishment, operation, termination, and liquidation of co-operatives.¹² It provides the basis for a special legal form that may be considered an NPO: the social co-operative (Law on Commercial Corporations Articles 758-773).

A social co-operative is defined as a community of at least three persons, which is a legal entity established for the purpose of the mutual support of its members, or the support of third persons, or to undertake business pursuits. Social co-operatives pursue publicly beneficial activities aiming to promote social cohesion, including the provision of workplaces and the integration of handicapped persons into society (Law on Commercial Corporations Article 758). The social co-operative is also supposed to make preferential use of local resources according to its seat or location of its operations, particularly in the field of employment development, social services, health care, education, and sustainable regional development.

The name of the social co-operative must contain the words "*sociální družstvo*" (Law on Commercial Corporations Article 759). A social co-operative must not change the purpose of its activities in a way that would not be in line with the definition given in Article 758, above. Social co-operatives also may not change their legal form - merging or splitting - unless the resulting legal form is also a social co-operative (Law on Commercial Corporations Article 760).

The members of a social co-operative comprise: persons employed by the social

co-operative, persons working for it as volunteers, or persons to whom the social co-operative provides its services. Every member of the social co-operative is obliged to contribute to the basic property of the social co-operative. Membership in the social co-operative is not transferrable to other persons.

Social co-operatives may engage in entrepreneurial activities. However, a social cooperative is not permitted to: issue bonds or secure liabilities of other persons with its property; participate in commercial activities of other persons or be a part of a contract on silent partnership; or alienate or sublet its branch to a legal person that is not a social co-operative.

The bylaws of the social co-operative may provide that it can distribute the net profit among its members after meeting the requirements of the reserve fund and other internal funds. In such a case, however, it may not distribute more than one-third of the disposable profit. If a social cooperative is terminated, its members have the right to be repaid their initial contribution, or a proportion of it if the liquidation balance is not sufficient. What remains of the liquidation balance must be transferred to another social co-operative or to the community where the social co-operative has its seat.

Public Benefit Corporations (PBCs)

PBCs are NPOs that have no members and provide "generally beneficial services" to the public on previously publicized and equal terms and conditions (Law on PBCs Article 2). PBCs were originally devised as legal entities for the transformation of state subsidized entities. In practice, PBCs were commonly used as an alternate legal form for foundations created before 1998 that could not meet the endowment requirement for establishing a foundation under the now-abolished Law on Foundations. Other organizations - such as theatres, hospitals, homes for the elderly, drug rehabilitation clinics, and other kinds of NPOs providing community services - became PBCs after the enactment of the Law on PBCs. Institutes, community centers, and entities providing social, educational, and cultural services also often took the form of PBCs. The name of the PBC must contain the words "*obecně prospěšná společnost*" or the legal form acronym "*o.p.s.*" as a suffix (Law on PBCs Article 2(2)).

With regard to managerial entities, the Executive Director serves as the PBC's statutory body. He or she must be a natural person without a criminal record. The Executive Director is appointed and recalled by the Board of Trustees. The Board of Trustees is appointed by the PBC's founder(s) and serves to guarantee the integrity of the PBC's assets and other property, as well as the pursuit of the PBC's purposes (Law on PBCs Articles 12-14). The Supervisory Board oversees the operations of a PBC, along with its Executive Director, and Board of Trustees; the Supervisory Board reports its findings annually to these bodies as

well as to the founder (Law on PBCs Articles 15-16).

A PBC may provide its statutory services for a fee and may otherwise engage in economic activities if the income generated augments the use of the organization's assets and human resources, without negatively affecting the quality, scope, and availability of the statutory public services it provides (Law on PBCs Article 17(1)). The Law on PBCs allows a PBC to establish another legal entity, with the approval of the PBC's Board of Trustees (Law on PBCs Article 13(1)(d)).

PBCs are exempt from property tax on real estate tax, as well as taxes on buildings if the buildings form a compact property in their possession or if the buildings are used to advance their purposes.

With the entering into force of the Civil Code in 2014, PBCs have to decide whether to continue with the legal form of a PBC or transform into a registered institute, foundation (if they have sufficient property to satisfy the required endowment equity value), or a fund. The Board of Trustees of the PBC must decide on such a change in legal form, with the consent of the PBC's Supervisory Body.¹³ PBCs that decide to continue without changing their legal form will continue to be regulated by the Law on PBCs. However, no new PBCs may be established after December 31, 2013.

B. Public Benefit Status

The Civil Code introduces the notion of a "publicly beneficial juridical person" as an entity with the mission of contributing to the general welfare through its activities, in accordance with its incorporation documents.¹⁴ Only persons without criminal records may govern such entities. Any property of a juridical person with the public benefit status must originate from lawful transactions and must be reasonably used for a publicly beneficial purpose (Civil Code Article 146).

The Civil Code provides that a publicly beneficial juridical person may register its public benefit status in the public register, pertaining to its given legal form. The court may decide to remove the status if the juridical person ceases to fulfill conditions for having the status, and does not remedy the deficiencies within a reasonable time (Civil Code Articles 147-149). The entity may choose to voluntarily resign the status, as well.

The provisions of the Civil Code refer to a special law that should define the conditions for public benefit status. However, until 2016 such a law has not yet been passed by the Czech Parliament.¹⁵ Nonetheless, the concept of a publicly beneficial taxpayer is incorporated into the Income Tax Law and the Public Collections Law.

Under the Income Tax Law, juridical and natural persons may generally deduct from their taxable income donations to a legal entity that is considered an NPO if: 1) the NPO is based in any member state of the European Union, or in Norway or Iceland; and 2) the recipient allocates the received money to certain public benefit activities, such as: science and learning, research and development, culture, schools, police, fire squads, support and protection of young people, protection of animals and their health, social and health care, ecology, humanitarian and charity purposes, religious purposes for registered churches and religious communities, and sports.¹⁶ Assistance for relief in the event of humanitarian and natural disasters is treated similarly (Income Tax Law Articles 15(1) and 20(8)).

The tax base reduction applies also to foreign legal entities that organize a "public collection." Under the Public Collections Law, "public collections" are limited to collecting contributions in order to promote "public benefit purposes," such as humanitarian and charitable goals, the development of education and learning, physical fitness and sports, the protection of cultural heritage or traditions, and the environment (Public Collections Law Article 1). Thus, tax deductibility may depend on how an NPO uses the donation. (See also Section V.A. below)

IV. Specific Questions Regarding Local Law

A. Inurement

Any profit generated from the main and auxiliary activities of an **association** must be used exclusively for the association's activities, including covering the costs of its administration (Civil Code Article 217(2-3)). If an association is terminated, the liquidation balance must be used as set forth in the bylaws of the association. In case of an association with registered public benefit status, the liquidation balance must be used for publicly beneficial purposes (Civil Code Article 272(1)).

Likewise, the assets of a **foundation** or **fund** must be used in a manner consistent with the purposes and conditions set forth in the organization's governing instruments (Civil Code Articles 338 and 398). In addition, the law precludes certain individuals associated with a **foundation** from receiving grants from the foundation, including: employees, the Supervising Officer, members of the Board of Directors or Supervisory Board or any other foundation body, as well as persons closely related to these individuals (Civil Code Article 353). There are no legal barriers for members of foundation bodies to receive reimbursement for their services to the foundation, but they should not be directly employed by it

(Civil Code Article 363b). There are no legal limitations on what compensation may be offered, if the compensation comprises part of the foundation's administrative costs (Civil Code Article 338). As regards the **fund**, the Civil Code does not specify any additional limits with regard to the members of its bodies, nor does it refer to the mandatory application of provisions related to foundations.¹⁷

Any profit generated by a **registered institute** must be used exclusively to cover the costs of activities for which the registered institute has been established, as well as administration costs. The institute's incorporation document may include provisions allowing for the compensation of members of institute bodies for their services to the registered institute. In absence of such provisions, however, it is assumed that membership is honorary. However, the Executive Director is entitled to fair remuneration and the Board of Trustees decides on the value or the manner in which the remuneration is determined (Civil Code Article 414).

The **social co-operative** may distribute up to 33% of its disposable profit among its members, unless the bylaws of the social co-operative provide otherwise. Additionally, before such distribution, the reserve and other internal funds of the social co-operative, if any, must be used (Law on Commercial Corporations Article 766).

The employees of **public benefit corporations** may be appointed to the PBC's Board of Trustees, however they may not comprise more than one-third of its members. The members of the Board of Trustees and the Supervisory Board may be regularly compensated for services rendered to the PBC (Law on PBCs Articles 9a, 21(1)(f)). Nevertheless, the law prohibits the use of a PBC's profit for the benefit of its founders, members of its management bodies, or employees (Law on PBCs Article 2(1)(c)). The salary of the Executive Director and sum of the PBC's compensations to the members of the boards must be reported as a part of the mandatory Annual Report (Law on PBCs Article 21(1)(f)).

B. Proprietary Interest

In general, it holds for all NPOs as defined above (with the exception of the social co-operative) that they may act as founders of other legal entities, unless otherwise specified in the law. The Civil Code explicitly prohibits the use of profit generated by the economic activities of associations, foundations, funds, and registered institutes for anything other than for supporting the purpose(s) for which these organizations were established, and to cover administrative costs. The same rule applies for PBCs. However, no NPO mentioned in this paragraph may become a partner with unlimited liability to a commercial corporation. This limits the choice of legal entities that NPOs may establish on their own to: other NPOs, companies with limited liability, and share-holding companies.

Foundations, funds, registered institutes, and PBCs are legal entities not belonging to the category of corporations and so, by definition, there is no natural nor juridical person that may claim proprietary interests to the property contributed, acquired, generated or otherwise taken into possession of the entity.¹⁸

In general, it also holds that any donor providing monetary or non-monetary donation or other contribution to a legal entity may do so under contract, in which it is specified the manner and/or purpose of the use of the donated or contributed assets. Such contracts may specify the conditions under which the donated or contributed assets must be returned to the original owner in cases of misuse or inability to properly use such assets. Therefore, the NPOs might have liabilities to individual donors or contributors and in case of termination such claims must be taken into account.

The social co-operative is essentially defined as a commercial corporation. The proprietary interests of its members to the profit and property of the social co-operative are limited as described in Sections IV.A. and IV.C.

C. Dissolution

The Civil Code generally provides for the winding up and final termination of all private juridical persons (Civil Code Articles 168-173 and 185-209).

Associations

For associations, dissolution requires the liquidation of association assets (Civil Code, Articles 269-273).¹⁹ The relevant body of the association or a court appoints a liquidating officer, who must compile a list of the association's property and make the list available for all members of the association for revision. The liquidating officer sells the association's property only to the extent necessary to pay off the association's debts, and uses the rest of the liquidation balance in accordance with the association's bylaws. Except for registered public benefit status associations, an association may distribute its remaining assets to its members upon dissolution if such distribution is provided for in the association's bylaws. Any attempt to use the liquidation balance of an association with the status of public benefit for other than publicly beneficial purposes is deemed invalid and void. If it is not possible to use the liquidation balance of an association in accordance with its bylaws, the liquidation officer must offer it to another association with a similar purpose. If that is not possible, the offer goes to the community where the association has its seat. If the community does not accept the offer, it is transferred under the control of the respective regional self-government. The public authorities are obliged to make use of the offered

liquidation balance explicitly for a publicly beneficial purpose (Civil Code Articles 271-272).

If the association has accepted grants or other contributions from a public budget, the above-mentioned procedure is not applicable, and the liquidating officer shall dispose of the relevant part of the liquidation balance according to the directions of the relevant public authority (Civil Code Article 273).²⁰

Foundations and Funds

In the event of the voluntary termination of a foundation (e.g., if it has achieved its purpose) or a fund (e.g., in case of impossibility to further fulfill its purpose) the Board of Directors of the foundation or of the fund decides on their termination, and appoints a liquidation officer. Foundations and funds may be also terminated upon the decision of a court, if a) they act in violation of the law; b) they are not active for more than two years without serious reason; or c) it is otherwise impossible to fulfill the purpose for which these entities were established. In such cases the court appoints the liquidation officer (Civil Code Articles 376, 377, and 401).

As with associations, the liquidating officer sells the property of the foundation only to the extent necessary to pay off the foundation's debts, and uses the rest of the liquidation balance in accordance with the incorporation document of the foundation. If the incorporation document of a foundation established exclusively for public benefit purposes allows use of the liquidation balance for other than publicly beneficial purposes, such a provision is considered invalid and shall not be applied.²¹ If the incorporation document does not define how the remaining liquidation balance should be disposed of, the liquidation officer must offer it to another foundation with similar purpose or upon decision of the Board of Directors to the community, region, or the state, if there is a good reason for it. If that is not possible, the offer goes to the community where the association has its seat. If the community does not accept the offer within two months, the remaining liquidation balance of the foundation shall be transferred to the control of the regional self-government where the foundation has its seat. The public authorities are obliged to make use of the offered liquidation balance explicitly for a publicly beneficial purpose (Civil Code Articles 378-380). If the foundation has accepted a purpose-bound subsidy from a public budget, the above-mentioned procedure shall not be applied, and the liquidating officer shall dispose of the relevant part of the liquidation balance according to the directions of the relevant public authority (Civil Code Article 381).

In addition, a foundation may, if its incorporation document explicitly allows it, change its legal form by merging with another foundation, or with a fund that serves a similar purpose. The resulting legal form must be a foundation (Civil

Code Article 382). In the case that the equity value of the endowment has fallen not temporarily below the minimum value of CZK 500,000, the Board of Directors of the foundation may decide to change the legal form of a foundation to that of a fund. This requires the consent of the Supervisory Board or Supervising Officer (Civil Code Article 391).

When explicitly allowed in the incorporation document, the Board of Directors of a fund may decide to change the fund's legal form to that of a foundation. As with foundations, this change requires the consent of the Supervisory Board of Supervising Officer (Civil Code Article 399).

Registered Institutes

According to the Civil Code, the provisions for foundations generally apply to registered institutes as well, with the exception of provisions related to the foundation endowment (Civil Code Article 418). This may be interpreted to mean that it is possible to merge one registered institute with another, or split it into two or more registered institutes. Nevertheless, only future judicial practice will provide more insight into the interpretation of these provisions.

Social Co-operatives

Upon termination of a social co-operative, its members have the right to receive compensation equal in monetary value to the basic contribution they made when entering the social co-operative - or to a proportion of it, if the liquidation balance is not sufficient. What remains of the liquidation balance must be transferred to another social co-operative or to the community where the social co-operative has its seat (Law on Commercial Corporations Article 772).

Public Benefit Corporations

The liquidation balance of a public benefit corporation after termination may be transferred only to a PBC identified in the organization's statute, or determined by the Board of Trustees when deciding to terminate the PBC and to liquidate its assets (Law on PBCs Article 9). A PBC's founder(s) must be informed and may act to prevent the termination of the PBC (Law on PBCs Article 8(2)). A PBC's incorporation document may also permit the transfer of a founder's rights to another person (Law on PBCs Article 8(7)). If there is no other PBC willing to acquire the property or liquidation balance, the remaining assets revert to the local government or the state (through the local government where the PBC was registered). Additionally, in this case, the assets must be allocated to a public benefit activity (Law on PBCs Article 9(6-10)). However, if the founder is a public entity, the liquidation balance of the PBC must be transferred to the founder, unless the incorporation document issued by the founder(s) identifies another

PBC to take over the remaining assets after termination of the PBC (Law on PBCs Article 9(7)-(9)).

According to the transitional provisions of the Civil Code, PBCs may decide on a change of legal form to a registered institute, a foundation, or a fund (Civil Code Article 3050). In such a case, the general provisions of the Civil Code (Articles 174-184) apply.

D. Activities

1. General Activities

Associations may engage in both mutual benefit and public benefit activities. In contrast, funds, registered institutes, PBCs and even social co-operatives are statutorily required to pursue socially or economically beneficial objectives (Civil Code Articles 306, 394 and 402; Law on PBCs Article 2(1); Law on Commercial Corporations Article 758). Foundations are also statutorily required to pursue socially or economically beneficial objectives; however, they may also be established for charitable objectives addressing the needs of a closed circle of persons (Civil Code Article 306).²²

In summary, associations and PBCs must not be established for the purpose of undertaking commercial, for-profit, economic activities (Civil Code Article 217; Law on PBCs Article 17(2)). However, associations and PBCs may be engaged in auxiliary economic activities on condition that all profit from these activities shall be used exclusively for supporting the statutory purpose or to cover administrative costs (Civil Code Article 217(2); Law on PBCs Article 17(1)). Foundations, registered institutes, and social co-operatives may engage in entrepreneurial activities on condition that all profit is used exclusively for supporting their statutory purpose or to cover administrative costs (Civil Code Articles 307 and 403; Law on Commercial Corporations Article 760).²³ There are no provisions in the Civil Code that would regulate this in the case of a fund.

2. Public Benefit Activities

As discussed above, all forms of NPOs may engage in social and economically beneficial or publicly beneficial activities. By their nature, foundations, funds, registered institutes, social co-operatives and PBCs must primarily engage in activities in pursuit of public benefit goals.²⁴

The Law on PBCs, for instance, requires PBCs to provide generally beneficial services that are open to the general public. The Law does not further define what a commonly beneficial service is, but requires that the conditions for

providing such services be specified in the incorporation document of the PBC (Law on PBCs Article 2(1)(b)). Similarly, the incorporation document of the registered institute must contain details concerning its socially or economically beneficial objective, including providing that the results of these activities must be equally accessible to all persons (Civil Code Articles 402 and 405(3)(b)). The Income Tax Law provides a more concrete definition of public benefit activities for the tax treatment of donors and beneficiaries of donations. (See also Section III.B. above and Section V. below)

3. Economic Activities

An **association** may not be established for the primary purpose of carrying out entrepreneurial or other income-generating economic activities (Civil Code Article 217(1)). The association may, however, carry out auxiliary economic activity consisting of entrepreneurship or other income-generating activity, if the objectives of such activities support the association's main activities or enhance use of association property. The profit generated from activities of an association may be used only for the association's activities, including administrative costs (Civil Code Article 217(2)-(3)).

It is likewise forbidden to establish a **foundation** for primarily income-generating purposes. Foundations may be engaged in entrepreneurship, if such activity represents only auxiliary activity, and all profit is used only to support the purpose for which the foundation was established. However, such economic activities are forbidden if the founder(s) stipulated as such in the incorporation document of the foundation. A foundation must not partner with a commercial corporation as a partner with unlimited liability. Violation of these rules may be grounds for the termination of a foundation by a court (Civil Code Articles 306(2), 307, and 377(1)(a)-(b)).

A **fund** may be established for a socially or economically beneficial purpose. Its property is formed of contributions and donations from its founders and donors. The fund may not pledge its property or otherwise use it to secure debts; any legal act that violates this rule is considered void. However, all property of the fund may be alienated, if it is in the interest of the purpose for which the fund was established (Civil Code Articles 394, 398). The law does not explicitly provide for the right of funds to take part in entrepreneurial activities, as is the case for foundations, and as such it may be concluded that such activities are not allowed.

A **registered institute** may carry out a business enterprise or other economic activity on an auxiliary basis, but it must not jeopardize the quality, scope, and accessibility of the institute's services, which must primarily comprise socially or economically beneficial activities. The registered institute may use any profit only to support the activity for which it was established and to cover its administrative

costs (Civil Code Articles 402, 403).

A **social co-operative** is a type of a commercial corporation that is suitable for carrying out social enterprise. As such, economic activities are one of the main characteristics of this legal form.

Public Benefit Corporations, similar to registered institutes, may engage in economic activities so long as these do not jeopardize the quality, scope, and availability of the organization's public benefit services (Law on PBCs Article 17(1)). PBCs may establish another juridical person but are not allowed to take part in the entrepreneurial activities of other juridical persons (Law on PBCs Article 17(2)).²⁵ Any profit earned from economic activities must be used for a PBC's development.

E. Political Activities

Czech law treats NPOs in the same manner as other legal entities. Accordingly, NPOs are generally allowed to support or oppose political candidates and to participate in lobbying and public advocacy activities. Nevertheless, there may be limitations on particular political activities depending on the NPO's legal form, as described below. Further, a special law on associating in political parties and political movements (Act No. 424/1991 Sb.) provides some additional constraints, for example reserving political parties and movements the right to register candidates for elections.

Nothing prohibits **associations** from engaging in legislative or politically motivated activities. In fact, associations are often active participants in fiscal decision-making processes, environmental and regional development planning, as well as political advocacy.

Foundations and **registered institutes** may not be established for the purpose of supporting political parties or movements, nor may they provide funding to political parties or movements or otherwise support or participate in their activities (Civil Code Articles 306(2) and 418). Violations of this rule may be cause for judicial termination of the foundation or the registered institute (Civil Code Article 377(1)(a)). However, neither foundations nor registered institutes are prohibited from engaging in general legislative and political activities.

In the case of **funds**, **social co-operatives**, and **PBCs**, there are no explicit legal provisions concerning activities related to political parties and movements.

F. Discrimination

The Czech Constitution explicitly prohibits discrimination based on, inter alia, sex,

race, skin color, language, religion, political or other persuasion, national or social origin, or belonging to a national or ethnic minority (Constitutional Act Article 3(1)). The Civil Code further forbids the establishment of any form of juridical persons to engage in activity that denies or restricts the civil rights of individuals because of their nationality, sex, race, origin, political opinions, or religious affiliation (Civil Code Article 145). This clearly precludes, for example, a private school or other educational institution operated as a foundation, registered institute, or PBC, as well as any other subject of the law, from discriminating based on gender, race, ethnicity, or sexual orientation.

G. Control of Organization

Under Czech law, there are no limits on the ability of foreign individuals to found and participate in an NPO of any form.²⁶ Foreign natural and legal persons are explicitly allowed to establish and participate in the governing bodies of associations, foundations, funds, registered institutes, social co-operatives, and PBCs (Civil Code Articles 214, 309(2), 396, and 406; Law on PBCs Article 3; Law on Commercial Corporations Article 763).

The Civil Code limits interlocking control with other organizations in some cases. For instance, a foundation may not provide a grant to a person who is a member of its statutory or supervisory body, its employee, or is close to such persons (Civil Code Article 353(1)). The foundation generally may not provide a grant to its founder, either: If there are special circumstances that should be taken into account, such a grant may be provided only after the Board of Directors obtains consent from the Supervisory Board or the Supervising Officer of the foundation (Civil Code Article 353(2)).

Individuals with a management or controlling position in an NPO may be subject to liability if the NPO violates the law.²⁷

V. Tax Laws

This section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

The basic income tax rate is 15% of the tax base (Income Tax Law Articles 16 and 34).²⁸ It should be noted that since 2010, there has been a solidarity increase on income tax of an additional 7% off of personal incomes that exceed 48 times the minimum wage as valid for the given year (Income Tax Law Article 16a).

In 2014, the VAT rate was set to 21% for most goods and services, with a lesser

15% rate for certain food products and some health care-related goods and services. In 2015, a third VAT rate of 10% was added for products consumed by families with small children (VAT Law Article 47 and Appendices 1, 2, 3, and 3a).

The amended Income Tax Law abolishes the Law on Heritage, Donations, and Transfer of Intangibles, making income from donations one of the taxable income categories. Moreover, any income of natural and legal persons from inheritance is income tax exempt (Income Tax Law Article 19b(1)(a)).

The amended Income Tax Law also retains the main tax benefits and taxation conditions for NPOs, such as a possibility to reduce the base for income tax calculation to all NPOs, if they are considered publicly beneficial taxpayers.

A. Tax Exemptions

The Income Tax Law introduces a notion of a "publicly beneficial taxpayer:" an entity, which, in accordance with its incorporation documents, statute, by-laws, or upon decision of a public authority, carries out its statutory (main) activities exclusively in a not-for-profit manner. However, the Law excludes from this status explicitly commercial corporations, professional chambers, and similar organizations that protect the entrepreneurial rights of their members (other than associations, trade, and employer unions), Czech public media, health insurance companies, communities of apartment owners, and foundations that serve to the persons close to their founders (Income Tax Law Article 17a). Publicly beneficial taxpayers are exempt from tax on incomes originating from not-for-profit activities, as well as from subsidies and grants from public budgets, and other types of income as defined in special laws concerning compensation for property confiscated to churches under communist regimes (Income Tax Law, Article. 18a(1)).

The Income Tax Law generally excludes from income taxation the income of publicly beneficial taxpayers earned in connection with the pursuit of their statutory activities, provided that the income is less than related expenses (Income Tax Law Article 18a(3)). Income of these taxpayers that is derived from subsidies and grants provided by the state, regional and communal public budgets, as well as from the budgets of the EU, EU member states, Iceland, and Norway, is also exempt from taxation (Income Tax Law Articles 4(1)(t) and 18a(1)(b)). The income from membership fees as defined in the statutory documents of an association, a trade union, a political party or movement, or a professional chamber with voluntary membership, is likewise tax-exempt (Income Tax Law Article 19(1)(a)). However, income from advertisements and facility rentals is subject to taxation (Income Tax Law Article 18a(2)).

Publicly beneficial taxpayers are obliged to maintain their accounting records in a

way that keeps income and related expenditures that are subject to the income tax separate from income and related expenditures that are tax-exempt (Law on Income Tax Article 18a(4)).

Foundations that are considered publicly beneficial taxpayers (i.e., with the exception of those foundations established for a charitable purpose of supporting closed circles of persons affiliated with their founders) enjoy a special exempt category, which comprises earnings resulting from economic use of property that is a registered part of the foundation's protected endowment. These endowment yields are fully exempt from income tax if they are used for the purpose of the foundation and not in violation of the law (Law on Income Tax Article 19(1)(r)).

The Income Tax Law specifically states that publicly beneficial taxpayers are generally not required to pay income tax on interest on accounts, state subsidies, and other income from their statutory activities, provided that the expenditures exceed the income from the activity (Income Tax Law Article 18a(1)(a)).²⁹

Foundations that are considered publicly beneficial taxpayers, funds, registered institutes, PBCs, and other publicly beneficial taxpayers resident in any state of the EU, Iceland and Norway are also exempt from the tax on donations (Income Tax Law Article 19b(2)(b)).

Income from profit-yielding economic activities that is related to the statutory purposes of a publicly beneficial taxpayer is subject to a reduced tax. All related income is fully exempt from income tax up to CZK 300,000 (approximately USD 12,000). Total revenues (i.e., income minus related expenses) at the end of the fiscal year that exceed this amount are reduced before taxation by 30% up to CZK 1,000,000 (approximately USD 40,000), or whichever is less, provided that the proceeds are used for statutory activities within three years of accrual and other conditions are met (Income Tax Law Article 20(7)). In cases where the tax payer is a public college, university, PBC, or registered institute acting according to the Law on Universities, the maximum amount that may be deducted is CZK 3,000,000 (approximately USD 120,000).³⁰

In general, corporate income tax is calculated as 19% of the reduced tax base (income minus related expenses reduced by deductible portions and after applying the 30% reduction discussed above rounded down to thousands).

Income from free-of-charge fulfillments (i.e., grants, subsidies and donations) is deductible from the tax base if received by publicly beneficial taxpayers - that is, those which according to their incorporation documents, statutes, bylaws, law or according to the decision of a public authority, pursue as their statutory activity only non-commercial, not-for-profit activities. These are: foundations (except those established for charitable purposes, which according to their incorporation documents are serving or acting to support a closed circle of persons), funds,

registered institutes and public benefit corporations, registered churches and religious congregations, and political parties. This category also includes associations that pursue, according to their bylaws, a publicly beneficial purpose. However, the exemption shall only be applied if the taxpayer requests it (Income Tax Law Article 19b(2)(b) and (3)).

Contributions earned through public collections organized in compliance with the Law on Public Collections or received for humanitarian and charitable purposes may be also deducted from the income tax base (Income Tax Law Article 19b(2)(c)-(d)).

B. Deductibility of Charitable Contributions

Donations equal to or higher than CZK 2,000 (approximately USD 80) provided as charitable contributions to communities, regions, branches of state administration, juridical persons with their seat in the Czech Republic, as well as to juridical persons organizing public collections organized in compliance with the Law on Public Collections, may be deducted from the corporate income tax base.³¹ In order to qualify for the deduction, the donation must be provided for the purpose of supporting activities in one or more of the following fields: science and education; research and development; culture; teaching in schools; police; fire prevention and protection; support and protection of young persons; protection of animals and their health; social or health care; ecological, humanitarian, and charitable purposes; religious purposes of registered churches and congregations; physical training and sporting activities; and support of political parties and movements and their activity. However, NPOs themselves may not deduct any donation they are providing from their own property (Income Tax Law Article 20(8)).

Violations of the rules of public collections are punishable by fines up to CZK 500,000 (approximately USD 20,000) (Public Collections Law Article 25).

For legal entities, up to 10% of taxable income is deductible from the tax base (Law on Income Tax Article 20(8)). Individuals may deduct donations to qualifying NPOs up to 15% of the person's taxable income. However, to qualify for the deduction, the individual must donate an amount that is greater than 2% of his or her taxable income or is at least CZK 1,000 (approximately USD 40) (Law on Income Tax Article 15(1)).

C. Value Added Tax

Under the VAT law as in force from January 1, 2015, the standard VAT rate is 21%. A reduced VAT rate of 15% is applied to many food products and goods of

special importance for health care, social services and similar activities, and printed books. This VAT rate also applies to certain services, including wheelchair maintenance, water distribution, public transportation, health and social care, the care of children, ill and elderly persons provided in hospices, and several cultural activities (Law on VAT Article 47(1)). A third VAT rate of 10% is applicable to products for newborns, children's books and basic food products.

NPOs are no longer generally exempt from VAT on supplies relating to their statutory purposes. Instead, VAT exemptions are limited to specific activities, including:

- Income from renting facilities and equipment (Law on VAT Article 56a);
- Educational services and goods provided and used by registered schools, educational institutions, universities, and accredited vocational training facilities. Similarly exempt are educational and free-time activities provided to children and youth by youth-focused NPOs (Law on VAT Article 57(1)(a) and (1)(g));
- Health insurance, services and goods provided by licensed entities to patients and persons covered by public health insurance, including the transportation of patients by specialized means. This is subject to certain exceptions, such as ophthalmology services and pharmaceutical products (Law on VAT Article 58);
- Social services provided according to special laws (Law on VAT Article 59);
- Provision of services, as compensation for membership fees, to members of political parties, churches and religious communities, associations, trade unions, professional chambers and to other juridical persons established for not-for-profit purposes, under the condition that the exemption would not jeopardize market competition (Law on VAT Article 61(a));
- Services and goods closely related to the protection and education of children and youth provided by public subjects or juridical persons that were not established for entrepreneurial purposes (Law on VAT Article 61(b));
- Rendering of one's personal capacities to churches and similar organizations to undertake activities related to tax-exempt educational and social services (Law on VAT Article 61(c));
- Provision of services related to sports and physical training by juridical persons that were not established for entrepreneurial purposes (Law on VAT Article 61(d));
- Provision of cultural services and related goods by the regional government, by a community, or by a juridical person established by the Ministry of Culture or juridical persons that was not established for entrepreneurial purposes (Law on VAT Article 61(e));
- Provision of services and goods by persons whose activities are exempt for educational, health care and social purposes, provided that such goods are sold and services provided exclusively during activities organized to raise funds for activities for which the organizations have been established, unless

such an exemption would jeopardize market competition (Law on VAT Article 61(f)); and

- Provision of VAT-exempt services by independent groups of persons with legal personality exclusively to their own members without requesting deduction of paid VAT if these services are indispensable for the purpose of the groups' existence and the exemption would not jeopardize market competition (Law on VAT Article 61(g)).

VAT must be added to the cost of services and goods and paid to the state by anyone whose turnover exceeds 1,000,000 CZK (approximately USD 40,000) within the preceding 12-month period of time. Excluded from this rule are persons executing exclusively VAT-exempt payments and not requiring VAT rebate (Law on VAT Article 6(1)). Goods imported by an NPO from other EU member states up to a total value of CZK 326,000 (approximately USD 13,040) within a calendar year are not included in the VAT calculation, with the exception of new cars or goods subjected to the consumption tax (Law on VAT Article 2a (3)). Also, any legal entity, including an NPO that accepts certain services from any VAT payer within the EU, must report receipt within 15 days to be identified as a potential VAT payer (Law on VAT Articles 6g-6i and 96-97). Taxable services include: consulting, providing legal advice, accounting, data processing and information rendering, translation and interpretation. Services related to the transport of goods from abroad are VAT-exempt.

The penalty for noncompliance with reporting requirements consists of publishing, by electronic means, data about the noncompliant VAT payer (Law on VAT Article 106a).

Under certain conditions, it is possible to apply for a rebate of paid VAT. For example, if an NPO receives a donation or grant from abroad as a part of activities supported by an international agreement, it can request a rebate of VAT paid within 15 months of the VAT payment. The exemption does not include grants provided by the European Union through its regular structural funds programs, with the exception of cross-border assistance (Law on VAT Article 81).

D. Property Tax

Real property tax is not imposed on buildings and land occupied by buildings belonging to and serving the following types of PBOs: foundations, funds, registered institutes, and PBCs, as well as trade unions and unions of employers (Act on Real Estate Tax Articles 4(1)(f), 9(1)(f)). This applies generally to any land parcel with buildings on it or buildings serving certain purposes, such as: schools; establishments that provide care for children under 3 years of age; museums and art galleries with collections registered by the Ministry of Culture; registered public libraries; licensed health institutions; and social care facilities

(Act on Real Estate Tax Articles 4(1)(g), 9(1)(k)). Similarly exempt are lands serving organizations exclusively engaged in waste management, environmental protection, water management, and energy production (Act on Real Estate Tax Articles 4(1)(h), 9(1)(m)).

Certain other categories of buildings are also exempt from the property tax. These include buildings belonging to associations of handicapped people, the buildings that are used exclusively for spiritual or religious activities.

The tax on real property transfer has been abolished as of January 2014, and replaced by a new tax on property acquisition. This tax is generally 4% of the value of the acquired real property and has to be paid by the acquirer, unless otherwise agreed upon by the transferring sides. Exempt from this tax are contributions to a social co-operative by its members.

E. Import Duties

Exemption from customs duties is tied to the nature and purpose of the goods, rather than the type of organization importing them. Goods are exempt from customs duties only if: (i) they are donated; and (ii) there is no equivalent produced in the Czech Republic, or their importation would not jeopardize the interests of Czech producers. Goods eligible for exemption are those used for educational purposes, scientific work (such as equipment and tools), goods to be used to improve the cultural and living standards of handicapped people, goods to be distributed free of charge for charitable purposes, and items to be used by the blind.

The Czech Republic has been a member of the European Union since May 1, 2004. As such, goods imported by an NPO from any other member state of the European Union, up to a total value of EUR 10,000 during a fiscal year, are exempt from import taxation and custom duties.

F. Double Tax Treaties

A double taxation treaty was signed in 1994 between the United States and the Czech Republic. Effective May 1, 2004, all regulation of double taxation between the United States and the European Union applies also to the Czech Republic. After this date, any provision of Czech law conflicting with general EU regulations ceased to be applicable.

VI. Knowledgeable Contacts

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¹ Juridical persons established according to special laws (including, e.g., the Educational Juridical Person as established under the Law on Schools or Law on Higher Educational Institutions), are expected to undertake certain specialized activities with more specific and detailed regulations than those contemplated for registered institutes or PBCs. Public universities and public research institutes also have been created using special laws.

² The Civil Code repeals the Law on Associations and essentially replaces it with Articles 210-302. In addition, the Civil Code repeals the Law on Foundations in its essential parts, replacing it with Articles 301-401. The Civil Code also formally repeals the Law on PBCs so that no new PBCs may be established. However, PBCs established before 2014 shall continue to be governed by the provisions of the Law on PBCs after December 31, 2013. Articles 303-305 and 402-418 of the Civil Code also introduce a new legal form called a registered institute – a legal form designed to replace PBCs. Those PBCs that do not transform into registered institutes, foundations, or funds will remain governed by the frozen Law on PBCs. The Civil Code also abolishes Act No. 513/1991 Sb., the Code of Commerce, and several other basic laws and acts related to these.

³ The Law on Commercial Corporations that replaced Act No. 513, the Code of Commerce, in January 2014 regulates activities of commercial legal entities and introduces the social co-operative as a new legal form.

⁴ Since January 1, 2014, the Law on PBCs regulates only existing PBCs, and does not apply to the establishment of new PBCs.

⁵ As of the writing of this report, the Public Benefit Status remains unused due to the fact that the special law regulating its recognition has not yet been adopted.

⁶ The Act on Real Estate Acquisition abolishes Act No. 357/1992 Sb. on Bequest Tax, Donation Tax, and Tax of Real Estate Transfer.

⁷ The Value Added Tax law entered into force in 2015, with some provisions having entered into force on January 1, 2016.

⁸ In March 2016, the Czech Parliament adopted a substantial amendment to Act No. 111/1998 Sb., which introduces a new system of accreditation for colleges and universities. As of the writing of this report, the Act has not yet been officially published. It shall enter into effect in September 2016.

⁹ In order to distinguish the not-for-profit form of a corporation based on membership of natural and/or juridical persons from other legal forms with commercial activities, the term “association” is used as the closest one to the Czech term “*spolek*”. The formerly-used Czech term “*občanské*

sdrůžení” was similarly translated as “association of citizens”. There are no significant differences between former and new associations, except that the Civil Code provides a more complex legal environment for membership-based NPOs, with many default provisions applicable if the association by-laws do not address certain situations.

¹⁰ Previously there were strict rules governing the use of foundations’ assets, but the Civil Code abolishes these.

¹¹ The founder may also exclude, or prohibit, the possibility of entrepreneurial activities in the foundation’s incorporation document (founder’s deed).

¹² Act No. 90/2012 Sb. On Business Corporations and Co-operatives, (Law on Commercial Corporations) entered into force on January 1, 2014. It replaces the former Commercial Code and a series of related laws.

¹³ The Civil Code does not provide any timeframe for such a decision. Accordingly, the decision may be made at any time after January 1, 2014.

¹⁴ Prior to January 2014 and the entry into force of the Civil Code, it was allowed to establish foundations and funds exclusively to promote “publicly beneficial goals.” These goals were defined in the (now abolished) Law on Foundations and indirectly in the Income Tax Law as: development of spiritual values; protection of human rights and other humanitarian values; protection of the environment, cultural monuments and traditions; the development of science, education, physical education, and sports. Similarly, PBCs could be established for the purpose of rendering “publicly beneficial services” to the general public under well-known conditions that were the same for all beneficiaries (Law on PBCs Article 2). However, the law does not explicitly define which services are considered to be publicly beneficial. The concept of public benefit was not mentioned in the abolished Law on Associations.

¹⁵ In 2012 and 2013, the Ministry of Justice, in coordination with a group of experts, prepared a Bill on the Status of Public Benefit, which was then open to general discussion. The Bill contained an open list of activities considered publicly beneficial and defined several other legal terms related to the right of a legal entity to apply for recognition of its public benefit status. Entities with the Status were to be provided with certain tax and other benefits on a higher level than those without it. Similar provisions were also initially included in amendments to the Income Tax Law. The Bill was passed by a weak quorum in the lower house of the Czech Parliament, but then repelled by the Parliament upper chamber, the Senate. As a result, the applicability of the concept of the Public Benefit Status as defined in the Civil Code is postponed until a new Bill is submitted by Ministry of Justice to the Government and Parliament. As a result of this development, the amendments of the Income Tax Law related to the new Civil Code were modified so as not to mention the status of public benefit. Moreover, those benefits reserved for juridical persons with registered status of public benefit were abandoned, resulting in a less friendly legal and taxation environment for public benefit NPOs.

¹⁶ Social co-operatives are not considered NPOs for the purpose of exemption from the income tax of free of charge incomes (donations) on the site of the donor. This may change after the adoption of a special Law on Public Benefit Status, since the social co-operatives are expected to be allowed to apply for the Status under specific conditions, which will complement the requirements of the Law on Commercial Corporations.

¹⁷ There is an ongoing debate between legal experts about the way in which the new Civil Code should be interpreted with regard to provisions for foundations and those for funds. Both the foundation and fund are legal forms within the category of *fundaciae*. Accordingly, some argue that the provisions for foundations should be applicable to funds as well. Others argue that if there is no explicit reference as regards application of provisions for foundations, these do not automatically apply to funds. In contrast, in provisions that address the registered institute, the Civil Code directly refers to a set of provisions for foundations as applicable to registered institutes.

¹⁸ There is an exception in case of PBCs: If the EU, the Czech Republic or its self-governing

administrative units are the providers of a contribution to a PBC, the property related to that contribution that forms a part of the liquidation balance must be disposed of according to the directives of the public contributor (Law on PBCs Article 9).

¹⁹ Under new private law regulations in force since January 2014, it is no longer possible to dissolve an association without liquidating its assets.

²⁰ Additional legal regulations for associations and their dissolution are anticipated to appear in the Act on Public Benefit Status. It was expected to pass the Czech Parliament in 2014. However, such a Bill is presently not on the agenda of the Government.

²¹ Note that some provisions of the new Civil Code are there to facilitate the use of incorporation documents created before the new Civil Code entered into force. This is mainly the case of foundations and funds established before January 1, 2014, whose incorporations documents were not simply amendable by decisions of statutory or other bodies of the entities themselves.

²² These foundations (with a closed or circumscribed set of beneficiaries) are excluded from the category of publicly beneficial taxpayers. The same holds true for the social co-operative, which is counted among commercial corporations in spite of the requirements on its publicly beneficial purpose (Income Tax Law Articles 17(a)(1), 2(f)).

²³ Article 765 of the Law on Commercial Corporations sets limits on the scope of entrepreneurial activities of a social co-operative. These entities are not allowed to issue bonds, fulfill obligations of other persons, become a partner with unlimited liability or a silent partner; nor may they transfer, sell or lend their enterprise to any person that is not a social co-operative.

²⁴ With regard to the disputes between the NPO community and Ministry of Interior concerning the right of associations to pursue publicly beneficial objectives addressed to the general public, there is available a statement of the expert panel at the Ministry of Justice, which confirms the right of association to provide services addressed to beneficiaries outside their membership or to pursue generally important objectives.

²⁵ This restriction tends to limit the possible establishment of other legal entities to those operating under not-for-profit principles.

²⁶ The Czech Constitution guarantees that foreign persons (natural and legal) have the same basic political rights under Czech law as Czech citizens (Constitutional Act Article 42(2)), unless the Constitution or laws specifically limits a right (for instance, eligibility for election to Parliament, appointment as a justice or judge, certain army positions etc.) to nationals of the Czech Republic or residents in the Czech Republic or citizens/residents of any member state of the European Union or European Economic Area.

²⁷ In general, juridical persons may be prosecuted for breaking the law and sentenced to penalties, including dissolution, fines, or prohibition for certain criminal acts, including human trafficking; child abuse; bank credit, insurance or grant fraud; participation in organized criminal activities; terrorism; misuse of data in an information system; forgery; damage to the environment and nature; corruption and bribery; illegal employment of foreigners; violence, promotion of or support of hatred against groups of citizens or individuals; participating in sexual abuse of women or children; and committing genocide and similar acts. (See Law on Criminal Responsibility of Juridical Persons.)

²⁸ The tax base is calculated as follows: the positive difference of incomes and related documented or expected expenditures from deductible portions (general minimum per capita, donations, and insurance payments) and tax exempt parts (losses from previous years).

²⁹ On first glance, this seems like a trivial tax exemption. However, it ends up indirectly ensuring that any profit-yielding activity of a publicly beneficial taxpayer is included in the tax base and subject to the rules of reduced taxation for publicly beneficial taxpayers. (See also footnote 32 below.)

³⁰ A requirement that a publicly beneficial taxpayer has to separately account for profitable and unprofitable activities may result in that taxpayer having greater income tax liability (despite the 30% tax base reduction) than a for-profit entity. Unlike a for-profit entity, a publicly beneficial

taxpayer cannot offset its earnings from certain activities with losses from all remaining unprofitable activities. That does not hold for registered institutes and PBCs, who are accounting for all incomes and expenditures separating only those related to the main activity, auxiliary economic activity and administration. However, all tax benefits accrued by these legal forms must be used to cover losses from non-profitable activities (Income Tax Law Article 19(7)).

³¹ Similarly deductible from the corporate tax base are donations equal to or higher than CZK 2,000 (USD 80) provided to natural persons residing in the Czech Republic, who receive a disability pension, or were receiving it before entering the retirement pension, to recipients of support for handicapped persons, to children under age dependent on the care of other person according to special regulations, and to health aid, as well as contributions facilitating entering into labor market of such persons. This holds also for the provision of humanitarian aid and donations in case of natural disasters that occur on the territory of the EU, Norway, and Iceland.