

# Hungary

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## I. Summary

### A. Types of Organizations

Hungary is a civil law country, and as such it recognizes two traditional civil law forms of nongovernmental, not-for-profit organizations (NPOs) – the association and the foundation.

Hungary recognizes additional organizational forms, including nonprofit companies, civil groups, and public chambers. The nonprofit company is the non-profit distributing version of a for-profit company form (e.g., a general partnership, limited partnership, limited liability company, or shareholder company). [1] The civil group is an unincorporated legal form which does not have legal personality. Public chambers are rare, as they are formed by an Act of Parliament.

In addition, Hungarian legislation enables associations, foundations, and nonprofit companies to qualify as "Public Benefit Organizations," or PBOs. PBO status is currently regulated by Chapter VII of Act CLXXV/2011. Since this status reflects that the organization is closer to being an IRC Section 501(c)(3) equivalent, grantmakers should inquire as to whether an NPO

is a PBO. According to the data of the Central Statistical Office from 2012, 53% of NPOs have public benefit status in Hungary. [\[2\]](#)

For practical purposes, then, a potential grantee will most likely be organized as:

1. an association,
2. a foundation, or
3. a nonprofit company.

As noted above, these organizations may also have PBO status under Act CLXXV/2011, as amended.

## **B. Tax Laws**

An association or foundation's income from any type of support, allowance, or membership fees is exempt from corporate income tax if it is allocated either to public benefit activities or other mission-related activities of the organization as indicated in its statute or bylaws.

Hungary also exempts from corporate income tax an association or foundation's income derived from public benefit or mission-related economic activities, with unrelated economic income subject to tax under certain circumstances. Such a distinction does not apply to nonprofit companies; thus, their economic activities are generally taxable. However, income of a public benefit nonprofit company is not taxed if it is generated from public benefit activities provided under contract with a local government or other institution, where such activities have a separate line in the annual state budget.

Hungary also subjects certain sales of goods and services to VAT, with a limited list of exempt activities.

The corporate income tax law provides tax benefits for donors. Hungary and the United States have entered into a double taxation treaty.

## **II. Applicable Laws**

- [Act V/2013](#) on the Civil Code
- [Act CLXXV/2011](#) on the Freedom of Association, Public Benefit Status and the Operation and Support of CSOs
- [Act LXV/2006](#) on the amendment of [Act XXXVIII/1992](#) on Public Finances and certain related Acts
- [Act CXXVI/1996](#) on the Use of Specified Amount of Personal Income Tax in Accordance with the Taxpayer's Instruction
- [Act LXXXI/1996](#) on Corporate Tax and Dividend Tax
- [Act LXXXVIII/2005](#) on Public Interest Volunteer Activities
- [Act CXXVII/2007](#) on Value Added Tax
- [Act CXXV/2003](#) on Equal Treatment and Promotion of Equal Opportunities
- [Act V/2006](#) on Public Company Information, Company Registration, and Winding-up Proceedings
- [Act CLXXXI/2007](#) on Transparency of Subsidies Provided from Public Funds
- [Act CLXXXI/2011](#) on the Court Registration of CSOs and the Relative Procedural Rules
- Government Decree 350/2011 (XII.30) on Certain Issues of CSO Financial Management, Fundraising and Public Benefit Status

## **III. Relevant Legal Forms**

## **A. General Legal Forms**

### ***Association***

An association is a legal entity established for the continuous realization of the common, permanent aim of the members as stated in the articles of association, and having a registered membership (Act V/2013 Section 3:63(1)). At least ten natural persons, legal persons, and/or organizations without legal personality are required to form an association (Act V/2013 Section 3:64). An association cannot be formed for the purpose of economic activity, though it may conduct economic activity that is directly related to the realization of the organization's purpose (Act V/2013 Section 3:63(2)-(3)). In addition, an association cannot be formed for criminal, military, or unlawful purposes; nor may it be formed to violate the rights and freedoms of others, or to undertake a public task which is reserved for state bodies (Act CLXXV/2011 Section 3(3)-(5)).

The special forms of associations are: alliances, political parties, and trade unions. Alliances may be established and operated by two members. The members may be foundations, associations, civil groups, other legal entities or organizations without legal personality; natural persons cannot be members (Act CLXXV/2011 Section 4(3)).

### ***Foundation***

A foundation is a legal person established by a founder or founders for the continuous realization of a long-term purpose, as determined in the founding statute (Act V/2013 Section 3:378). The founder must provide sufficient assets to achieve the foundation's purposes. When the foundation's application for registration is submitted, the founder must have provided at least the amount necessary to begin the foundation's operations; the remaining amount of committed assets must be provided within one year of registration (Act V/2013 Section 3:382). A foundation must elect a board of trustees to function as a management body. The founder and his or her close relatives may not have a majority in the board of trustees (Act V/2013 Section 3:397(1), (4)).

From 1994 to 2006, Hungarian legislation permitted the establishment of a public foundation, which is a foundation created by the Parliament, the Government, or the municipal council of a local government or a minority government in order to ensure the continuous performance of public duties. However, this form was discontinued on August 24, 2006; no new public foundations may be established after this date (Act LXV/2006 Section 1(1)).

### ***Nonprofit Company***

A nonprofit company is the non-profit distributing version of an otherwise for-profit company form (e.g., a partnership, limited partnership, limited liability company, or shareholder company). All company forms, in other words, can operate in a nonprofit manner. A company that does so must indicate such in its name, and stipulate in its statute that profit may not be distributed among its members (Act V/2006 Section 9/F(1)-(3)).

### ***Civil Group***

The civil group is an unincorporated organizational form which does not have legal personality. Natural persons may set up a civil group to achieve a shared, non-economic goal and to harmonize their community-oriented activities. A civil group needs not register with any authority, and may be established merely by adopting a statute. Civil groups also do not need to have financial contribution in order to be established. They cannot carry out business (entrepreneurial) activities (Act CLXXV/2011 Section 5/A(1), (2), (4)).

## ***Public Chamber (Public Body)***

A public chamber—also known as a public body—is a self-governed organization with a registered membership, which is established by an act of Parliament. A public chamber fulfills a public task connected to its members or the activity performed by its members (Act LXV/2006 Section 8/A(1)). Legislation may delegate certain public tasks to public chambers (such as certifying professional qualifications), and may prohibit non-members from engaging in those activities (Act LXV/2006 Section 8/A(4)). Where not stated otherwise, the rules for associations apply to public chambers (Act LXV/2006 Section 8/A(5)).

## **B. Public Benefit Status**

### ***Public Benefit Organization (PBO)***

Associations and foundations may register as PBOs. Other organizations, such as nonprofit companies, may also be authorized by law to acquire PBO status (Act CLXXV/2011 Section 32(1)). [3] There are a number of requirements for PBO status, the foremost of which is that the organization must undertake public benefit activity. Public benefit activity is defined as an activity that directly or indirectly serves the completion of public (i.e. governmental, including at the local government level) tasks, and thereby contributes to the satisfaction of the common needs of society and individuals (Act CLXXV/2011 Section 2(20)).

Qualifying organizations must meet one condition from each of the following two groups of criteria (Act CLXXV/2011 Section 32(4)-(5)):

#### *1. Having "appropriate resources"*

Based on the previous two closed fiscal years, one of the following conditions must be met:

- The average annual income exceeds HUF 1,000,000 (approximately \$4,100); or
- The after-tax result of the two years counted together is not negative; or
- Personnel expenditures—except for the compensation of executive officers—account for 1/4 of the total expenditures.

#### *2. Having "appropriate social support"*

Based on the previous two closed fiscal years, one of the following conditions must be met:

- The amount of 1% tax designations (see Section V.B, *infra*) transferred to the organization reaches 2% of the total income; or
- The costs and expenditures arising in the interest of the public benefit activity reach 50% of the total costs and expenditures in the average of the two years; or
- At least ten volunteers are permanently (in the average of two years) supporting the public benefit activity of the organization in accordance with the Act on Public Interest Volunteer Activities (Act LXXXVIII/2005).

Furthermore, the organization's statute shall set forth the following (Act CLXXV/2011 Section 34):

- a. The public benefit activity or activities that it undertakes; the public tasks that these activities further; and exact references to the legislative provisions that prescribe those public tasks to the state;
- b. That the organization does not exclude non-members from benefiting from its public benefit services;
- c. That business (entrepreneurial) activities may be undertaken only without jeopardizing the implementation of the public benefit and other mission-related activities determined in the statute;

- d. That the organization is not entitled to distribute its profit and shall spend it on its public benefit activity defined in its statute;
- e. That the organization does not undertake direct political activity, shall be independent from any political parties, and shall not provide financial support to them.

By introducing the above criteria, Act CLXXV of 2011 substantially reformed the concept of and preconditions for public benefit status. Organizations that gained their public benefit status on the basis of the previous Act (Act CLVI/1997) remained PBOs until May 31, 2014; after that date, if they wish to retain their status, they must reapply and meet the above criteria with regards to their prior two fiscal years.

#### **IV. Specific Questions Regarding Local Law**

##### **A. Inurement**

An association may use its assets according to its purpose; it shall not distribute its assets or profit among its members (Act V/2013 Section 3:63(4)).

A foundation, likewise, must manage its assets and use them in accordance with the purpose of the organization and provisions of its statute. The founder, other donors, and their legal successor may not withdraw and reclaim the provided assets from the foundation (Act V/2013 Section 3:384(1)-(2)). A foundation cannot be established for the benefit of the founder, donor, officer, or member of the foundation, or their relatives. Remuneration to the officers of the foundation does not violate this provision (Act V/2013 Section 3:379(4)).

There are other legal limitations related to the possible beneficiaries of the foundations, as well. The foundation may provide financial services from its assets only to someone who is designated a beneficiary by the statute or the authorized body of the foundation (Act V/2013 Section 3:385). The founder and the donor may be beneficiaries of the foundation only if the purpose of the foundation is to look after the scientific, literary, or artistic work of the founder. Relatives of the founder and the donor, moreover, may be beneficiaries of the foundation only if the purpose of the foundation is to look after the scientific, literary, or artistic work of the relative, or to nurse, provide support to, bear the healthcare costs of, or finance the studies of the relative (Act V/2013 Section 3:386(1)-(2)).

In order to qualify as a PBO, an organization's statute must state that "the organization does not distribute profits, but spends the profits on the public benefits activity defined in its statute" (Act CLXXV/2011 Section 34(1)(c)).

##### **B. Proprietary Interest**

Foundations and nonprofit companies can be formed such that founders retain a proprietary interest in the organizations. This is true even for organizations registered as PBOs because Act CLXX/2011 does not preclude such interests. The founders of both foundations and nonprofit companies are entitled to reacquire their contributed assets upon dissolution as long as the statutes contain such a provision (see Sections C.2. and C.3., *infra*).

Founders do not retain proprietary interests in associations. In case of the termination of a public foundation, the founder shall use the remaining assets to a similar purpose and inform the public about the assets' reassignment. The assets may be designated to a budgetary institution, public benefit nonprofit company, or other organization that carries out a public task (Act LXV/2006 Section 1(5)-(6)).

##### **C. Dissolution**

###### **1. Associations**

The general assembly of an association has ultimate decision-making power over its dissolution or merger (Act V/2013 Section 3:74(b)). The assets remaining after dissolution may be designated to a public benefit organization that was established for the realization of the same or similar purpose as the association. In case the articles of association do not include any provision regarding remaining assets, or if the public benefit organization determined in the articles of association does not or cannot accept the assets, the registering court will give the assets to organizations determined by law (Act V/2013 Section 3:85(1)). As a general rule, the remaining assets are due to the National Cooperation Fund with the purpose of supporting NGOs. The details of utilization shall be published on the Civil Information Portal website. Additionally, any remaining in-kind assets are reported to the National Cooperation Fund and distributed through an open tender procedure. In case the tender procedure remains unsuccessful for 6 months, the in-kind assets shall go to the state. Per the law regarding cultural property, any artistic works or collections go to the state; the property management of a public collection is selected through a tender procedure, free of charge or offset. Finally, the utilization of lands falling under the scope of the Law on the National Land Fund is also regulated by the law (Act CLXXV/2011 Section 10/A(1)-(4)).

## **2. Foundations**

Remaining foundation assets are due to the person designated in the statute; however, the amount designated to the founder, donor, or their relatives cannot exceed the amount they gave to the organization. In case the statute does not regulate it, the founder may dedicate the remaining amount to a foundation or association which has the same or similar purpose as the foundation. In case the founder does not determine the beneficiary organization or the beneficiary organization is not willing or able to accept the assets, the court gives the remaining assets to an organization determined by law (Act V/2013 Section 3:404(1)-(3)).

## **3. Nonprofit Company**

A nonprofit company can only transform into or merge with another nonprofit company or companies (Act V/2006 Section 57/A). In case a public benefit nonprofit company terminates without a legal successor, the members of the company are only entitled to receive the equity capital of the organization at the time of termination, but not more than the amount of the nominal capital they contributed. Any remaining assets will be expended by the court of registration for public purposes in conformity with the provisions of the statute. In the absence of such regulations the court of registration will assign the remaining assets of the company to support the National Cooperation Fund (Act V/2006 Section 9/F(6)).

## **4. Public Chambers**

The rules on dissolution of associations apply to public chambers (Act LXV/2006 Section 8/A(5)).

## **5. Public Benefit Organizations**

The law requires that when an organization loses its PBO status it must pay taxes and other debts owed to the state, and fulfill its duties under contracts for the performance of public services on a *pro rata* basis (Act CLXXV/2011 Section 50). If the PBO itself dissolves, the rules governing the specific legal form (as described above) shall be considered.

## **D. Activities**

### **1. General**

NPOs in Hungary are generally permitted to engage in all activities which are not prohibited by law and which correspond with the Basic Act of Hungary (i.e., the Constitution) (Act CLXXV/2011 Section 3(4)).

## **2. Public Benefit Activities**

Public benefit activity is defined as activity that directly or indirectly serves the completion of public tasks and thereby contributes to satisfying the shared needs of society and individuals. A public task is defined as a governmental duty set forth in a legal regulation, which is undertaken by a legally obliged (assigned) provider in the interest of the public, without the aim of profit-making, and in conformity with the requirements and conditions set by the law. Such tasks include the provision of public services to citizens and the provision of the necessary infrastructure to implement such services.

## **3. Economic Activities**

NPOs in Hungary are generally allowed to engage in any economic activities that do not jeopardize the mission-related activity of the organization. Accordingly, NPOs may pursue any sort of income-generating activity (such as investment, trade, etc.) to help finance their operations. However, associations and foundations must not be established for primarily business or entrepreneurial activity (Act CLXXV/2011 Section 17(1)). An NPO is deemed an organization established for primarily entrepreneurial activity if the income from such activity accounts for 60% or more of the NPO's total income (Act CLXXV/2011 Section 2(7)). In addition, none of the not-for-profit legal forms may distribute profits to any person; all profits must be used to carry out the purposes of the organization (Act V/2006 Section 9/F(2); Act CLXXV/2011 Section 34(1)(c); Act V/2013 Sections 3:63(4), 3:384),

For PBOs, an exhaustive list of preferred fields of activity no longer exists, but Section 2(20) of Act CLXXV/2011 gives a definition of public benefit activity, as discussed above. Entrepreneurial activities may be undertaken by the NPO as long as they do not jeopardize the implementation of the public benefit and other mission-related activities set forth in the NPO's statute (Act CLXXV/2011 Section 34(1)(b)).

Under the corporate tax law, Hungary generally taxes an organization's "entrepreneurial activities," which the law defines as "economic activities aimed at or resulting in the acquisition of income or property" (Act LXXXI/1996 Section 1(1)). In theory, the income of associations, foundations, public foundations, and public chambers from economic activities is not taxed, and not deemed "entrepreneurial," if the activities are related to the organization's public benefit or mission-related activities. The consideration of or revenues from the sale of intangible assets, tangible assets, or inventories serving solely the public benefit or mission-related activities are also not taxed. Furthermore, there is a tax-exempt threshold on income arising from business activity.

Such a distinction does not apply to nonprofit companies, however; thus, their economic activities are generally taxable. Nonetheless, income of a public benefit nonprofit company is not taxed if it is generated from public benefit activities provided under contract with a local government or other institution which has a separate line in the annual state budget for continuous service provision, including the fee and the conditions of amending the fee. In addition, the support and allowance provided to such activity are also not taxed (Act LXXXI/1996 Section 1(1) Annex 6(E)).

## **E. Political Activities**

Act V/2013 places no restrictions on legislative or political activities of NPOs. Foundations and associations may freely advocate for legislation as well as nominate and support political candidates.

However, if the organization is registered as a PBO under Chapter VII of Act CLXXV/2011, its statute must state that 1) it does not pursue direct political activity; 2) it is independent of political parties; and 3) it does not provide financial support to political parties (Act CLXXI/2011 Section 34(1)(d)). [4] The prohibition on political activity does not apply to the nomination of candidates for local government councils at the municipal level (including districts of the capital). In addition, although PBOs cannot support political parties, they may receive support from political parties.

## **F. Discrimination**

Act CXXV/2003 bars racial discrimination by any school that uses a state-accredited curriculum, or that receives direct or indirect financial support from the government. This accounts for the vast majority of Hungarian schools.

## **G. Control of Organization**

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. It is possible that a Hungarian NPO may be controlled by a for-profit entity or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

## **V. Tax Laws**

### **A. Tax Exemptions**

Hungary generally taxes an organization's "entrepreneurial activities," which the law defines as "economic activities aimed at or resulting in the acquisition of income or property" (Act LXXXI/1996 Section 1(1)).

As discussed above, all income related to the public benefit or mission-related activities of associations, foundations, public foundations, and public chambers are deemed non-entrepreneurial and therefore exempt from corporate tax. This exemption includes any support, allowance, or membership fee received in connection with such activity. The consideration of or revenues from the sale of intangible assets, tangible assets or inventories serving solely the public benefit or mission-related activities shall also not be taxed. Only income from unrelated economic activities is subject to taxation as entrepreneurial (Act LXXXI/1996 Schedule No. 6).

### **B. Tax Deductions, Credits, and Rebates for Charitable Contributions**

#### **Tax deductions and credits**

Individuals are not entitled to any tax benefits for charitable donations. For companies, donations to Hungarian NPOs with PBO status are tax-deductible under limited conditions. Companies may also enjoy tax benefits for donations to the National Cultural Fund and the National Relief Fund. To claim the deduction, the company must be in possession of a certificate for tax purposes provided by the beneficiary organization (Act LXXXI/1996 Section 7(1)(z), 7(7)).

The pre-tax profit may be reduced:

1. by 20% of the donation if the donation supports the public benefit activity of a public benefit organization or 50% if the donation supports the Hungarian Relief Fund or National Cultural Fund; and
2. by an additional 20% of the donation if provided under a long-term donation contract (i.e., a monetary contribution provided on the basis of an agreement between a public

benefit organization and its donor, wherein the donor undertakes to provide the donation in the subject year and in at least three forthcoming years at least once each year, in the same or larger amount, without any consideration) up to the amount of the pre-tax profit on the aggregate.

### **Rebate of individual taxes to charity**

Individuals living in Hungary who pay income tax are also entitled to designate 1% of their income taxes to specific NPOs that carry on public benefit activities and some other institutions (Act No. CXXVI/1996). [\[5\]](#)

### **C. Value Added Tax**

Generally, all organizations engaged in economic activities are subject to the VAT. The standard rate is 27%, with some goods and services taxed at 18% and 5%.

There is a list of public interest activities which are exempt from VAT if they are provided by public service providers. The following organizations may be public service providers: budgetary organs, associations, alliances, civil groups, public chambers, national professional sports federations, foundations, public foundations, churches, nonprofit companies, and other organizations which have obtained PBO status or perform their activities within the framework of a social security or other obligatory insurance relationship for the benefit of insured or other beneficiaries.

Furthermore, organizations may also be considered as public service providers if the following conditions are met: 1) they do not systematically aim to make a profit and they use the profit to maintain and extend their public interest activities; 2) their executive officers (including the board) are volunteers; and 3) they charge prices for the supply of goods or services in compliance with the Act on Price Control Regulations or the prices are lower than those charged on the market for similar goods or services. The exempt services include, among others: health, social services, public education, child and youth protection, day care, psychological assistance, folk art, and sports-related services (Act CXXVII/2007 Section 85(1), (4)).

The sale of assets is exempt from VAT if the asset was previously used for the above activities (Act CXXVII/2007 Section 87).

The donation supporting the public benefit activity of a PBO is also exempt from VAT so far as the donor disposes of the certificate of the beneficiary (Act CXXVII/2007 Section 259(9/A)).

Finally, the purchase of assets by an organization undertaking public benefit activity is also exempt from VAT if it is used exclusively for humanitarian, educational, and charitable causes outside of the EU (Act CXXVII/2007 Section 100).

### **D. Double Tax Treaty**

Hungary has entered into double tax treaties with a number of countries, including the United States. When such a treaty is in existence, dividends, interest, and royalties arising in one country and paid in another are subject to tax only in the country where paid.

### **VI. Knowledgeable Contact**

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## Footnotes

[1] The nonprofit company replaced the former category of public benefit companies, which ceased to exist as of July 1, 2009.

[2] Those PBOs that acquired their status based on the previous law on PBOs (Act CLVI/1997) had to re-apply and qualify based on new criteria before May 31, 2014, in order to retain this status (See Section III.B, *infra*).

[3] Pertinent regulations were set forth in a separate Act (Act CLVI/1997), which was repealed by the adoption of the new “CSO Law” (Act CLXXV/2011), and are now found in Chapter VII of the CSO Law.

[4] Under Act CLXXI/2011 Section 2, point 22, "direct political activity" includes "political activity undertaken for the benefit of a political party, nomination of candidates during the Parliamentary election or to the county or metropolitan local government council (including the capital Budapest), nomination of a member of the European Parliament, nomination to the council of a city with county rights, and nomination of a mayor." However, "the nomination of mayor or nomination at the local and minority local government election by certain minority organizations determined by law are not considered as direct political activity."

[5] For a discussion of the requirements of this legislation, see ECNL's paper "[About Miracles and Misperceptions - Lessons from the "percentage mechanism" in Hungary.](#)"

More information available at: <http://www.cof.org/content/hungary#sthash.bilploIW.dpuf>