

Poland

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I. Summary

A. Types of Organizations

Poland is a civil law country with two primary forms of not-for-profit, nongovernmental organizations (NPOs):

- Associations
- Foundations

These forms are governed by the [Law on Associations](#) and the Law on Foundations, respectively.

In addition, the [Law on Public Benefit Activity and Volunteerism](#) (PBA Law), enacted in 2003 and amended in 2010, 2011, 2012, 2013, 2014, and 2015, permits Polish NPOs to seek designation as Public Benefit Organizations (PBOs). With certain exceptions, associations and foundations are eligible to apply for PBO status. [1] Joint-stock companies, limited liability companies, sports clubs that have the legal form of companies, church-based corporate entities, social cooperatives, and associations of local government units are also eligible for PBO status once they satisfy the requirements specified in the Law on Public Benefit Activity and Volunteerism. However, these types of organizations cannot qualify as “nongovernmental organizations” according to the legal definition provided in the law (PBA Law Article 3(2)).

Several NPO forms are beyond the scope of this Note because of their limited interaction with U.S. grantmakers, including: social cooperatives, associations of local government units, church-based corporate entities, and organizations such as the Polish Red Cross or the Polish Welfare Committee.

B. Tax Laws

Public Benefit Organizations are exempt from paying corporate tax on income devoted to their statutory goals (Law on Corporate Income Tax (CIT Law) 17.1c). As of September 2016, approximately 8,700 organizations have PBO status. A [comprehensive PBO database](#) is available in Polish from the official website of the Department of Social Economy and Public Benefit at the Ministry of Family, Labor, and Social Policy. Associations and foundations that do not apply or qualify for PBO status are exempt from paying corporate tax if their statutory objectives fall within particular categories, including science, education, culture, sports, environmental protection, support for technical infrastructure in rural areas, health care, social care, and charity (CIT Law 17.1.4). These NPOs, however, must pay tax on unrelated business income under certain circumstances. NPOs falling outside those categories, such as associations and foundations that neither qualify as PBOs nor pursue the statutory objectives listed above, generally must pay corporate tax on their income, including grants.

Poland also subjects certain sales of goods and services to VAT, with a fairly narrow range of exempt activities.

The tax laws provide some tax benefits for both individual and corporate donors.

II. Applicable Laws

- [Polish Constitution](#)
- Law on Associations (LOA)
- [Law on Foundations \(LOF\)](#)
- Law on Economic Activities
- [Law on Corporate Income Tax \(CIT Law\)](#)
- Implementation Law to the CIT Law
- Law on Personal Income Tax (PIT Law) and Flat-Rate Personal Income Tax Paid from Chosen Incomes
- Act on the amendment of the Act on Personal Income Tax, Act on Corporate Income Tax and selected other Acts – Journal of Laws No. 209, Item 1316
- Law on Flat-Rate Income Tax
- VAT Law
- Act on the amendment of the Act on the Value Added Tax and selected other Acts – Journal of Laws No. 209, Item 1320
- [Law on Public Benefit Activity and Volunteerism \(PBA Law\)](#)
- Implementation Law on Public Benefit Activity and Volunteerism

III. Relevant Legal Forms

A. General Legal Forms

The Constitution of the Republic of Poland (1997) provides the legal basis for freedom of association in Article 12: "The Republic of Poland shall ensure freedom for the creation and functioning of trade unions, socio-occupational organizations of farmers, societies, citizens' movements, other voluntary associations and foundations." This freedom is restricted only by a prohibition against "[p]olitical parties and other organizations whose programs are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programs or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership" (Constitution Article 13).

Associations

The Law on Associations defines an association as a self-governing, lasting (membership) organization, formed of free will and with a nonprofit motive ([LOA Article 2](#)). Associations must register with the regional Registry Court – also called the State Court Register (LOA Article 8; see also State Court Register). Associations may be formed by Polish citizens or by foreigners who are domiciled in Poland ([LOA Articles 3-4](#)).

No one may be forced to join an association or prevented from freely withdrawing from one, and an association cannot require members to unconditionally obey its authorities ([LOA Article 6](#)).

A special form, known as the "simplified association," is somewhat easier to create than a regular association. As of May 2016, simplified associations can acquire rights and incur obligations ([LOA Articles 40\(1\), 42\(1\)](#)). Simplified associations are not very common, however, and will not be discussed further in this Note.

Finally, the law permits a "union of associations" to be established by a minimum of three associations; other legal persons may also act as founders. Unions of associations are subject to the same rules as other associations ([LOA Article 22](#)).

Foundations

Foundations in Poland are governed by the Law on Foundations, which was enacted in 1984 and amended a number of times. The law does not distinguish between grantmaking and operational foundations. In practice, most Polish foundations are operational, which means that they do not possess significant capital and must fundraise, and thus are often competing with associations for funds.

The Law on Foundations does not define the term foundation, but the definition may be inferred from various provisions of the Law. Generally speaking, a foundation is a non-membership organization established by a founder (who provides the initial endowment) that pursues economically and socially beneficial objectives subject to the essential interest of the Republic of Poland ([LOF Article 1](#)). A foundation may be formed by Polish citizens or foreigners who are of legal age, or by domestic or foreign legal persons (LOF Article 2).

Foundations may be established through a notarized document expressing the wish of a founder to form a foundation, or by a will (LOF Article 3). The governing document should state the purpose of the foundation (LOF Article 3(2)). The law does not establish a minimum or maximum value for the initial endowment; however, where a foundation plans to engage in economic activities, it is required to set aside at least 1,000 Polish Zloty (PLN) (approximately \$270) for those activities. A foundation may engage in business activity within the scope of its aims ([LOF Article 5\(5\)](#)).

B. Public Benefit Status

Associations

An association may be formed for either mutual benefit or public benefit purposes.

Foundations

Foundations are subject to a public benefit requirement. A foundation must be formed to realize economically and socially beneficial objectives subject to the essential interest of the Republic of Poland, such as: health care, development in economy and science, education, culture and fine arts, welfare, environmental protection, and protection of historical monuments ([LOF Article 1](#)). Polish courts have often struggled with determining what qualifies as a public benefit purpose, guided by examples in the Law on Foundations and in the Law on Public Benefit Activities and Volunteerism.

Public Benefit Organizations (PBOs)

In April 2003, the Polish Parliament adopted the Law on Public Benefit Activity and Volunteerism (PBA Law), which, among other things, establishes “Public Benefit Organizations.”

The PBA Law was substantially amended in 2010, and additional changes were introduced in 2011, 2012, 2013, 2014, and 2015. In order to qualify for PBO status, a “non-governmental organization” under the law, such as a foundation or association, must satisfy a number of requirements. First, the “non-governmental organization” must be active in one of the areas listed in the Law. These areas include: social and charity work; promotion of the integration and reintegration into the labor market of persons susceptible to social exclusion; support to various minority groups and local communities; and promotion of culture and learning ([PBA Law Article 4\(1\)](#)).

This list differs in some respects from the examples given in the Law on Foundations; accordingly, the term “public benefit” may hold different meanings under different statutes. New foundations commonly list activities from both laws to support their PBO applications. The Council of Ministers may also designate additional public benefit activities by decree ([PBA Law Article 4\(2\)](#)).

An organization applying for PBO status must also meet the following requirements ([PBA Law Article 20](#)):

- The organization must be involved in public benefit activity working for the benefit of the entire society or of a specific group, provided that this group is selected due to its particularly difficult situation, such as life or financial conditions, as compared to the rest of the society;

- The organization must have been continually involved in the public benefit activity for a minimum of two years before applying for PBO status (PBA Law Article 22);
- If the organization is commercially active, the commercial activity must be purely a complement to the main activity, which must be for the public benefit;
- The surplus revenue remaining after costs are covered must be used for public benefit activity;
- Apart from the managing board or authority, the organization must have a separate authority dedicated to inspection and supervision;
- The bylaws or other internal regulations of the organization must include provisions that prohibit engaging in certain acts specified by the law that would lead to a conflict of interest or fraud; and
- Organizations that are legally formed as associations are prohibited from conducting public benefit activities only for the benefit of their members.

Joint-stock companies, limited liability companies, and sports clubs that have the legal form of companies are eligible for PBO status if, in addition to satisfying the above-listed requirements: a) they are not profit-making organizations, b) they invest their entire revenue in work towards achieving the public benefit goals specified in their bylaws, and c) they refrain from offering a share in their income to their members, shareholders and employees (PBA Law Article 21).

To apply for PBO status, an organization must submit an application form, a financial report, and an organizational statute to the State Court Register. The organization obtains PBO status on the day it is notified by the State Court Register that it has fulfilled the criteria for such status ([PBA Law Article 22](#)). In general, PBO status qualifies an organization to receive certain benefits defined in the law, provided that it meets accountability requirements. [2]

IV. Specific Questions Regarding Local Law

A. Inurement

Neither the Law on Associations nor the Law on Foundations expressly deals with inurement. However, [Article 34 of the Law on Associations](#) states that proceeds from economic activities of an association must serve the association's statutory goals and not be shared among the

association's members. As for foundations, a court has ruled that a foundation may not pay dividends to its founder or to members of its board. Many aspects of inurement, however, are not comprehensively governed by foundation or association law.

A PBO must devote its entire income to public benefit activities ([PBA Law Article 20\(5\)](#)). An activity, regardless of whether the organization charges a fee for it, cannot qualify as a public benefit activity if the employees who perform it are paid more than thrice of the average monthly remuneration in the corporate sector, as announced by the President of the Central Statistical Office for the previous year. ([PBA Law Article 9](#)). In addition, a PBO's statutes must prohibit certain transactions with members, employees, and their relatives: lending money to them; securing obligations for them; ceding property to them under privileged terms; purchasing goods from them under privileged terms; or using property for their sake, unless such use directly stems from a statutory goal of the organization ([PBA Article 20\(7\)](#)).

B. Proprietary Interest

The Law on Associations, the Law on Foundations, and the Law on Public Benefit Activity and Volunteerism all are silent on the question of proprietary interest.

C. Dissolution

Associations

When an association is dissolved, whether by its own resolution or by a court, the remaining assets are distributed pursuant to the association's statute or its liquidation resolution ([LOA Articles 36, 38](#)). In the absence of such a directive, the court appropriates the assets to a social purpose ([LOA Article 38](#)).

Foundations

A foundation is dissolved if its purposes have been achieved or if its financial assets have been exhausted ([LOF Article 15](#)). If its statute does not specify how assets are to be distributed upon dissolution, then the court decides, taking into account the purposes served by the foundation ([LOF Article 15\(4\)](#)).

Public Benefit Organizations (PBOs)

A PBO is dissolved according to the rules of its underlying form, whether association or foundation. If an association or a foundation loses its PBO status but continues operating, it must promptly spend (on public benefit activities) all income it received through its earlier public fundraising as a

PBO. If any such funds remain six months after the organization loses PBO status, the Minister for Social Security will order the funds ceded to a PBO with similar activities.

D. Activities

1. General

Associations

An association is free to define its purposes, operational program, and organizational structure, and to pass internal resolutions about its operations ([LOA Article 2\(2\)](#)). It is limited in its purposes and activities only by other laws intended to ensure national security, public order, protection of public health and morals, and the protection of rights and freedom of others ([LOA Article 1\(2\)](#)).

Foundations

A foundation may be formed only for economically and socially beneficial objectives subject to the essential interest of the Republic of Poland, such as: health care, development in economy and science, education, culture and fine arts, welfare, environmental protection, and protection of historical monuments ([LOF Article 1](#)).

Public Benefit Organizations (PBOs)

A PBO must perform public benefit activities listed in the law or designated by the Council on Ministers ([PBA Law Article 4](#)).

2. Economic Activities

Associations

An association may conduct economic activities, so long as it abides by the rules imposed by other regulations ([LOA Article 34](#)). For example, an association must register with the court register of business entities before undertaking economic activities (Law on Economic Activities Article 7.1). In theory, an association could be formed primarily for economic purposes, though excessive economic activity would render it ineligible to become a PBO. Proceeds from an association's economic activities must serve to realize its statutory goals and may not be shared among its members ([LOA Article 34](#)). As will be discussed below, certain statutory activities that an association carries out for fees are not considered economic activities.

Foundations

A foundation may conduct economic activities within the scope necessary

to achieve its aims ([LOF Article 5](#)). The statute of the foundation, however, must authorize the economic activities. A foundation formed for the purpose of working for a cleaner environment, for example, cannot sell books or charge fees for seminars on the topic, or even contract with the government to undertake clean-up efforts, unless the foundation statute allows for it ([LOF Article 11](#)). Like an association, a foundation must register with the court register of business entities before undertaking economic activities (Law on Economic Activities, Article 7(1)). As will be discussed below, certain statutory activities that a foundation carries out for fees are not considered economic activities.

Public Benefit Organizations (PBOs)

A PBO can undertake economic activities only if the activities help fulfill its statutory goals ([PBA Law Article 20\(4\)](#)). As will be discussed in the next section, certain statutory activities that a PBO (whether association or foundation) carries out for fees are not considered economic activities.

Payments Received for Public Benefit Activities

The Law on Public Benefit Activity and Volunteerism provides that certain statutory activities carried out for fees by a non-governmental organization (including an association or foundation, with or without PBO designation) are not considered economic activities ([PBA Law Article 6](#)). These are known as “payable public benefit activities” and are defined as public benefit activities (listed in [PBA Law Article 4](#)) designated in the statutes of the organization for which payment is received ([PBA Law Article 8](#)). They may include the sale of goods or services manufactured or provided by individuals who are direct beneficiaries of a public benefit activity (e.g., sale of goods made by a handicapped person), or the sale of goods donated for the purpose of benefiting the public ([PBA Law Article 8](#)). Any profit gained from payable public benefit activities must be used exclusively to implement public benefit activities ([PBA Law Article 8](#)). Payable public benefit activities are subject to VAT tax.

Public benefit activity provided for a fee is classified as an economic activity if:

- the fee charged for the activity exceeds the costs of providing it; or
- the average monthly earnings of the person employed to carry out the public benefit activity provided for a fee (as specified by the organization’s bylaws) exceed the triple value of average monthly earnings in the industrial sector, as published by the President of the Central Statistical Office with regard to the preceding year (PBA Law Article 9(1)).

3. Political Activities

In July 2005, a new law regulating lobbying activities was enacted. This law distinguishes between professional or commercial lobbying and the activities of NPOs. NPOs are not obliged to obey the law's strict lobbying restrictions. Other limits on political activities may apply, however, depending on an NPO's organizational form.

Associations

There are no limitations on the political activities of associations. The preamble of the Law on Associations lists the opportunity to participate actively in public life as one of the inherent purposes of associations ([LOA Preamble](#)) The law explicitly grants associations "the right to voice their opinion on public issues," regardless of their stated goals or activities (LOA Article 1(3)).

Foundations

Although no explicit regulations prohibit foundations from engaging in political activities, foundations are only permitted to engage in activities specified in their governing documents. Therefore, a foundation wishing to engage in political activities would presumably be required to state that intention in its statute.

Public Benefit Organizations (PBOs)

Political activities are not explicitly listed as public benefit activities in the law, though the list does include "promotion and protection of human and civic rights and freedoms, work to support the development of democracy."

E. Discrimination

The Polish Constitution prohibits "limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property" ([Constitution Article 233\(2\)](#)). According to local experts, this provision appears to prohibit racial discrimination in any form.

F. Control of Organization

Associations

In principle a legal person may only be a supporting member of an association, and cannot control it.

Foundations

In general, no restriction exists on the control of foundations by other organizations. All foundations should prepare and make publicly available their annual reports, including narrative and financial components. It is

possible that a Polish foundation 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).

Public Benefit Organizations (PBOs)

PBOs are governed by the rules applicable to the underlying form, whether association or foundation.

V. Tax Laws

A. Tax Exemption

A PBO is exempt from corporate income tax (as well as real estate tax, civil actions tax, stamp duty, and court fees) on all income devoted to the public benefit objectives listed in the law ([PBA Law Article 24\(1\)](#)). Because the law limits PBOs to those activities ([PBA Law Article 20](#)), it appears that PBOs are generally exempt from corporate tax altogether, with one possible exception: a PBO that unlawfully engaged in activities beyond those listed in the law might be liable for tax on those activities immediately, even before the initiation of proceedings to revoke the organization's PBO status.

In addition, there is an exemption from the corporate income tax for income of organizations whose statutory objectives consist of activities in the fields of:

- science, technology and education, including tuition of students;
- culture;
- physical education and sports;
- environmental protection;
- supporting public projects in building roads and telecommunication networks and water supply systems in rural areas;
- charity;
- health care and social welfare;
- occupational and social rehabilitation of the disabled; and
- religious worship (CIT Law Article 17(1),(4),(5)).

An NPO (other than a PBO) must pay corporate tax on all income, including grants, devoted to any objectives not listed above. Thus, the taxability of some grant income depends on how it is spent.

The corporate tax treatment of endowments has been a pressing concern to foundations in Poland. In 2002, Poland's Supreme Court reversed a

[ruling of the Supreme Administrative Court](#) which required that money invested by foundations in securities be subject to corporate income tax. Subsequently Article 17(1)(e) of the Law on Corporate Income Tax was enacted, permitting the investment of tax-free income in a range of securities, equities and other financial instruments, if managed by a professional investment company (asset managers or investment funds). Profits accumulated are not subject to tax, provided that they are used exclusively to implement public benefit or statutory activities.

In addition, foundations and associations (and legal entities in general) are not subject to the heritages and donations tax in Poland.

B. Deductibility of Donations to Polish NPOs by Individuals and Corporations Based in Poland

Both personal and corporate income taxpayers can deduct certain donations from their taxable basis. A donation is deductible if the recipient organization conducts public benefit activities (as defined in the PBA Law), regardless of whether the organization holds PBO status. The limits on deductibility are 6% of taxable income for physical persons and 10% for corporations (CIT Law Article (18)(1)(1)).

There are no strict limitations regarding the type of organization to which donations may be made; the only restriction is that a donation, in order to qualify for tax exemption, may not be made to natural persons; entities engaged in the production of alcoholic beverages, fuels, tobacco, electronic devices, precious metals; or entities engaged in the trade of precious metals (PIT Law Article 26(5); CIT Law Article 18(1a)). Organizations receiving donations from legal persons are obliged to make this information public (including the identity of the donor) if a single donation exceeds 15,000 PLN, or if the cumulative value of a donor's donations during a year exceeds of 35,000 PLN (approximately \$12,000) (CIT Law Article 18(1d)).

According to the amendment of the Corporate Income Tax Act, which has been in force since 2009, entrepreneurs are able to classify the cost of manufacturing or acquiring food products that are offered to a public benefit organization (with the sole purpose of being used towards the charitable aims of such organization) as tax-deductible costs (Act on the amendment of the Act on Personal Income Tax, Act on Corporate Income Tax and selected other Acts – Journal of Laws No. 2009, Item 1316, Article 16(1)(14)). Thus, food donations to charitable PBOs are fully tax-deductible. Other (non-food) donations remain deductible at the current level, up to 10% of the income.

The Law on Public Benefit Activities and Volunteerism creates a new form of tax incentive that benefits PBOs. It permits a personal income taxpayer to allocate 1% of his/her tax payment to a PBO up to 1% of his/her income in a fiscal year (PBA Law Article 27; PIT Law Article 45 (5c-5g); Law on Flat-Rate Income Tax Article 21(3a-3d)). Recent amendments to the personal income tax laws allow a taxpayer to designate a PBO in his/her annual tax statement and the tax office will execute payment to the PBO (previously the taxpayer had to allocate 1% of his/her tax in person). For each taxpayer, one percent of his/her tax payment may be designated only for one PBO. For the fiscal year 20154, 8,001 PBOs were entitled to receive 1% of individual taxpayers' income tax.

C. Value Added Tax

There are no exemptions from VAT for specific kinds of persons or organizations. However, certain goods and services are exempt from VAT, including, *inter alia*, the following (Appendix 4 to VAT Law):

- Research and development services;
- Services in the field of education;
- Services in the field of health protection and social welfare; and
- Statutory services provided by membership organizations, not classified otherwise

If an NPO uses a donation to provide a good or service, the good or service is generally subject to VAT unless one of the foregoing exemptions applies. Grants are typically exempt from VAT if provided to an NPO to pursue its statutory goals. In contrast, if a VAT taxpayer provides an in-kind donation, the donation is generally subject to VAT.

At the beginning of January 2009, amendments to the Act on VAT came into force (Act of November 7, 2008 on the amendment of the Act on the Value Added Tax and selected other Acts – Journal of Laws No 209, Item 1320). The amendment creates a VAT exemption for certain donations of food (Article 43(1)(16) and 43(12)). The list of VAT-exempt goods and services now includes the supply of goods by their manufacturer, if the goods in question consist of food products (with some exceptions for alcoholic beverages) – if they are being donated to a PBO with the sole purpose of being used towards its charitable aims (Article 43 Section 1 of the amended Act). The exemption is applicable only where the entity delivering the goods produces appropriate documentation.

D. Double Tax Treaties

Poland 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 Contacts

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Footnotes

[1] For example, foundations established by political parties are ineligible for PBO status. As a general matter, the same is true for a foundation established solely by the State Treasury unless the foundation supports scientific endeavors.

[2] A PBO must prepare annual reports on its activity. The reports consist of a substantive report and a financial report. The reports must be made available to the public in a manner that would make it possible for any interested person to access them. This includes the duty to publish the report on the organization's website. The reports are also submitted to the government, within deadlines specified in the PBA, and placed in a database of reports published on a government website. The minister competent in the matters of social security is the supervising authority with regard to PBOs (PBA Law Articles 23, 28–34).