

# Romania

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Comments related to any information in this Note should be addressed to [Brittany Grabel](#).

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## I. Summary

### A. Types of Organizations

Romania is a civil law country, and as such has two traditional, civil law forms for nongovernmental, not-for-profit organizations (NPOs): the association and the foundation. In addition, two or more associations or foundations may join together to form a federation. These three entities are commonly referred to as "not-for-profit organizations" in Romanian legislation. Although some laws use the terms "nongovernmental organizations" or "civil society organizations," the terms are synonymous for purposes of this Country Note.

NPOs are defined in the [Fiscal Code, Law 571/2003](#) (Art. 7). The principal regulations governing NPOs appear in [Governmental Ordinance 26/2000](#), which was substantially amended by Law 246/2005.

This Note does not discuss forms of Romanian NPOs that have little interaction with foreign grantmakers, including: trade unions (governed by [Law 54/2003](#)), householders' associations (Law 114/1996), political parties (Law 14/2003), employers' syndicates ([Law 356/2001](#)), and informal organizations that lack the status of legal entities ([Governmental Ordinance 26/2000](#)).

## B. Tax Laws

As detailed below, Romania exempts from corporate income tax the income of certain NPOs carrying out specific types of activities, with unrelated business income subject to tax under certain circumstances.

Romania also subjects certain sales of goods and services to a Value Added Tax (VAT), with a fairly broad range of exempt activities. The income tax law and the corporate tax law provide tax benefits for donors.

The existence of a double taxation treaty between Romania and the United States may also affect gift planning decisions of U.S. corporate grantmakers doing business in Romania.

## II. Applicable Laws

- [Constitution of Romania](#)
- [Governmental Ordinance 26/2000](#), amended by Law 246/2005
- [Fiscal Code, Law 571/2003](#)
- [Law on Sponsorship, Law 32/1994](#)
- [Volunteer Law, Law 78/2014](#)
- [Law on National Education, Law 1/2011](#)

## III. Relevant Legal Forms

### A. General Legal Forms

#### Association

An association is defined as a “subject of law constituted of three or more persons who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, of collective interest, or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest” ([Governmental Ordinance 26/2000 Art. 4](#)). [1] Law 246/2005 eliminated the lists of qualifying general interest and collective interest activities that appeared in earlier legislation. “General interest” and “collective interest” are discussed further in Section B.

The founding members of an association must produce a statute and constitutive act that govern the association ([Governmental Ordinance 26/2000 Art. 6](#)). An association acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters ([Government Ordinance 26/2000 Arts. 7 and 8](#)). [2]

#### Foundation

A foundation is defined as a “subject of law created by one or more persons who, on the basis of an act of will *inter vivos* or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of collective interest” ([Governmental Ordinance 26/2000 Art. 15](#)). Like an association, a foundation acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters.

#### Federation

Two or more foundations or associations may establish a federation. A federation acquires legal status upon registration with the clerk's office in the jurisdiction in which it will have its headquarters. Federations are generally subject to the law regulating associations ([Governmental Ordinance 26/2000 Arts. 35-36](#)). The foundations and associations that make up the membership of a federation retain their own separate legal status, as well as their patrimony ([Governmental Ordinance 26/2000 Art. 36\(2\)](#)).

## B. Public Benefit Status

NPOs that serve objectives in the "general interest" or "collective interest" are eligible to attain a special status: Public Utility Status. All foundations must serve these purposes and therefore are all eligible to apply for Public Utility Status ([Government Ordinance 26/2000 Art. 15](#)). In contrast, an association or federation must state in its governing statute whether it pursues "general interest," "collective interest," or "mutual benefit" objectives.

To qualify for Public Utility Status, an NPO must meet the following conditions:

- It has carried out its activity for the general or collective interest;
- It has operated for at least three years and achieved part of its proposed goals with proof of continuous activity through significant actions;
- It has presented a report showing the development of significant prior activities through programs or projects specific to its purpose, together with balance sheets and budgets for the last three years; [3]
- It has its own patrimony, membership, and employees necessary to achieve its proposed aims;
- It has cooperation and partnership contracts with public institutions or associations and foundations from Romania or abroad; and
- It has obtained significant results in line with its proposed aims, or presented letters of recommendations from competent authorities at the national or international level in order to demonstrate continuity of its activity ([Governmental Ordinance 26/2000 Art. 38](#), as amended by Law 246/2005 and Law 145/2012).

The Government may waive the first two conditions, however, if the applicant represents a merger of two or more associations or foundations, and each of the predecessor entities would have met the conditions ([Governmental Ordinance 26/2000 Art. 38\(2\)](#) as amended by Law 246/2005). A federation may also gain Public Utility Status if at least two-thirds of its constituent organizations hold that status ([Governmental Ordinance 26/2000 Art. 45](#) as amended by Governmental Ordinance 37/2003 Art. I Section 26).

It should be noted that Law 246/2005 simplifies the certification process for Public Utility Status. Previously, different ministries or central authorities imposed different requirements. Now, all applications are submitted to the General Secretariat of the Romanian Government, which must obtain recommendations from the pertinent ministries or central authorities within 60 days.

Public Utility Status confers the following rights and obligations on NPOs:

1. The right to obtain free public goods;
2. The right to publicize its Public Utility Status in all documents;
3. The obligation not to let its level of activity and performance fall below that set forth in its application for Public Utility Status;
4. The obligation to report regularly to the competent administrative authority on its activities, finances, and any modifications to its constitutive act or statute (these reports are available to the public); and
5. The obligation to publish excerpts of its activity reports and annual balance sheets in the Official Gazette of Romania, Part IV, as well as in the national registry of legal persons without patrimonial aim.

# IV. Specific Questions Regarding Local Law

## A. Inurement Association

Romanian law does not specifically prohibit inurement. As a general matter, a member with a personal interest in an issue on the agenda of the association's general assembly must not take part in the discussion of the issue or vote on it ([Governmental Ordinance 26/2000 Art. 22\(1\)](#)). The labor relationships between NPOs and their employees are governed by the same rules applied to the business sector: the Labor Code. Further, the Fiscal Code permits members of an NPO's Board of Directors to be paid in their capacity as members of the Board of Directors or as employees.

### Foundation

Inurement is not specifically prohibited. The conflict of interest rules applicable to members of an association also apply to the members of a foundation's board of directors ([Governmental Ordinance 26/2000 Art. 29\(4\)](#)).

## B. Proprietary Interest Association

On the basis of an agreement, the members of an association share, *inter alia*, their material contributions with the organization without being entitled to restitution of their individual contributions (See [Governmental Ordinance 26/2000 Art. 4](#)). As discussed below, an association may not distribute the assets remaining after liquidation to its members or to any natural persons ([Governmental Ordinance 26/2000 Art. 60\(1\)](#)).

### Foundation

A foundation is created by one or more persons who establish a patrimony dedicated permanently and irrevocably to achieving a goal of general or collective interest ([Governmental Ordinance 26/2000 Art. 15\(1\)](#)). A foundation may not distribute the assets remaining after liquidation to its founders or to any natural persons ([Governmental Ordinance 26/2000 Art. 60\(1\)](#)).

### Federations

Associations and foundations that form a federation maintain their own legal status, including their own patrimony. If an association or foundation leaves the federation, however, it receives its share of the federation's total assets after a financial report is approved by auditors or an external financial expert.

## C. Dissolution

In the case of dissolution, the remaining assets of an association or foundation must be transferred to legal persons that pursue purposes identical or similar to those of the dissolving entity (See [Governmental Ordinance 26/2000 Art. 60\(2\) and \(3\)](#)). [4] This transfer must be carried out in accordance with the

provisions of the organization's governing documents (See [Governmental Ordinance 26/2000 Art. 6\(3\)\(f\) \(associations\)](#) and [Art. 16\(3\)\(f\) \(foundations\)](#)). The assets may not be distributed to natural persons ([Governmental Ordinance 26/2000 Art. 60\(1\)](#)).

The court has the authority to distribute the assets of an association or foundation remaining after liquidation under any of the following circumstances:

- If the liquidators fail to transfer the remaining assets within six months of the liquidation according to terms of [Governmental Ordinance 26/2000 Art. 60\(2\)](#);
- If the charter of the association or foundation does not stipulate a procedure for transferring the assets; or
- If the stipulation in the charter is contrary to law or the public order ([Governmental Ordinance 26/2000 Art. 60\(3\)](#)).

When an association or foundation is dissolved by court decision, the remaining assets will be taken over by the state or, if the entity's purposes were principally local, by the municipality ([Governmental Ordinance 26/2000 Art. 60\(4\)](#)).

## **Federations**

When a federation dissolves, the assets remaining after liquidation shall be transferred, in equal shares, to its member foundations and associations unless otherwise stipulated by its statute ([Governmental Ordinance 26/2000 Art. 37](#)). If an association or foundation leaves the federation, it likewise receives its share of the total assets, but only after a financial report is approved by auditors or an external financial expert.

## **NPOs with Public Utility Status**

NPOs with Public Utility Status must keep track of which assets and goods come from public sources and which come from private sources. When an NPO with Public Utility Status dissolves, the assets purchased with public money that remain after liquidation will be distributed, according to a government decision, to other associations or foundations pursuing similar purposes, or to public institutions. Assets that came from private sources will be distributed according to the rules stated above for associations and foundations.

# **D. Activities**

## **1. General Activities**

### **Association**

An association carries out activities to pursue goals which, as stipulated in its constitutive statute, are “of general interest, or collective interest or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest” ([Governmental Ordinance 26/2000 Art. 4](#)).

### **Foundation**

A foundation must devote its activities to achieving the objectives of general or collective interest, as stated in its constitutive statute ([Governmental Ordinance 26/2000 Art. 15\(1\)](#)).

## **2. Economic Activities**

An association or foundation may directly carry out economic activities that have an “accessory character” and are closely connected to the main purpose of the organization. Income from these related economic activities is exempt from corporate tax if the income falls below 15,000 EUR or 10% of the entity's total not-for-profit income, whichever is less ([Fiscal Code Art. 15\(3\)](#)). For income exceeding those thresholds, and for all income from unrelated economic activities, the NPO pays taxes at the same rate as commercial firms. There is one exception: foundations established by legacy are exempt from paying profit tax altogether ([Fiscal Code Art. 15\(1\)\(d\)](#)).

The Fiscal Code extends a profit tax exemption to income generated by NPOs from "occasional [economic activities]" ([Fiscal Code Art. 15\(2\)\(i\)](#)). The activities must be for social or professional purposes, in accordance with the organization's statute. Examples include fund-raising events with an admission fee, festivals, raffles, and conferences.

An association, foundation, or federation can establish a commercial company, provided that all dividends from the company are used to advance the purpose of the NPO or are reinvested in the company; they must not be distributed to any other shareholders (See [Governmental Ordinance 26/2000 Art. 47](#) and [Governmental Ordinance 37/2003](#)). An NPO (association, foundation, or federation, including those that have Public Utility Status) is required to pay tax on the dividends. [5]

## E. Political Activities

Not-for-profit organizations may engage in political activities so long as those activities are not specifically covered by the Political Parties Law. They can contribute funds to political parties or for electioneering (See [Law 334/2006 Regarding Financial Political Parties' Activities and Electioneering Campaigns](#)). Foreign NPOs are not permitted to finance political parties, however.

## F. Discrimination

The Romanian Constitution prohibits discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property, or social origin ([Constitution Art. 4](#)). Further, the Law on National Education states that “The state provides Romanian citizens with equal rights of access to all levels and forms of pre-university and higher education, as well as lifetime education without any discrimination” ([Law 1/2011 Art. 2\(4\)](#)). Educational establishments, including private institutions, must comply with this law (See [Constitution Art. 32\(5\)](#)).

## G. Control of Organization

Foundations and associations may be established by natural or legal persons, whether domestic or foreign. Under Art. 76(1) of Governmental Ordinance 26/2000, “foreign legal persons without patrimonial aim may be recognized in Romania, under condition of reciprocity, on the basis of prior approval from the Government, by registration in the Registry of associations and foundations with the clerks’ office at the Bucharest tribunal, if they are validly established in the state whose nationality they possess, and if the purpose in their statute does not run counter to the public order in Romania.” For the procedure to be followed in this respect, see Governmental Ordinance 26/2000 Art. 76(2) and (3).

It is possible that a Romanian 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).

The Sponsorship Law prohibits the sponsorship of an NPO by a sponsor that directs the activity of the beneficiary ([Law on Sponsorship, Law 32/1994](#); see also Section V.B below for additional information on sponsorships). In this respect, if a commercial firm is the sole founder of an NPO or has a position on the NPO's Board of Directors, it cannot make a legal donation to the NPO.

# V. Tax Laws

## A. Tax Exemption

The Fiscal Code establishes the profit tax rate in Romania; exceptions are listed in Art. 33 and Art. 38 ([Fiscal Code, Law 927/2003](#)).

A number of entities are exempt from paying profit tax altogether. These include Romanian foundations established as a result of legacies; religious entities, with regard to income obtained from economic activities used for the support of activities with a charitable purpose; and Romanian legal persons that pay tax on the income of micro-enterprises ([Fiscal Code Art. 15\(1\)](#)).

In addition to the foregoing exemptions, all Romanian NPOs are exempt from profit tax on certain types of revenue, including:

- Donations, money, or goods obtained through sponsorship;
- Sports taxes, visas and penalties (these are income sources that sports associations acquire as a result of participation in different sport competitions);
- Dividends and interest;
- Income on which tax already is paid, including income from entertainment (concerts, shows, etc.);
- Cash or in-kind contributions from members or supporters;
- Membership fees;
- Registration fees as established under effective legislation;
- Resources from the public budget or from non-reimbursable financing;
- Income obtained from occasional activities – such as fundraising events with admission fees, festivals, raffles, and conferences – used for social or professional purposes, according to the organization's statute;
- Exceptional income resulting from certain assignments of the organization's assets; and
- Income obtained from advertising and publicity, realized by public benefit organizations (PBOs), according to the law of organization and operation, in the fields of culture, scientific research, education, sports, and health ([Fiscal Code Art. 15\(2\)](#)).

In general, associations and foundations are liable for profit tax on all of their business activities beyond a certain threshold. Foundations established as a result of a legacy are an exception and are exempt from all profit tax ([Fiscal Code Art. 15\(1\)](#)).

## B. Deductibility of Donations to Romanian NPOs by Individuals and Corporations Based in Romania

The deductibility of contributions (whether individual or corporate) to NPOs is regulated by the Law on Sponsorship, which lists the types of "sponsorship" that qualify as deductible ([Law 32/1994](#)); as well as the Fiscal Code, which imposes limits on the amount that a donor can deduct ([Law 517/2003](#)).

Under Romanian law, "sponsorship" occurs where two parties agree on the transfer of ownership of goods or financial means to support the not-for-profit activities of the beneficiary ([Law 32/1994 Art. 1](#)). Under Law 204/2001, published in the Official Journal in July 2001 (approving Governmental Ordinance 36/1998), the following entities are eligible to be beneficiaries of sponsorship:

- Any not-for-profit organization that undertakes activities in Romania intended to promote sports; religion; culture; art; the environment; scientific research; charity; human rights protection;

- economic, health, and social services or assistance; social and community development; professional interest representation; and maintenance, renovation, preservation, and valorizing of historical monuments;
- Any public authorities or institutions that engage in the activities listed above;
- Radio or TV broadcasts or books or other publications relating to the activities listed above; and
- Any individual living in Romania who develops activities in the areas listed above, provided that this activity is recognized by a not-for-profit organization or by a public institution engaged in the domain for which sponsorship is sought (See [Law 32/1994 Art. 4](#) as modified by Governmental Ordinance 36/1998 and by Law 204/2001).

Under the Sponsorship Law, a sponsor can be a business company or a natural person.

The Fiscal Code establishes the rates governing deductions. A business company that grants sponsorships under the Sponsorship Law (or the Library Law) can deduct from the tax profit up to 0.3% of its turnover or 20% of the profit tax due, whichever is less ([Law 927/2003 Art. 31\(4\)](#)).

Individuals can designate that 2% of their annual income tax will provide sponsorship to NPOs legally operating under Governmental Ordinance 26/2000 regarding associations and foundations (See [Fiscal Code Art. 84\(2\)](#) as modified by Governmental Ordinance 138/2004). An individual receiving commercial income from independent activities (e.g., work as a lawyer or notary when the individual is not affiliated with a particular company), or from intellectual property rights, qualifies for a sponsorship deduction of up to 5% of the taxable base, in addition to the 2% of annual income tax that he or she can designate for sponsorship of a particular NPO (See [Fiscal Code Art. 48\(5\)](#) as modified by Governmental Ordinance 138/2004).

Beginning in 2011, Romania's new education law allows an individual to designate 2% of his or her income tax to his or her own child for education expenses ([Law 1/2001 of National Education Art. 356\(3\)](#)). However this provision has not been implemented through secondary legislation and is therefore not effective as of September 2014.

## C. Value Added Tax

The basic VAT rate in Romania is 24% ([Fiscal Code Art. 140\(1\)](#)). A lower rate, 9%, applies to books, medicines, and certain other goods and services ([Fiscal Code Art. 140\(2\)](#)). Entities can be exempted from paying VAT if their economic activities generate a turnover of less than 35,000 Euro for the current fiscal year. Turnover does not include revenues from not-for-profit activities (e.g., grants and member contributions).

If an NPO's income from economic activity exceeds 100,000 Euro, the NPO must register as a VAT taxpayer. [6] Below this threshold, registration as a VAT taxpayer is optional. Romania exempts from VAT the following goods and services provided by NPOs or other private or public entities:

- Medical treatment;
- Goods and services closely related to social assistance or social protection performed by public institutions or other entities recognized as having a social character;
- Goods and services closely related to the protection of children and youth performed by public institutions or other entities recognized as having a social character;
- Goods and services furnished for the collective benefit of members, in exchange for a fixed subscription fee, by organizations without a patrimonial purpose that have an objective of a political, trade union, religious, patriotic, philosophical, philanthropic, ownership, professional or civic nature, as well as the objective of representing the interest of their members, on the condition that such exemption does not cause distortions of competition;
- Cultural services, or goods closely related to such services, performed by public institutions, as well as operations that fall under the tax for performance;

- Goods and services provided by persons whose operations fall in one of the above categories for exemption, in connection with events intended to raise financial support and organized for their exclusive benefit, on the condition that such exemptions do not produce distortions of competition;
- Objects and apparel of religious bodies;
- The import of goods received free of charge as assistance or donations intended for religious, health or sanitation, state defense or national security, artistic, or sport purposes, or for environmental protection or protection and preservation of historical and architectural monuments, under the conditions established by regulations; and
- The import of goods financed by non-repayable loans granted by foreign governments, international organizations, or foreign or domestic not-for-profit organizations, under the conditions established by regulations ([Fiscal Code Arts. 141 and 142](#)).

If an NPO is registered as a VAT payer, its fiscal treatment – including required submissions of VAT periodical reports, and deductibility – is similar to that of a commercial company.

Beginning on January 1, 2011, NPOs must pay the social taxes and other taxes related to labor contracts on a monthly basis, as opposed to twice yearly under the prior framework. NPOs with fewer than three employees are allowed to declare and pay taxes every three months.

## D. Double Tax Treaties

Romania has entered into a double taxation treaty with the United States, but the treaty does not specifically address the deductibility of contributions to NPOs (See <http://www.irs.gov/pub/irs-rtty/romania.pdf>).

# VI. Knowledgeable Contacts

Octavian Rusu, 21 Nerva Traian Blv. Bucharest, Sector 3. Phone: +40 742 127 721, fax: +40 21 310 01 80. [octavian\\_rusu@yahoo.com](mailto:octavian_rusu@yahoo.com)

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## Footnotes

[1] English translations of Governmental Ordinance 26/2000 and the Fiscal Code most often use the phrase "community interest." According to a local expert, the phrases "community interest" and "collective / collectivity interest," which also appears in some translations, are synonymous. Initially the text of Ordinance 26/2000 used the term "community interest." In 2005 this term was changed to "collective interest" or "collectivity interest."

[2] Following adoption of the new Civil Code in 2013, the name of an NPO must contain the word "association" or "foundation," depending what type of entity it is. In addition, according to Law 34/2010, an NPO cannot legally form if its name contains words such as "academy," "council," "authority" or "agency." This restriction is designed to avoid confusion created in the past when some NPOs formed with names similar to those of public institutions. Furthermore, if an NPO decides to include in its name words such as "national" or "Romanian," or derivatives thereof, it must first obtain special approval from the General Secretary of the Government (See also Law 22/2014 amending and supplementing Government Ordinance 26/2000 on Associations and Foundations).

[3] The standard that an NPO currently must meet reflects a change under Law 246/2005. Previously, an NPO needed to demonstrate that it had accomplished the majority of its objectives before obtaining Public Utility Status; in practice, this proved difficult for many NPOs to do and the law was modified accordingly.

[4] Local experts interpret these sections of the Government Ordinance to mean that an association or foundation's patrimony could be allocated to another nonprofit organization or to a local public authority, e.g., a Local Council.

There is an exception to the distribution framework: When a Federation dissolves, its members (NPOs – legal persons) are entitled to receive a percentage of the patrimony that is proportional to the subscribed capital.

[5] Recent modifications of Law 346/2004 on stimulating the creation and development of small and medium-enterprises (SMEs) assimilates NPOs with the status of SMEs, such that they may benefit from the fiscal treatment of SMEs. These modifications recognize the economic values of NPOs.

[6] The limit was increased from 35,000 Euro to 100,000 Euro beginning on July 1, 2012. The exchange rate (Euro to national currency) is that which existed at the date of Romania's accession to the EU (3.3817 lei/Euro).