

Serbia

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I. Summary

A. *Types of Organizations*

In Serbia there are three common legal forms of not-for-profit organizations (NPOs):

- Associations;
- Foundations; and
- Endowments (Legacies) [\[1\]](#)

Other not-for-profit legal forms, which are outside the scope of this Note due to their limited interaction with U.S. grantmakers, include: political parties, trade unions, chambers of commerce, cooperatives, and private institutions (faculties and universities).

B. Tax Laws

The Income Tax Law generally exempts NPOs from taxation on grants, donations, membership dues, and non-economic sources of income. Property tax is not levied on non-monetary gifts, as long as the transfer of those gifts is subject to VAT. Profits from related and unrelated economic activities are exempt up to 400,000 Serbian dinars (RSD) (approximately USD 3,728 [2]), provided that certain conditions are satisfied.

A VAT regime went into effect on January 1, 2005. The standard tax rate was increased to 20% in October 2012, with a reduced tax rate of 8% or 10% for certain goods and services. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods. There are limited incentives for philanthropy, and the concept of “public benefit” status is still not fully developed.

II. Applicable Laws

- [Constitution of Serbia](#), Official Gazette No. 98/2006
- [Law on Associations](#), Official Gazette No. 51/09 ([English version](#))
- [Law on Endowments and Foundations](#), Official Gazette No. 88/2010
- [Property Tax Law](#), Official Gazette No. Official Gazette, No. 26/01, 45/02, FRY Official Gazette, No. 42/02, RS Official Gazette, No. 80/02, 135/04, 61/07, 5/09, 101/10, 24/11, 78/11, 57/12, 47/13)
- [Anti-Discrimination Law](#), Official Gazette, No 22/2009
- [Corporate Profit Tax Law](#), Official Gazette No. 25/01, 80/02, 43/03, 84/04, 18/2010, 101/11, 119/12, 47/13, 108/13 [3]
- [Value-Added Tax Law](#), Official Gazette No.84/04, 86/04-correction, 61/05 and 61/07, 93/12, 108/13, 6/14.
- [Games of Chance Act](#), Official Gazette No. 88/2011 and 93/2012.
- [Law on Accounting](#), Official Gazette No. 46/2006, 111/2009, 99/2011, and 62/2013.

III. Relevant Legal Forms

A. General Legal Forms

The legal framework in Serbia allows for the operation of both membership and non-membership NPOs.

Associations. On October 22, 2009, a new Law on Associations came into force. Under this law, an “association” is defined as a “voluntary, non-governmental, and not-for-profit organization composed of natural and/or legal persons, established to pursue mutual or public benefit goals, which are not prohibited by the Constitution and law” (Law on Associations Article 2). [4]

Foundations and Endowments. On November 23, 2010, a new Law on Endowments and Foundations (“Law on Foundations”) was adopted. The law provides for two categories

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

Both foundations and endowments can be established by natural or legal persons.

There is no capital requirement to establish a foundation. In order to establish an endowment, however, a minimum capital amount of Serbian dinars equivalent to 30,000 Euros (approximately USD 33,108) is required. There are two exceptions: a) If the competent state authority determines that an organization pursuing a public interest objective can accomplish such objective without the minimum capital requirement, the authority has discretionary power to allow the endowment’s establishment; or b) If the endowment’s property was confiscated after the Second World War, the minimum capital requirement does not apply (Law on Foundations Article 12).

B. Public Benefit Status

There is no specific legislation that regulates the assignment of public benefit status to NPOs. Rather, the framework laws and tax laws reflect different concepts of public benefit (see Section V, below).

IV. Specific Questions Regarding Local Law

A. Inurement

The Law on Associations and the Law on Foundations each contain a general requirement that the property of an organization must only be used to advance its statutory goals. In addition, the laws also prohibit any distribution of an organization’s property to its founders, members, managers, employees, and persons affiliated with the organization. [5] The non-distribution constraint does not pertain to appropriate monetary awards and necessary costs that the foregoing persons have incurred in the course of realizing the statutory goals of an organization (Law on Associations Article 41; Law on Foundations Article 47).

B. Proprietary Interest

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

C. Dissolution

The assets of a dissolved association or foundation may only be distributed to another domestic not-for-profit organization (membership or non-membership) pursuing the same or similar statutory goal, as stipulated in the organization's statute (Law on Associations Article 42; Law on Foundations Article 55). [6] If, at the time of an organization's dissolution, it is not possible to transfer the remaining property to an organization designated in the statute, or if the statute is silent on that point, the remaining property will become the property of the Republic of Serbia, which will transfer the right to use it to a municipality in which the dissolved association had its seat (Law on Associations Article 43; Law on Foundations Article 55).

D. Activities

1. General Activities

Registered associations, foundations, and endowments are legal persons, and as such are permitted to engage in a broad range of activities, provided that the activities are enumerated in the organization's charter. Foundations must serve the public benefit, whereas associations and endowments may pursue mutual benefit or public benefit purposes.

2. Public Benefit Activities

Associations, under the Law on Associations, may be established for mutual benefit or public benefit purposes (Law on Associations Article 3). The Law defines activities deemed for public benefit, for which an association is eligible to apply for state, provincial, and local governmental support. These include: social security; care for disabled war veterans; care for persons with disabilities; social child care; care for internally displaced persons from Kosovo and Metohija and refugees; promotion of the birthrate; assistance to senior citizens; health care; protection and promotion of human and minority rights; education; science; culture; information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programs and other programs whereby the association pursues public benefit purposes directly and exclusively. The wording of the Law suggests that the list of public benefit activities is illustrative, rather than exhaustive (Law on Associations Article 38).

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

As discussed in Section V, below, compared to the NPO framework regulation, tax law provides for a narrower definition of public benefit. Deductions are provided only for donations that advance health care, cultural, educational, scientific, humanitarian, religious, environmental, and sport-related purposes, as well as donations given to institutions providing social services.

3. Economic Activities

Associations, foundations and endowments pursuing public interest objectives may engage directly in economic activities insofar as the following conditions are met: 1) the activities are related to the organization's statutory goals; 2) they are envisaged in the organization's statute; 3) they are incidental in terms of their volume, or are carried out in volume which is deemed necessary to advance the organization's statutory goals (Law on Associations Article 37; Law on Foundations Article 45). [7] In addition, an NPO must register one economic activity – the so-called major economic activity it seeks to directly engage in – with the Companies Register, but may directly engage in other economic activities insofar as they are envisaged in its statute. [8] This rule has been inconsistently applied, as the supervising state authority occasionally has taken the position that an NPO may directly engage *only* in the economic activity which is registered with the Agency. Fines are levied on NPOs that do not meet the foregoing criteria (Law on Associations Article 72; Law on Foundations Article 62).

In addition, tax legislation refers specifically to "NPOs that generate income from economic activities;" no distinction is drawn between related and unrelated economic activities (Legal Entity Profit Tax Law Article 44).

E. Political Activities

The Law on Foundations prohibits foundations and endowments from being established in order to directly engage in election campaigning, support political parties or candidates in elections, or raise funds for political parties or candidates (Law on Foundations Article 6). The Law on Associations is silent on this point. In fact, many organizations have engaged directly in lobbying campaigns for candidates and parties.

F. Discrimination

The Serbian Constitution contains provisions prohibiting discrimination on the basis of ethnicity, race, and similar categories (Constitution of Serbia Article 21). Serbia has also enacted an Anti-Discrimination Law, which in addition to the generally protected groups, also prohibits discrimination based on: citizenship; language; religious or political beliefs; financial standing; sexual orientation; genetic features; health condition; previous convictions; membership in unions, political groups, or other organizations; as well as real or presumed personal property (Anti-Discrimination Law Article 2).

G. Control of Organization

The Law on Associations requires at least three legal or natural persons to establish an association, provided at least one of the founders has a residence or place of business in Serbia. If the foregoing condition is met, no other restrictions are envisaged for foreign legal and natural persons as founders. Both for-profit and not-for-profit legal entities may be founders of an association (Law on Associations Article 2 and 10).

The Law on Foundations puts on equal footing foreign, legal, and natural persons as founders. Both for-profit and not-for-profit legal entities may be founders of a foundation (Law on Foundations Article 10).

V. Tax Laws

A. Tax Exemptions

NPOs are exempt from income tax on foreign and domestic grants, donations, membership dues, and similar forms of income not related to the organization's economic activities. Under the Legal Entity Profit Tax Law, profit generated by an NPO is also exempt from income tax, provided that:

- a) income from economic activities did not exceed a given threshold of RSD 400,000 (approximately USD 3,728);
- b) earnings were not distributed to the founders, employees, members of the management board, or any affiliated person thereof;
- c) salaries for the members of the management board and employees do not exceed double the average salary paid by organizations engaged in the same activities in the commercial sector;
- d) all earned profit was used to further the objectives for which the organization was created; and
- e) the NPO's economic activities do not give rise to unfair competition with the private business sector, as defined by the antitrust law (Legal Entity Profit Tax Law Article 45).

B. Deductibility of Charitable Contributions

Corporations may deduct up to 5% of their expenditures for health care, cultural, cinematography, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes, including contributions to social security institutions established in compliance with the Social Security Law of May 2013. In practice, however, companies report difficulties when attempting to obtain tax deduction. Corporations may claim deductions only if they donate to entities registered according to specific laws to carry out these activities and if funds are intended for these specific purposes.

It is unclear how these tax provisions relate to public benefit concepts found in the NPO framework legislation. [\[9\]](#)

The Personal Income Tax Law does not address charitable contributions.

C. Value Added Taxes

The VAT Law came into effect on January 1, 2005. According to the Law, foreign grants and donations are not subject to VAT (VAT Law Article 24). Foreign donors are also exempt from paying VAT on humanitarian goods imported to Serbia (Article 26). The Law does not provide NPOs as such with specific exemptions; however, it does exempt a number of services and supplies that may be provided by NPOs, including services (and,

generally, goods related to those services) in medicine, social welfare, culture, education, science, religion, and sports (VAT Law Article 25).

D. Double Tax Treaties

The United States has no double tax treaty with Serbia.

VI. Knowledgeable Contacts

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Footnotes

[1] For purposes of this Note, the term “foundation” will be used in the general sense to refer to both foundations and endowments pursuing public interest purposes under Serbian law, unless otherwise indicated. The term “NPO” will be used to encompass all not-for-profit organizational forms under the Serbian law discussed in the Note.

[2] As of February 2015, 1 USD = 107,2928 RSD (National Bank of Serbia).

[3] The Enterprise Profit Tax Law was renamed the Corporate Profit Tax Law.

[4] The Law permits informal associations to operate. Article 55, Paragraph 2, of the Serbian Constitution of 2006, states: “Associations may be established without prior approval, subject to registration with the competent state body, pursuant to law.” By entering into the registry, an association is granted legal entity status.

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

[6] The only exception to this rule is for associations that, at the time the Law came into force, possessed so called “socially owned” real estate. Upon dissolution, this real estate automatically reverts to the state (Law on Associations Article 42). The Constitution of Serbia no longer recognizes the concept of “socially owned property” – that is, property that belongs to “everybody and nobody;” all such property has since been nationalized or transformed into state property.

[7] The Law does not provide for a more precise definition of any of the foregoing criteria. Rather, their fulfillment is to be determined by the competent state authority on a case-by-case basis. However, the wording of the Law on Foundations slightly differs in this respect from the Law on Associations. Article 45 of the Law on Foundations provides that a foundation may directly engage in economic activities which are “incidental in terms of their volume,” without further references to the “volume which is deemed necessary to advance the statutory goals of an organization,” as provided in Article 37 of the Law on Associations. Local experts believe that this change is designed to limit somewhat the discretionary power of the supervising state authority in

determining whether a foundation meets the conditions prescribed for its direct economic activities.

[8] The Companies Register is run by the SBRA (Serbian Business Registers Agency).

[9] For example, foundations must serve the public benefit. However, based on current practices, it is unlikely that a donor could make a tax-deductible contribution to a foundation that pursues a public benefit purpose other than those enumerated in the tax laws.