

CZECH REPUBLIC

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

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

- Associations (*spolek*),
- Foundations (*nadace*),
- Funds (*nadační fond*),
- Registered institutes (*ústav*), and
- Social cooperatives (*sociální družstvo*).

In addition to these forms, which are provided for in the Czech Civil Code, there are also Public Benefit Corporations (PBCs) (*obecně prospěšná společnost*).

With exception of the social cooperative, the above legal entities are considered publicly beneficial taxpayers or not-for-profit organizations (NPOs) if their primary activity is not entrepreneurial (i.e. systematically pursuing profit-making), as stated in their incorporation documents, statute, bylaws, or according to the decision of a public authority (Income Tax Law Article 17a(1)). Social cooperatives may also be considered NPOs under certain conditions.

B. TAX LAWS

Under the Income Tax Law, NPOs are exempt from tax on income from non-commercial activities that do not generate a surplus of revenue over related expenses, provided that certain other conditions are met. NPOs are also exempt from tax on income from state subsidies and similar forms of support from public budgets (Income Tax Law Article 18a(1)).

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

Economic activities and statutory activities that generate a surplus of revenue over related expenses are taxed at a reduced rate, up to a certain limit. Foundations and funds considered as NPOs are exempt from tax on income generated from their registered endowments if this income is used exclusively for the purpose for which the foundation has been established, and if such income is not used in violation of the Income Tax Law. Family foundations do not qualify as NPOs because they only serve the founder or persons close to the founder. Thus, such foundations do not qualify for this tax exemption.

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

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

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

II. APPLICABLE LAWS

- Constitution of the Czech Republic, Act No. 1/1993, as amended
- The Constitutional List of Freedoms and Rights ("Constitutional Act"), Act No. 2/1993
- Civil Code, Act No. 89/2012 (entered into force on January 1, 2014) as amended
- Law on Commercial Corporations, Act on Business and Cooperates No. 90/2012 (entered into force on January 1, 2014), as amended
- [Act on Public Benefit Corporations](#) ("Law on PBCs"), No. 248/1995, as amended [1]
- Act on Public Collections ("Public Collections Law"), No. 117/2001, as amended
- Act on Basic Register of Juridical Persons, Self-Employed Natural Persons and Public Authorities ("Law on Basic Registers"), No. 111/2009, as amended
- Act on Income Tax ("Income Tax Law"), No. 586/1992, as amended [2]
- Act on Real Estate Acquisition, No. 340/2013, as implemented by Regulation No. 419/2013 (entered into force on January 1, 2014) and amended
- Act on Real Estate Tax, No. 338/1992, as amended
- Act on Value Added Tax ("VAT Law"), No. 235/2004, in the text of the Act on Changes of Tax Laws, No. 344/2013, and amended
- Act on Maternal, Basic, High, Higher Professional, and other Education ("Law on Schools"), No. 561/2004, as amended
- Act on Higher Education ("Law on Universities"), No. 111/1998, as amended
- Act on Criminal Responsibility of Juridical Persons ("Law on Criminal Responsibility of Juridical Persons"), No. 418/2011
- Act on Public Registers of Juridical and Natural Persons ("Law on Public Registers"), No. 304/2013 (entered into force on January 1, 2014) as amended
- Act on Court Fees ("Law on Court Fees"), No. 549/1991, as amended

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

As in most civil law countries in Europe, the principal legal forms of not-for-profit organizations (NPOs) in the Czech Republic are associations and foundations. The Czech Republic has several

additional forms, including funds, registered institutes, social cooperatives, and public benefit corporations (PBCs).

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

The Civil Code addresses three main categories of legal entities: a) corporations (*korporace*), b) fundaciae (*fundace*), and c) registered institutes (*ústav*).

The main distinguishing feature of the **corporation** category is the existence of an active membership. This category includes all commercial companies, including those with a single proprietor, as well as **associations** of natural or juridical persons established for non-commercial purposes and serving the interests of their members or any public interest. Fundaciae, in contrast, include juridical persons without membership, established to take care of the property set aside by their founder(s) to be used for a given purpose. This category includes **foundations** (*nadace*) with a protected endowment (both grant-giving and operational) and **funds** (without an endowment) (*nadační fond*). The third category, **registered institutes**, are similar to fundaciae in that they do not have any members and may be established on a not-for-profit basis for the purpose of rendering activities of certain socially or economically beneficial purposes according to the will of their founder(s). The law treats European political foundations the same as Czech NPO foundations (Income Tax Law, Articles 15(1), 19 (1(a)(2), and 20(8))).

Two additional legal forms, **public benefit corporations** and **social cooperatives**, may be considered NPOs under certain conditions. However, the law regulating public benefit corporations was abolished, so it is not possible to establish new organizations in this legal form. Social cooperatives are considered commercial corporations with certain features of NPOs.

The following sections describe the legal forms mentioned above in more detail.

ASSOCIATIONS

In 2014, the Civil Code introduced a novel Czech term, "*spolek*" (which means "association") to replace the legal form previously known as "*občanské sdružení*" (which means the "Association of Citizens"), under the general category of corporations. The association is distinguished as a not-for-profit, non-commercial, corporate entity, which has a minimum number of members whose interests it serves. Associations cannot pursue entrepreneurship or other profit-generating activities as their main purpose, but may pursue auxiliary economic activities that support their main purpose or allow for better usage of their property (Civil Code, Article 217).

The old form of associations (*občanská sdružení*) is still recognized as an association under the new Civil Code, but entities taking this form are required to have reconciled their bylaws and internal relations with the mandatory provisions of the new Civil Code. Additionally, the highest body of such an association had to have decided whether it wanted to change its legal form to a registered institute or social cooperative.

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

Associations are specifically regulated according to Articles 214-302 of the Civil Code. While permitted to engage in both mutual benefit and public benefit activities, associations must not be established for entrepreneurial or other profit-generating activities (Civil Code Article 217). Moreover, like other juridical persons, associations cannot be established for activities violating the rights of other persons or the laws of the Czech Republic; activities pursuing military objectives; or activities interfering with those reserved to the state authorities, unless otherwise specified by special laws (Civil Code Article 145).

The Civil Code provides that an association must be established by and remain composed of at least three persons (Civil Code Article 214(1)), and that it cannot be established for a purpose that is explicitly commercial unless such an activity is auxiliary and its purpose is to support the statutory purpose of the association or to enable more efficient use of its property (Civil Code Article 217).

FOUNDATIONS

Any income generated by a foundation's endowment is exempt from income tax when used for the foundation's publicly beneficial purpose and not in violation of the law (Income Tax Law Article 19(1)(r)). Other assets of the foundation, including acquired donations, may be used to: pursue statutory purposes; provide financial support to third persons, such as through grants; cover costs of activities otherwise serving the purpose of the foundation; and cover administrative costs. The foundation must account for these expenditures separately (Civil Code Article 357).

Foundations may also be established for a charitable purpose, including support for a closed or limited circle of persons (Civil Code Article 306(1)). However, in such a case, the foundation is not considered an NPO, and does not receive income tax benefits applicable to NPOs. For instance, a **family foundation** is defined (Income Tax Law Article 17a(2)(f)) as a foundation established for the benefit of the founder or persons close to him (family members in general). Family foundations are not considered NPOs and do not qualify for NPO income tax benefits.

It is forbidden to establish foundations exclusively for the purpose of profit-making. It is also not allowed to establish a foundation to support political parties and political movements or to otherwise participate in their activities (Civil Code Article 306(2)). If a foundation violates these restrictions, a court may order its termination and liquidation of its assets.

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

FUNDS

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

Funds do not have a minimum endowment requirement. The assets of a fund consist of the founder's initial contribution and any subsequent donations, which are not required to yield further

income. Funds are prohibited from pledging their assets or otherwise using their property to secure a debt. Any legal act aimed to such a use is considered invalid. On the other hand, the property of a fund may be alienated, if it is in accord with its purpose. It may also be used as a careful investment. Funds may be established for a limited period of time, or until their assets are fully expended for the purpose defined in their incorporation document (Civil Code Articles 394-401). The Income Tax Law defines a **family fund** as a fund established for the benefit of the founder or persons close to him (family members in general). Like family foundations, family funds do not receive income tax benefits and are not considered NPOs.

REGISTERED INSTITUTE

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

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

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

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

SOCIAL COOPERATIVE

A social cooperative is defined as a community of at least three persons that acts as a legal entity established for the purpose of the mutual support of its members, the support of third persons, or to undertake business pursuits. The name of the social cooperative must contain the words "*sociální družstvo*" (Law on Commercial Corporations Article 759).

Social cooperatives pursue publicly beneficial activities aiming to promote social cohesion (Law on Commercial Corporations Article 758). The social cooperative is also supposed to make preferential use of local resources according to its seat or location of its operations, particularly in the field of employment development, social services, health care, education, and sustainable regional development. A social cooperative must not change the purpose of its activities in a way that would not align with these purposes. Social cooperatives also may not change their legal form—e.g. by merging or splitting—unless the resulting legal form is also a social cooperative (Law on Commercial Corporations Article 760).

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

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

PUBLIC BENEFIT CORPORATIONS (PBCs)

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

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

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

After the Civil Code entered into force in 2014, existing PBCs had to decide whether to continue with the PBC legal form or transform into a registered institute, foundation, or a fund. PBCs that decided to continue without changing their legal form continue to be regulated by the Law on PBCs. However, no new PBCs were allowed to form after December 31, 2013. [1]

B. PUBLIC BENEFIT STATUS

The Civil Code provides that a publicly beneficial juridical person may register its public benefit status in the public register (Civil Code Article 146). However, following amendments in 2017, the Code does not further address the criteria for public benefit status or its implications, nor is there a separate law to govern public benefit status.

The Income Tax Law provides that juridical and natural persons may generally deduct from their taxable income donations to a legal entity that is considered an NPO if: 1) the NPO is based in any

member state of the European Union, or in Norway or Iceland; and 2) the recipient allocates the received money to certain public benefit activities, such as: science and learning, research and development, culture, schools, police, fire squads, support and protection of young people, protection of animals and their health, social and health care, ecology, humanitarian and charity purposes, religious purposes for registered churches and religious communities, and sports. Assistance for relief in the event of humanitarian and natural disasters is treated similarly (Income Tax Law Articles 15(1) and 20(8)).

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

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

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

Likewise, the assets of a **foundation** or **fund** must be used in a manner consistent with the purposes and conditions set forth in the organization's governing instruments (Civil Code Articles 338 and 398). In addition, the law precludes certain individuals associated with a **foundation** from receiving grants from the foundation, including: employees, the Supervising Officer, members of the Board of Directors or Supervisory Board or any other foundation body, as well as persons closely related to these individuals (Civil Code Article 353). There are no legal barriers for members of foundation bodies to receive reimbursement for their services to the foundation, but they should not be directly employed by it (Civil Code Article 363b). There are no legal limitations on what compensation may be offered, if the compensation comprises part of the foundation's administrative costs (Civil Code Article 338). The Civil Code is silent as to the applicability of these or other provisions with regards to a **fund** and members of its bodies. However, as amended in 2017, the Income Tax Law limits access to taxation benefits for founders and persons close to them if the foundation or the fund is considered a family foundation or a family fund.

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

A **social cooperative** may distribute up to 33 percent of its disposable profit among its members, unless the bylaws of the social cooperative set a lesser percentage. Additionally, before such distribution, any reserve or other internal funds of the social cooperative must be used (Law on Commercial Corporations Article 766).

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

B. PROPRIETARY INTEREST

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

Foundations, funds, registered institutes, and PBCs are legal entities that are not corporations, so no natural or juridical person may claim proprietary interests to the property contributed, acquired, generated, or otherwise taken into the entity's possession. However, the Law on Criminal Responsibility of Juridical Persons, as amended by Act No. 368/2016, introduces the notion of a legal entity's real owner. The owner is usually defined as a statutory person or a founder. For more details, see [\[3\]](#).

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

Social cooperatives, by contrast to the above, are essentially defined as commercial corporations. Accordingly, a social cooperative's members have limited proprietary interests in its profit and property.

C. DISSOLUTION

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

Associations

For associations, dissolution requires the liquidation of association assets (Civil Code, Articles 269-273). The relevant body of the association or a court appoints a liquidating officer, who must compile a list of the association's property and make the list available for all members of the association for revision. The liquidating officer sells the association's property only to the extent necessary to pay off the association's debts and uses the rest of the liquidation balance in accordance with the association's bylaws. Except for registered public benefit status associations, an association may distribute its remaining assets to its members upon dissolution if such distribution is provided for in the association's bylaws. Any attempt to use the liquidation balance of an association with the status of public benefit for other than publicly beneficial purposes is deemed invalid and void. If it is not possible to use the liquidation balance of an association in accordance with its bylaws, the liquidation officer must offer it to another association with a similar purpose. If that is not possible, the offer goes to the community where the association has its seat. The public authorities are obliged to make use of the offered liquidation balance for a publicly beneficial purpose (Civil Code Articles 271-272).

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

Foundations and Funds

In the event of the voluntary termination of a foundation or a fund, the Board of Directors of the foundation or fund appoints a liquidation officer. Foundations and funds may be also terminated upon the decision of a court, if a) they act in violation of the law; b) they are inactive for more than two years without serious reason; or c) it is otherwise impossible to fulfill the purpose for which these entities were established. In such cases the court appoints the liquidation officer (Civil Code Articles 376, 377, and 401).

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

In addition, a foundation may, if its incorporation document explicitly allows it, change its legal form by merging with another foundation, or with a fund that serves a similar purpose. The resulting legal form must be a foundation (Civil Code Article 382). In the case that the equity value of the endowment has fallen not temporarily below the minimum value of CZK 500,000 (~\$22,220), the Board of Directors of the foundation may decide to change the legal form of a foundation to that of

a fund. This requires the consent of the Supervisory Board or Supervising Officer (Civil Code Article 391).

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

Registered Institutes

Most of the provisions for foundations apply to registered institutes as well, with the exception of provisions related to the foundation's endowment (Civil Code Article 418). This may be interpreted to mean that it is possible to merge one registered institute with another or to split it into two or more registered institutes.

Social Cooperatives

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

Public Benefit Corporations

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

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

D. ACTIVITIES

1. GENERAL ACTIVITIES

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

2. PUBLIC BENEFIT ACTIVITIES

All forms of NPOs may engage in socially and economically beneficial or publicly beneficial activities. By their nature, foundations, funds, registered institutes, social cooperatives, and PBCs must primarily engage in activities in pursuit of public benefit goals. [4]

The Law on PBCs, for instance, requires PBCs to provide broadly beneficial services that are open to the general public. The Law does not further define what a broadly beneficial service is. However, it requires that the conditions for providing such services be specified in the incorporation document of the PBC (Law on PBCs Article 2(1)(b)). Similarly, the incorporation document of the registered institute must contain details concerning its socially or economically beneficial objective, including providing that the results of these activities must be equally accessible to all persons (Civil Code Article 402). The Income Tax Law provides a more concrete definition of public benefit activities for the tax treatment of donors and beneficiaries of donations.

3. ECONOMIC ACTIVITIES

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

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

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

A **registered institute** may carry out a business enterprise or other economic activity on an auxiliary basis, but any such activity must not jeopardize the quality, scope, and accessibility of the institute's socially or economically beneficial activities. The registered institute may use any profit only to support the activity for which it was established and to cover its administrative costs (Civil Code Articles 402 and 403).

A **social cooperative** is a type of a commercial corporation that is suitable for carrying out social enterprise. As such, economic activities are one of the main characteristics of this legal form. [5]

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

E. POLITICAL ACTIVITIES

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

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

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

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

F. DISCRIMINATION

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

G. CONTROL OF ORGANIZATION

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

The Civil Code does limit interlocking control with other organizations in some cases, however. For instance, a foundation may not provide a financial contribution to a person who is a member of its

statutory or supervisory body, its employee, or who is close to such persons (Civil Code Article 353(1)). The foundation generally may not provide a contribution to its founder, either: If there are special circumstances that should be taken into account, such a contribution may be provided only after the Board of Directors obtains consent from the Supervisory Board or the Supervising Officer of the foundation (Civil Code Article 353(2)).

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

V. TAX LAWS

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

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

In 2014, the VAT rate was set to 21 percent for most goods and services, with a lesser 15 percent rate for certain food products and some health care-related goods and services. In 2015, a third VAT rate of 10 percent was added for products consumed by families with small children (VAT Law Article 47 and Appendices 1, 2, 3, and 3a).

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

The amended Income Tax Law also retains the main tax benefits and taxation conditions for NPOs, such as a possibility to reduce the base for income tax calculation to all NPOs, if they are considered publicly beneficial taxpayers. Amendments to the Income Tax Law in 2017 clarified that tax benefits available to foundations and funds are not available to family foundations and family funds.

A. TAX EXEMPTIONS

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

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

Foundations that are considered publicly beneficial taxpayers (i.e., excepting family foundations) enjoy a special exempt category, which comprises earnings resulting from economic use of property that is a registered part of the foundation's protected endowment (Law on Income Tax Article 17(a)(2)(f)). These endowment yields are fully exempt from income tax if they are used for the purpose of the foundation and not in violation of the law (Law on Income Tax Article 19(1)(r)).

The Income Tax Law specifically states that publicly beneficial taxpayers are not required to pay income tax on interest on accounts, state subsidies, and other income from their statutory activities, provided that the expenditures exceed the income from the activity (Income Tax Law Article 18a(1)(a)). Foundations and funds that are considered publicly beneficial taxpayers, registered institutes, PBCs, and other publicly beneficial taxpayers resident in any state of the EU, Iceland and Norway are also exempt from the tax on donations (Income Tax Law Article 19b(2)(b)).

Income from profit-yielding economic activities that are related to the statutory purposes of a publicly beneficial taxpayer is subject to a reduced tax. All related income is fully exempt from income tax up to CZK 300,000 (≈\$13,350). Total revenues at the end of the fiscal year that exceed this amount are reduced before taxation by 30 percent up to CZK 1,000,000 (≈\$44,450), or whichever is less, provided that the proceeds are used for statutory activities within three years of accrual and other conditions are met (Income Tax Law Article 20(7)). In cases where the tax payer is a public college, university, PBC, or registered institute acting according to the Law on Universities, the maximum amount that may be deducted is CZK 3,000,000 (≈\$133,350).

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

Income from free-of-charge fulfillments (i.e., grants, subsidies, donations, and other contributions) is deductible from the tax base if received by publicly beneficial taxpayers—that is, those which according to their incorporation documents, statutes, bylaws, law, or according to the decision of a public authority, pursue as their statutory activity only non-commercial, not-for-profit activities. These are: **foundations** (except family foundations), **funds** (except family funds), **registered institutes** and **public benefit corporations**, registered churches and religious congregations, and political parties. This category also includes **associations** that pursue a publicly beneficial purpose. However, the exemption shall only be applied if the taxpayer requests it (Income Tax Law Article 19b(2)(b) and (3)).

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

B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Donations equal to or higher than CZK 2,000 (≈\$90) to communities, regions, branches of state administration, juridical persons with their seat in the Czech Republic, as well as to juridical persons organizing public collections organized in compliance with the Law on Public Collections, may be deducted from the corporate income tax base. In order to qualify for the deduction, the donation must support activities in one or more of the following fields: science and education; research and development; culture; teaching in schools; police; fire prevention and protection; support and protection of young persons; protection of animals and their health; social or health care; ecological, humanitarian, and charitable purposes; religious purposes of registered churches and congregations; physical training and sporting activities; and support of political parties and movements and their activity. However, NPOs themselves may not deduct any donation they are providing from their own property (Income Tax Law Article 20(8)).

Violations of the rules of public collections are punishable by fines up to CZK 500,000 (≈\$22,220) (Public Collections Law Article 25).

For legal entities, up to 10 percent of taxable income is deductible from the tax base (Law on Income Tax Article 20(8)). Individuals may deduct donations to qualifying NPOs up to 15 percent of the person's taxable income. However, to qualify for the deduction, the individual must donate an amount that is greater than 2 percent of his or her taxable income or is at least CZK 1,000 (≈\$45) (Law on Income Tax Article 15(1)).

C. VALUE ADDED TAX

The standard VAT rate is 21 percent. A reduced VAT rate of 15 percent is applied to many food products and goods of special importance for health care, social services and similar activities, and printed books. This VAT rate also applies to certain services, including wheelchair maintenance, water distribution, public transportation, health and social care, the care of children, ill and elderly persons provided in hospices, and several cultural activities (Law on VAT Article 47(1)). A third VAT rate of 10 percent is applicable to products for newborns, children's books and basic food products.

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

- Income from renting facilities and equipment (Law on VAT Article 56a);
- Educational services and goods provided and used by registered schools, educational institutions, universities, and accredited vocational training facilities. Similarly exempt are educational and free-time activities provided to children and youth by youth-focused NPOs (Law on VAT Article 57(1)(a) and (1)(g));
- Health insurance, services and goods provided by licensed entities to patients and persons covered by public health insurance. This is subject to certain exceptions (Law on VAT Article 58);
- Social services provided according to special laws (Law on VAT Article 59);

- Provision of services, as compensation for membership fees, to members of political parties, churches and religious communities, associations, trade unions, professional chambers and to other juridical persons established for not-for-profit purposes, under the condition that the exemption would not jeopardize market competition (Law on VAT Article 61(a));
- Services and goods closely related to the protection and education of children and youth provided by public subjects or juridical persons that were not established for entrepreneurial purposes (Law on VAT Article 61(b));
- Rendering of one's personal capacities to churches and similar organizations to undertake activities related to tax-exempt educational and social services (Law on VAT Article 61(c));
- Provision of services related to sports and physical training by juridical persons that were not established for entrepreneurial purposes (Law on VAT Article 61(d));
- Provision of cultural services and related goods by the regional government, by a community, or by a juridical person established by the Ministry of Culture or juridical persons that was not established for entrepreneurial purposes (Law on VAT Article 61(e));
- Provision of services and goods by persons whose activities are exempt for educational, health care and social purposes, provided that such goods are sold and services provided exclusively during activities organized to raise funds for activities for which the organizations have been established, unless such an exemption would jeopardize market competition (Law on VAT Article 61(f)); and
- Provision of VAT-exempt services by independent groups of persons with legal personality exclusively to their own members without requesting deduction of paid VAT if these services are indispensable for the purpose of the groups' existence and the exemption would not jeopardize market competition (Law on VAT Article 61(g)).

VAT is added to the cost of services and goods and paid to the state by anyone whose turnover exceeds 1,000,000 CZK (≈\$44,450) within the preceding 12-month period. Excluded from this rule are persons executing exclusively VAT exempt payments and not requiring VAT rebate (Law on VAT Article 6(1)). Goods imported by an NPO from other EU member states up to a total value of CZK 326,000 (≈\$14,450) within a calendar year are not included in the VAT calculation, with the exception of new cars or goods subjected to the consumption tax (Law on VAT Article 2a (3)). Also, any legal entity, including an NPO that accepts certain services from any VAT payer within the EU, must report receipt within 15 days to be identified as a potential VAT payer (Law on VAT Articles 6g-6i and 96-97). Taxable services include: consulting, providing legal advice, accounting, data processing and information rendering, translation and interpretation. Services related to the transport of goods from abroad are VAT-exempt.

Data about the noncompliant VAT payer will be published electronically as a penalty for noncompliance with reporting requirements (Law on VAT Article 106a).

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

D. PROPERTY TAX

Real property tax is not imposed on buildings and land occupied by buildings belonging to and serving the following types of PBOs: **foundations, funds, registered institutes, and PBCs**, as well as trade unions and unions of employers (Act on Real Estate Tax Articles 4(1)(f), 9(1)(f)). This applies generally to any land parcel with buildings on it or buildings serving certain purposes, such as: schools; establishments that provide care for children under 3 years of age; museums and art galleries with collections registered by the Ministry of Culture; registered public libraries; licensed health institutions; and social care facilities (Act on Real Estate Tax Articles 4(1)(g), 9(1)(k)). Similarly exempt are lands serving organizations exclusively engaged in waste management, environmental protection, water management, and energy production (Act on Real Estate Tax Articles 4(1)(h), 9(1)(m)).

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

The tax on property acquisition is calculated as 4 percent of the value of the acquired real property if it exceeds CZK 5,000 (≈\$220) and has to be paid by the acquirer, unless otherwise agreed upon by the transferring sides. Exempt from this tax are contributions to a social cooperative by its members.

E. IMPORT DUTIES

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

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

F. DOUBLE TAX TREATIES

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

VI. KNOWLEDGEABLE CONTACTS

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FOOTNOTES

[1] While no new PBCs were allowed to form after enactment of the new Civil Code of the Czech Republic, Act No. 248/1995 still governs and regulates the activities of PBCs that existed as of December 31, 2013, and opted to remain PBCs. There is no requirement that PBCs change their legal form.

[2] The Act on Income Tax has been amended a number of times, including several revisions in 2017. The changes resulting from the 2017 amendments that are most relevant for this Note include the following:

- Article 17a, Par. (2)(f) defines a family fund or a family foundation as such a fund or foundation which has been established with the purpose to support the founder or persons close to the founder;
- Article 4, Par. (1)(k) eliminates the income tax exemption for family funds and family foundations;
- Article 8, Par. (1)(i) makes all incomes from a family fund or family foundation taxable;
- Article 4a(j) and Article 6, Par. (9)(d) extend the exemption from income tax to accepted donations used within a year for education and to medicines and other healthcare goods, as well as to certain children books;
- Article 10, Par. (1)(b) exempts from taxable incomes any free of charge donation of property including a property previously endowed to a family foundation by its founder, as well as any occasional incomes of a value less than CZK 15,000 (approximately \$730).

[3] Act No. 418/2011, as amended by Act No. 368/2016, introduces the notion of a legal entity's real owner. For NPOs, where there is no ownership of physical persons with respect to the property of the NPO, the law stipulates that real owners are members of the statutory body of an association, board of trustees of a foundation, or a fund. For registered institutes or public benefit corporations, the founder is considered to be the real owner. The real owners must be registered in the register of legal persons.

[4] With regard to the disputes between the NPO community and Ministry of Interior concerning the right of associations to pursue publicly beneficial objectives addressed to the general public, an expert panel at the Ministry of Justice has confirmed the right of associations to provide services to beneficiaries outside their membership or to pursue generally important objectives.

[5] Article 765 of the Law on Commercial Corporations sets some limits on the scope of entrepreneurial activities of social cooperatives. Under the law, social cooperatives are not allowed to issue bonds, fulfill obligations of other persons, become a partner with unlimited liability or a silent partner; nor may they transfer, sell, or lend their enterprise to any entity that is not a social cooperative.