

ISRAEL

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

In the State of Israel, there are five primary types of not-for-profit organizations (NPOs), each with different requirements for formation, membership, and public purpose. These include:

- Associations ("*Amutot*," singular "*Amuta*"), governed by the [Law of Associations 1980](#);
- Public Benefit Companies (PBCs), governed by the [Companies Law 1999](#) (since 2007);
- Public Benefit Foundations (PBFs), governed by the [Companies Law 1999](#) (since 2014);
- Cooperative Societies, governed by the Cooperative Societies Ordinance 1933; and
- Public Endowments, governed by the Trust Law 1979.

B. TAX LAWS

Tax Exemption - The Income Tax Ordinance grants tax exemptions to organizations that qualify as "public institutions" [Article 9(2)]. To determine which organizations may be recognized as public institutions, it is important to examine the legal structure and public purposes of the organization as well as the activities in which it is engaged. Generally, any activity involving religion, culture, education, science, health, welfare, sport, or any other objective approved by the Minister of Finance constitutes a public purpose.

Tax Allowance - Tax credits are available for donations to organizations recognized as public institutions by the Income Tax Ordinance [Article 46]. These tax allowances may not be granted for contributions to a foreign NPO unless the foreign NPO adheres to the Israeli standards for public institutions and is registered in Israel. In addition, the Income Tax Authority noted in a September 2015 directive that tax credits may be permitted if the activities of the foreign organization are linked to the State of Israel, including activities for Israeli citizens or in the national interest of Israel, or if the organization carries out activities to address urgent humanitarian situations.

II. APPLICABLE LAWS

- [Companies Law 1999](#)
- Cooperative Societies Ordinance 1933
- Income Tax Ordinance 1961
- [Law of Associations](#) ("*Amutot* Law") 1980
- Political Parties Law 1992
- Property Tax and Compensation Fund Law 1961
- Trust Law 1979
- [Value Added Tax Law 1975](#)

III. RELEVANT LEGAL FORMS

NPOs in Israel can be formed and incorporated under several laws: the Law of Associations ("*Amutot* Law") 1980; the Companies Law 1999; the Cooperative Societies Ordinance 1933; and the Trust Law 1979. Incorporation is not required for an organization to be classified as an NPO for tax purposes. Incorporation is necessary, however, to receive certain tax credits and governmental grants.

Association ("*Amuta*")

The Law of Associations ("*Amutot* Law") 1980 introduced the *amuta* as a type of corporate entity that has all the legal rights and benefits of an incorporated legal entity. [1] For NPOs, the *amuta* has become a popular form of incorporation. This legal entity comes into being upon the act of registration [Law of Associations, Article 1]. When applying for registration, a prospective *amuta* may submit its own articles of association (i.e., by-laws), or else the model articles appended to the Law of Associations will serve as the *amuta's* by-laws.

Registration of an *amuta* requires the following (all citations are to the Law of Associations):

1. Two or more members, whether individuals or corporations (this membership is non-transferable) [Article 17];
2. Legal purposes, i.e., almost all purposes other than those that undermine the State of Israel and its democratic nature or that provide a safe haven for illegal activity. (Other than these prohibitions, the Law of Associations does not provide further guidance regarding permissible public purposes of the *amutot*);
3. Activities which are not intended, as their primary purpose, to be profit-making [Article 1];
4. Prohibition on the distribution of earnings (the "non-distribution constraint") [Article 1]; and
5. A name that is not misleading or prejudicial to the public, and is not the same as or similar to other registered *amutot* or Israeli corporations [Article 4].

An *amuta* must indicate its status by attaching, at the end of its name, "Registered *Amuta*" or RA (written in Hebrew) [Article 4].

An *amuta* is also required to submit the following reports to the Registrar:

1. Annual financial statement;
2. Annual director's report;
3. Annual report on the five highest salaries;
4. Changes in the membership of the board, audit committee, or external auditor (CPA) and its address;
5. Changes to the by-laws adopted by the *amuta's* General Assembly and approved by the Registrar; and
6. Any legal claim presented against the *amuta* or one of its board members in his/her capacity as a board member.

Public Benefit Companies (PBCs)

Private companies may be created to serve as not-for-profit institutions, according to the Companies Law of 1999. Unlike the *amuta*, a company's purpose must be in accordance with the Companies Law, morality, and public order [Companies Law, Article 2], and it must comply with at least one category of the thirteen public benefit purposes specified in the appendix to the Law. The Companies Law does not include an express prohibition against purposes that negate the existence of Israel or purposes that seem to disguise illegal activities; rather, it states that a company must act in accordance with the law. The Companies Registrar is charged with ensuring that the company complies with all the conditions of the Law, and the court oversees the Registrar's determinations [Companies Law, Articles 36-45].

The Companies Law does not specify a minimum number of members; accordingly, a company may be formed with only one person. The name of the company must not be misleading or in opposition to public order [Companies Law, Articles 27-28]. Once the company has been registered and has received its certificate of incorporation, it becomes an independent legal entity. When applying for registration, a company must submit articles of association. The articles of association must comply with tax laws in order for a company

to be regarded as an NPO that would qualify for a tax exemption. This requires that the company's articles of association:

1. Provide that the company's purposes comport with the purposes of a public institution, as per the Income Tax Ordinance;
2. Include a prohibition on the distribution of profits;
3. Define the value of the shares as non-economic and prevent the transfer of such shares, unless authorized by the court; and
4. Provide for equal voting rights per share.

A company for public benefit must indicate its status by attaching, at the end of its name, "Public Benefit Company," or PBC (written in Hebrew). A PBC is required to submit the following reports to the Registrar:

1. Annual financial statement;
2. Annual director's report;
3. Annual report on the five highest salaries;
4. Changes in the membership of the board, audit committee, and external auditor (CPA); [\[2\]](#)
5. Changes to the by-laws adopted by the organization's General Assembly; and
6. Any legal claim presented against the organization or one of its board members in his/her capacity as a board member.

Public Benefit Foundation (PBF)

The Companies Law of 1999 also provides for the formation of public benefit foundations (PBF). A PBF is formed when an entity first incorporates as a public benefit company (PBC) and then applies for status as a PBF. This status will be granted only to prospective PBFs that adopt by-laws committing them to financing one or more of the following:

- A public benefit company;
- An *amuta* that operates for the public benefit;
- An accredited institution for higher education;
- A public hospital;
- Another organization operating for the public benefit that has been approved by the Minister of Finance.

The Companies Law provides for three types of PBFs [Companies Law, Article 345(34-42)]:

- Family Foundation: The foundation's capital consists of donations from a maximum of twenty donors. It is subject to a low level of regulation and financial demands.
- Privately Controlled Foundation: The foundation's capital consists of donations from a maximum of twenty donors in each fiscal year, and every donation must be at least 20,000 NIS (approximately \$5,250). This foundation is subject to a medium degree of regulation and financial design demands.
- Publicly Controlled Foundation: The foundation does not have any limits on the structure of its capital; its main feature is the absence of private control. This foundation is subject to the most rigorous regulation and financial demands.

All PBFs must operate under specific regulations. For instance, a PBF is not allowed to have long-term ownership of donated assets or property. These must be sold within two years from the time they were received by the foundation. A PBF must also grant a yearly minimum (5 percent or 2 million NIS, whichever is less) from its endowment. A PBF must invest its monetary resources according to a special regulation [(Article 345(40) and its supplement)]. Finally, a PBF must nominate at least one independent director. (By contrast, a publicly-controlled foundation will nominate at least two independent directors.)

Similar to PBCs, PBFs must submit annual reports to the Registrar. In addition, a PBF is required to report on: its policy and criteria for allocating funds; the organizations that receive funds from the PBF and the rationale behind the foundation's decision to fund them; and measurements taken by the PBF to support and/or supervise the organization regarding their use of the funds.

PBFs are also required to publish certain information on their website at least once a year. This includes contact information for the PBF; how to submit requests for funds, forms, procedures, dates, etc.; the PBF's policy and criteria for allocating funds; and the planned time for allocating funds in the current year.

Cooperative Societies

Cooperative Societies formed under the Cooperative Societies Ordinance of 1933 ("the Ordinance") may also register as NPOs. The Ordinance sets forth the purposes of cooperative societies as fostering "economy, independent assistance, and reciprocal assistance between persons having common economic interests, in order to effect an improvement in their living conditions."

There are several requirements for forming a cooperative society:

1. At least seven members are required to form a cooperative society (the members may include other corporate entities);
2. The purposes of the cooperative society must be in compliance with the Ordinance;
3. The name of the cooperative society is subject to all the restrictions contained in the Companies Law. Additionally, the words "cooperative" and "limited" must follow the names of all cooperative societies;
4. A cooperative society must specifically prohibit distribution of profits in order to be treated as an NPO. Although cooperative societies generally do distribute profits, an express prohibition is required for consideration as an NPO; and
5. Shares in a cooperative society are non-transferable.

Before a cooperative society may register, the Registrar must determine that the cooperative has complied with all the provisions of the Ordinance. The Registrar also must categorize the cooperative and decide in which of twenty-five classes of cooperative societies the applicant belongs. Once the Registrar is satisfied, the cooperative society may register and become an independent legal entity.

Public Endowments

The Trust Law of 1979 governs the formation of public endowments. A public endowment is a type of trust in which the assets are set aside to benefit a specific public community or accomplish a particular public aim. Public endowments are not membership organizations and are not independent legal entities. The Law does not require the formation of a public endowment as a trust. A trust can also register in a religious court.

To create a public endowment, three steps must be taken:

1. The endowment must be created through a deed of endowment. This document sets forth the creator's public interest aims and intention to create an endowment. The endowment is created once control of the assets is transferred from the creator to the trustee;
2. A trustee must be appointed; and
3. The endowment must be registered. After the trustee is appointed, he or she must notify the Registrar of Endowments within three months and provide details of the endowment, assets, creator, and trustee(s). In the event that there is no trustee (whether none is appointed or the appointed party is unable to fulfill the duties of office), the Public Trustee may take control of the endowment until the appointment of another trustee.

IV. PUBLIC BENEFIT STATUS

According to the Income Tax Ordinance, an organization must satisfy certain conditions to be recognized as a public institution for purposes of tax exemption. One of these conditions requires a "public purpose," defined broadly to include activities related to religion, culture, education, science, health, welfare, sport, and any other public purpose approved by the Minister of Finance.

The role and definition of "public benefit purpose" varies somewhat for each form of NPO. The Law of Associations permits *amutot* to have a broad set of purposes, as discussed in Part III. NPOs organized under the Companies Law must articulate a public purpose in their articles of association (at least one category of the thirteen public benefit purposes specified in the Appendix to the Law). Cooperatives typically are characterized by public benefit in the form of mutual aid and reciprocal assistance [Cooperative Societies Ordinance, Article 11(b)]. Endowments are either "public" or "religious," where the former are required to promote public purposes and the latter are required to promote religious purposes.

V. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

The law prohibits *amutot*, PBCs, and endowments from distributing profits to their members [Law of Associations, Article 1 and 34c; Companies Law, Article 345(g)]. Cooperative societies are not prohibited from distributing their profits, but any cooperative society that does so is unable to attain nonprofit status [Cooperative Societies Ordinance, Articles 39 and 40].

Public Benefit Companies (PBCs): The Companies Law clearly addresses the subject of transactions with interested parties and imposes a fiduciary duty on the officers of the company [Companies Law, Article 254]. When there is a potential conflict of interest, the interested officer has a duty to disclose his interest and obtain approval for the activity or transaction at issue from both the internal audit committee and the board of directors [Companies Law, Article 255]. Failure to do so may result in sanctions; the transaction may be canceled or the officer may be subject to claims for damages [Companies Law, Article 345(13)]. In addition, payments to executives and administrative expenditures should not exceed limits designated in the Minister of Finance's ordinance.

***Amutot* and Cooperative Societies:** Interestingly, neither the Law of Associations ("*Amutot* Law") nor the Cooperative Societies Ordinance expressly addresses the issues of fiduciary duty and how to handle a conflict of interest. While the Law of Associations does state that members must act for the good of the *amuta*, the Cooperative Societies Ordinance is silent on the matter.

Despite the lack of express provisions, officers of *amutot* and cooperative societies are expected to adhere to fiduciary duties similar to those applicable to for-profit companies. Further, other general laws, such as the Penal Law, impose certain responsibilities on members and directors.

Public Endowments: The Trust Law expressly forbids a trustee from obtaining any personal benefits from management of the trust assets. As such, a beneficiary of a trust is not permitted to act as trustee, unless the deed of endowment specifies otherwise. In certain circumstances, however, the court may grant the trustee permission to derive benefits from the management of the trust when such an action is also advantageous to the trust [Trust Law, Article 13].

B. PROPRIETARY INTEREST

Amutot, PBCs, and cooperative societies are all independent legal entities. The non-distribution constraint requires that the members do not have a proprietary interest in the organization. The non-distribution constraint also means that an *amuta* or PBC cannot distribute assets upon dissolution, and that the Registrar limits salaries through regulation. The articles of association filed with the organization's registration create a contractual relationship between the members and the organization itself. [For *amutot*, please see the Law of Associations, Article 9]

A public endowment, however, is not a legal entity. The endowment is created when control of the assets is transferred to the trustee, so a trustee may have a proprietary interest in those assets.

C. DISSOLUTION

The appropriate distribution of assets that remain after payment of outstanding debt differs according to the type of organization. An *amuta* must distribute its remaining assets according to its articles of association, which most likely provide for the transfer of assets to an NPO engaged in the pursuit of similar goals. If the *amuta* does not have appropriate

articles, or they are impractical, the court will order that the assets be distributed for a purpose related to the objective of the *amuta* [Law of Associations, Article 58, and Companies Law, Article 345(21)]. [3] In the case of cooperative societies, however, the Cooperative Societies Ordinance allows remaining assets to be distributed to members. Therefore, as noted above, NPOs formed under the Cooperative Societies Ordinance must have an express prohibition against distribution in order to qualify for tax exemption.

D. ACTIVITIES

1. General

All the legal forms discussed above, except for the public endowment, become independent legal entities upon completion of the proper registration procedures. As such, these legal entities gain the right to participate in all the appropriate activities to which such entities are entitled, unless otherwise prohibited.

2. Public Benefit Activities

The Law of Associations does not specify what public purposes are permissible for an *amuta*, but it does prohibit activities that either undermine the democratic nature of the State of Israel or serve as a screen for illegal activity [Law of Associations, Article 3]. The purposes of a PBC, on the other hand, must comply with the Companies Law, morality, public order, and the general laws of the State of Israel [Companies Law, Article 2]. A cooperative society's purpose is set forth as fostering "economy, independent assistance, and reciprocal assistance between persons having common economic interests, in order to effect an improvement in their living conditions" [Cooperative Societies Ordinance, Article 4]. Finally, a public endowment's aims must be simply to benefit a particular public community or fulfill a public aim.

3. Economic Activities

NPOs may participate in business activities by conducting such activities as part of the organization's operation or by holding shares in a for-profit corporation. The business activities may be taxed, however, unless they are a central or integral part of the organization's fulfillment of its public purposes, and are not a substantial part of its activities or income [Income Tax Ordinance, Article 9]. An NPO's status as a "public institution" qualifying for a tax exemption may be affected if business activities predominate. Dividends from for-profit corporations are taxable at a rate of 25 percent.

E. POLITICAL ACTIVITIES

There is no express provision governing the extent to which an NPO may participate in the political process. The Law of Associations does not prohibit *amutot* from lobbying or any other political activity, so long as these activities are not aimed at achieving representation of the NPO in the Israeli parliament (the Knesset). An NPO may work to influence the legislative process as well as the outcome of political elections. It may publicly support a political candidate or party and call on the public to vote for a particular candidate or party. The law prohibits a minister or a member of parliament from membership in an NPO, however. [4]

In a September 2015 directive, the Income Tax Authority noted that for tax credit purposes, the Tax Authority will examine if the activity of the public institution assists a political party goal, whether directly or indirectly.

F. RACIAL DISCRIMINATION

The definition of what constitutes a "public purpose" – as set forth in the law, court rulings, administrative orders, and the orders of the Minister of Finance – includes the improvement of public welfare without discrimination. Israeli law does not otherwise address racial, ethnic, gender, or religious discrimination in connection with NPOs.

G. CONTROL OF ORGANIZATIONS

An Israeli NPO can be controlled by another NPO, a for-profit entity (which would lead to additional IRS scrutiny), the government, a local authority, or a local or foreign grantor charity.

VI. TAX LAWS

The tax laws in Israel do not distinguish among legal forms or types of NPOs. Therefore, the determination of taxable income and tax exemption does not depend on how an organization was originally formed. The two main tax laws – the Income Tax Ordinance and Value Added Tax Law – do not have the same definition for "public institution." While the Income Tax Ordinance relates primarily to the aims of the organization, the VAT Law refers to the nature of its activities.

A. TAX EXEMPTION

Only "public institutions" are granted exemption from income tax, according to the Income Tax Ordinance, as long as income is not derived from a trade or business carried on by the institution. Although there is no automatic exemption upon incorporation of an organization, the exemption is granted as long as the institution submits an annual financial report and self-assessment indicating the institution's sources of income. To determine which organizations may be recognized as public institutions for tax purposes, it is important to examine the legal structure and public aims of the organization, as well as the activities in which it is engaged.

There are six criteria that an organization must satisfy in order to qualify for tax exemption:

1. The organization does not have to be an association (*amuta*), but must consist of a collection of people operating together;
2. There must be at least seven members (individuals and/or corporations);
3. The majority of the members may not be related to each other;
4. The organization must have a public purpose;
5. The income and resources of the organization must be used in pursuit of the public purpose; and

6. The organization must provide annual reports (financial and director's report), detailing, inter alia, its expenditures, resources, and income to assure compliance with its public purpose.

The law, court decisions, and administrative rulings have defined "public purpose" to include activities related to religion, culture, education, science, health, welfare, and sports, as well as any other public purpose approved by the Minister of Finance.

An NPO may engage in both commercial and not-for-profit activities, but its business activities may be taxed. If income is generated by a business that is a central or integral part of accomplishing the organization's public purpose, it will be exempt from tax. The Minister of Finance may grant a tax exemption for income of a public institution from business sources, as long as the public will still benefit.

B. VALUE ADDED TAX

The Value Added Tax ("VAT") Law of 1975 imposes a tax on the ultimate consumer. With a focus on the nature of an organization's activities, the VAT Law provides that not-for-profit organizations engaging in non-commercial business receive the status of "*malkar*" (Hebrew abbreviation of "Not-for-Profit Institution").

In order for an organization to attain *malkar* status, it:

1. Must be a collection of people (though not necessarily incorporated; 'people' includes individuals and corporations);
2. Must not engage in for-profit business activities; and
3. Must not be a financial institution.

Organizations with *malkar* status must pay VAT upon buying goods or services. They are not permitted to issue a tax invoice (i.e., to collect VAT from their customers), and are not reimbursed for the VAT paid (input tax). In addition, they must pay a payroll tax ("Wage Tax") based on the amount of wages paid to their employees.

The VAT rate in Israel is 17 percent, and the Wage Tax is 7.5 percent.

C. PROPERTY TAX

The Property Tax and Compensation Fund Law of 1961 governs the taxation of property owners in Israel. Adopting the definition of "public institution," NPOs may be exempt from property tax if:

1. The NPO has at least seven members;
2. Most members are unrelated to one another;
3. The NPO has a public purpose – religion, culture, education, science, health, relief, or sports;
4. The NPO's property is used in pursuit of one of the above-named public purposes; and

5. Any income generated from the property is used to pursue the organization's purposes.

Alternatively, the Property Tax and Compensation Fund Law gives the Minister of Finance discretion to grant tax exemptions for property that serves a public purpose. The Finance Committee of the Israeli Legislature (Knesset) must also approve the exemption.

D. TAX ALLOWANCES

Article 46 of the Income Tax Ordinance provides donors with a tax credit for donations to certified public institutions. To qualify for such an allowance, the following conditions must be met:

1. The organization must satisfy the Tax Ordinance definition of a "public institution;" and
2. The organization must be approved by the Finance Committee of the Knesset.

In a September 2015 directive, tax authorities listed a number of requirements for an organization to qualify as a public institution. These requirements include: the NPO must obtain a certificate of proper management from the NPO registrar; the NPO's activities should promote the public welfare without discrimination; salaries of the NPO's management should be capped; and prices for services should be lower than market rate.

Individual donors may receive a 35 percent tax credit for contributions to certified NPOs that exceed 180 NIS (approximately \$50) but are not greater than 9 million NIS (approximately \$2.4 million), or up to 30 percent of the donor's total tax in the relevant fiscal year.

Under the above limitations, the tax credit afforded to corporations is equal to the company tax rate (24 percent).

Foreign NPOs must be registered in Israel according to the Israeli standards for public institutions in order for donors to benefit from tax allowances. In the directive mentioned above, the Income Tax Authority noted that—subject to consultation with the Foreign Ministry—tax credits may be permitted for foreign NPOs if the organization's activities are linked to the State of Israel, including activities for Israeli citizens or in the national interest of Israel, or activities to address urgent humanitarian situations.

E. DOUBLE TAX TREATIES

The 1975 U.S.-Israel Income Tax Treaty ("Israel Treaty") took effect on January 1, 1995. Article 15A of the 1980 Protocol to the Israel Treaty allows U.S. donors to deduct contributions to Israeli charities as long as the charitable organization would have qualified for exemption according to U.S. standards. The Israel Treaty fixes the percentage limitation on charitable deductions at 25 percent. This percentage is calculated according to the amount of income the U.S. donor has from sources within Israel. The treaty provision makes it easier for some U.S. grantmakers – particularly those with business in Israel – to make grants to Israeli charities.

It should be noted that the U.S. definition of the territory of Israel is different from the way the State of Israel defines itself. This issue of territorial definition may introduce complications regarding the proper application of the Israel Treaty.

VII. KNOWLEDGEABLE CONTACT

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FOOTNOTES

[1] In December 2009, the Israeli Parliament approved Amendment Number 12 to the Law of Associations ("*Amutot* Law") 1980. This amendment adds a new chapter: D2 - Merger (Articles 34e-34i). Prior to this amendment, two or more *amutot* could not merge. If two *amutot* wanted to merge, one of them had to dissolve, request the permission of the court to transfer its assets (if any) to the other, and the members of the dissolved *amuta* had to apply for membership in the other *amuta*. Amendment 12 created the possibility for two or more *amutot* to merge and form one legal entity with all of the assets, rights, and obligations of all merging organizations. The amendment also allows for the merger of *amutot* with Companies for Public Benefit (PBCs).

[2] The General Assembly of the PBC must appoint an audit committee. Unlike the audit committee of a public (for-profit) company, neither a board member nor an executive of the company may serve as a member of the audit committee. A PBC must nominate an Internal Auditor if its volume exceeds 10 million New Israeli Shekels (NIS).

[3] The Companies Law allows return of certain property to its owner, if at the time of transferring this asset to the PBC for its use, it was agreed and properly documented that this asset was given for use and not as a gift.

[4] The Political Parties Law of 1992, however, distinguishes between registered parties and NPOs. The law defines a party as: "A body of persons organized in order to advance political or social objectives by legal means and to win their representation in the Knesset through election." Although registered parties are associations, they are not governed by the Law of Associations.