

# KOSOVO

Current as of May 2018

Comments related to any information in this Note should be addressed to [Mai El-Sadany](#).

## TABLE OF CONTENTS

- I. [Summary](#)
  - A. [Types of Organizations](#)
  - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
  - A. [General Legal Forms](#)
  - B. [Public Beneficiary Status](#)
- IV. [Specific Questions Regarding Local Law](#)
  - A. [Inurement](#)
  - B. [Proprietary Interest](#)
  - C. [Dissolution](#)
  - D. [Activities](#)
  - E. [Political Activities](#)
  - F. [Discrimination](#)
  - G. [Control of Organization](#)
- V. [Tax Laws](#)
  - A. [Tax Exemptions](#)
  - B. [Deductibility of Charitable Contributions](#)
  - C. [Value Added and Turnover Taxes](#)
  - D. [Tax Declaration](#)
  - E. [Double Tax Treaties](#)
- VI. [Knowledgeable Contacts](#)

## I. SUMMARY

### A. TYPES OF ORGANIZATIONS

The two recognized forms of domestic non-governmental organizations (NGOs) in Kosovo are foundations (non-membership organizations) and associations (membership organizations) (Law on Freedom of Association Article 5). Foreign NGOs may conduct activities in the territory of Kosovo, provided that they register and substantially meet specified requirements imposed on domestic NGOs (Law on Freedom of Association

Articles 7, 9(8)). Both foreign and domestic NGOs may apply for "public beneficiary status" (Law on Freedom of Association Article 17).

In this Note, the term NGO refers to foundations and associations. Other not-for-profit legal forms, which are outside the focus of this Note, include political parties, trade unions, and other organizations registered under separate laws or regulations.

## B. TAX LAWS

NGOs with public benefit status enjoy tax and other fiscal exemptions to the extent their income is used exclusively to further their public benefit purposes, including income derived from donations and grants (Law on Freedom of Association Article 17(1); Law on Corporate Income Tax Article 10). [1] An NGO is taxed at the rate of 10 percent on income from commercial or other activities not exclusively related to its public purpose, reduced by deductions directly related to the expense of carrying out such activities allowed by law (Law on Corporate Income Tax Article 34). NGOs without public benefit status are taxed on their profits in the same manner as other legal entities.

Both legal persons and individuals are allowed to deduct up to 10 percent of their taxable income for donations for specified public benefit purposes (Law on Corporate Income Tax Article 10(1); Law on Personal Income Tax Article 28(1)). The donation must be made to an NGO that has received and maintained public benefit status or to "any other non-commercial organizations that directly perform activities in the public interest and are not-for-profit," including medical, educational, environmental, religious and other specified types of institutions (Law on Corporate Income Tax Article 10(2.2); Law on Personal Income Tax Article 28(2.2)). Taxpayers who make such donations in particular subject areas may receive an additional allowance of up to 10 percent of their income for deduction purposes, as prescribed by separate laws (Law on Corporate Income Tax Article 10(5); Law on Personal Income Tax Article 28(5)). Deductions are not allowed if the contribution will directly benefit a person related to the donor (Law on Corporate Income Tax Article 10(3); Law on Personal Income Tax Article 28(3)).

A value added tax (VAT) is in effect in Kosovo. Exemptions are provided for the sale or import of medicines, medical services, pharmaceutical products, and medical and surgical instruments and apparatus, as well as the provision of public education services (Law on Value Added Tax Article 27).

## II. APPLICABLE LAWS

A collection of Kosovo's laws in English is available [here](#) and [here](#).

- Constitution of the Republic of Kosovo
- Law No. 04/L-057 on [Freedom of Association in Non-Governmental Organizations](#); entered into force in October 2011 (Law on Freedom of Association)
- Law No. 05/L-029 on Corporate Income Tax
- Law No. 05/L-037 on Value Added Tax
- Law No. 05/L-028 on Personal Income Tax

- Law No. 04/L-102 on Amending and Supplementing the Law on Tax Administration and Procedures 03/L-222
- [Law No. 2004/3 The Anti-Discrimination Law](#)
- Law No. 03/L-040 [on Local Self Government](#)
- [Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo](#)
- [Law No. 03/L-034 on Citizenship of Kosovo](#)
- Law No. 03/L-215 on Access to Public Documents
- Law No. 04/L-093 on Banks, Microfinance Institutions and Non-Bank Financial Institutions
- Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing
- Law No. 04/L-178 on Amending and Supplementing the Law No. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing
- Administrative Instruction GRK No. 02/2014 on Registration and Functioning of Non-Governmental Organizations

### III. RELEVANT LEGAL FORMS

#### A. GENERAL LEGAL FORMS

Kosovo recognizes two legal forms for domestic NGOs: associations and foundations. [2] Both forms may be established for any lawful public or mutual benefit purpose (Law on Freedom of Association Article 5).

NGOs may apply to register online via the [Ministry of Public Administration website](#). By law, the authorities must respond to a registration application within 60 days after receiving it (Law on Freedom of Association Article 9(9)). Authorities may deny registration of NGOs that promote inequality of any type (Law on Freedom of Association Articles 10).

An association is a membership organization established by at least three domestic or foreign legal or natural persons, at least one of whom has a residence or seat in Kosovo (Law on Freedom of Association Article 5(2)). If any of the founders are legal persons, they must provide evidence of their registration as legal entities, as well as the decision appointing the legal person's representative for the establishment of the NGO (Administrative Instruction on the Registration and Functioning of NGOs).

A foundation is an organization without members that is established to manage properties and assets. A foundation may be created by one or more legal or natural persons, at least one of whom has a residence or seat in Kosovo (Law on Freedom of Association Article 5(3)). A foundation may also be established by a will, bequest, or legacy (Law on Freedom of Association Article 6(2)).

Foreign NGOs may conduct activities in the territory of Kosovo, provided that they register with the Government of Kosovo and substantially meet specified requirements (Law on

Freedom of Association Article 9(5) and 9(8); Administrative Instruction on the Registration and Functioning of NGOs Article 2)

## **B. PUBLIC BENEFIT STATUS**

An NGO may apply to the Government of Kosovo for “public beneficiary status,” which, if granted, entitles the organization to certain tax benefits and makes it subject to certain reporting requirements (Law on Freedom of Association Article 17). An NGO organized and operated to undertake one or more of the following as its principal activity may apply for public beneficiary status: humanitarian assistance and relief, support for persons with disabilities, charity, education, health, culture, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, the promotion of gender equality, or any other activity that serves the public benefit (Law on Freedom of Association Article 17(1)).

NGO activities in the area of economic development are considered to be public beneficiary activities only if they are undertaken primarily for the benefit of disadvantaged individuals or groups; similarly, activities in the areas of education and health are considered public beneficiary activities only if significant benefits are provided free of charge or at less than fair market value to disadvantaged individuals or groups (Law on Freedom of Association Article 17(2)).

An NGO with public beneficiary status must file annual financial and programmatic reports in order to retain that status (Law on Freedom of Association Article 18(1); Administrative Instruction on Registration and Functioning of NGOs Article 11). The financial reports of all NGOs with annual income or expenditures in Kosovo in excess of €100,000 must be submitted with “an opinion, signed by an independent auditor, as to whether the financial statements present fairly, in all material respects, the organization's financial position for the reporting period” (Law on Freedom of Association Article 18(9); Administrative Instruction on Registration and Functioning of NGOs Article 11).

Public beneficiary status may be suspended should the NGO fail to file a complete annual report or if the NGO no longer meets the requirements for public beneficiary status (Law on Freedom of Association Article 19(1)-(3)). If the status is suspended or revoked, the NGO must wait three years to reapply for the status (Law on Freedom of Association Article 19(4)).

## **IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW**

### **A. INUREMENT**

NGOs are prohibited from distributing any net earnings or profits to any person. An NGO's assets, earnings, and profits may not be used to provide direct or indirect benefit to any founder, director, officer, member, employee, or donor of the NGO (Law on Freedom of Association Article 4). NGOs are, however, allowed to pay “reasonable compensation” to such persons for work performed for the organization (Law on Freedom of Association Article 4).

## **B. PROPRIETARY INTEREST**

No specific legal provisions address the issue of proprietary interest, which is still an evolving area under local law. In general, an NGO may own and manage property and assets for the accomplishment of its not-for-profit purposes (Law on Freedom of Association Article 16(3)).

## **C. DISSOLUTION**

If an NGO receives tax or fiscal benefits, donations from the public, or government grants, then upon the organization's dissolution, any assets remaining after the discharge of liabilities shall be distributed to another NGO with the same or similar purposes, as identified in the organization's governing documents or through a decision of the organization's highest governing body. If no NGO is designated by either of these means, then the Government of Kosovo shall determine the NGO entitled to receive these assets (Law on Freedom of Association Article 21(3)).

All other NGOs must distribute assets remaining after satisfying their liabilities "in accordance with the [NGO's] statutes or a decision by the highest governing body" and in accordance with the provision governing private inurement (Law on Freedom of Association Article 21(4)).

### **1. Removal of NGOs from Register**

Local, foreign, and international NGOs are obliged to submit once a year, to the competent authority, a statement confirming that the information they have provided remains valid or to provide relevant changes. The statement shall be submitted no later than February 28 after the year covered by the statement (Administrative Instruction on Registration and Functioning of NGOs Article 12; see also Law on Freedom of Association Article 12(4)). If an NGO fails to submit this statement for two consecutive years, the competent body may remove the NGO from the NGO register (Law on Freedom of Association Article 12(5)).

### **2. Suspension of operation of the NGO**

An NGO may be terminated based on a valid court decision, or if it becomes insolvent (Law on Freedom of Association Article 20). Further, upon written request and justification from an authorized security institution, the competent authority may issue a decision to suspend the operation of the NGO. This decision must be based on a determination that the NGO's activity does not comply with the legal and constitutional order of the Republic of Kosovo and international law (Administrative Instruction on Registration and Functioning of NGOs Article 18). NGOs whose activity has been suspended shall have the right to complain to a commission tasked with reviewing complaints from NGOs, in accordance with Regulation No. 02/2012 MPA.

NGOs may also terminate their operations voluntarily (Law on Freedom of Association Article 20(1)). A voluntarily-terminated NGO must, within 30 days from its decision to terminate, notify the competent body about this decision (Administrative Instruction on Registration and Functioning of NGOs Article 14).

### **3. Prevention of Money Laundering and Terrorist Financing**

Legal constraints designed to prevent money laundering and terrorist financing may affect an NGO's access to funding and reporting obligations. The law prohibits NGOs from accepting any contribution in currency in excess of €1,000 from a single source in a single day. An NGO also may not disburse currency in excess of €5,000 in a single day to any single recipient. NGOs seeking a one-time or recurring exemption from the prohibition may file a written request for exemption with the Financial Intelligence Unit (FIU), setting forth the nature of the exemption sought and the reasons for it. The FIU shall respond to the request in writing within 30 days, and may decide to grant, conditionally grant, or deny the exemption (Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing Article 24).

NGOs shall report any suspicious act or transaction to the FIU within three business days and prior to taking further action in connection with any such act or transaction. The NGO should not report this information to any person or entity other than the FIU, including even those involved in the relevant transaction, unless authorized in writing by the FIU, a prosecutor, or a court (Law No. 04/L-178 on Amending and Supplementing the Law No. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing).

Moreover, NGOs must submit a report describing any cash contribution over the course of one year from a single source that is in excess of €5,000, identifying the source, amount, and date of each contribution. The NGO must do likewise for any disbursement to a particular recipient if the total value over one year is in excess of €10,000, identifying the recipient, amount and date of each disbursement, and the intended use of the money (Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing Article 24).

## **D. ACTIVITIES**

### **1. GENERAL ACTIVITIES**

NGOs in Kosovo may generally engage in any lawful activities, including economic activities and certain political activities.

### **2. ECONOMIC ACTIVITIES**

An NGO may engage in economic activities, provided that the earnings are intended and used solely to promote the organization's not-for-profit purposes as specified in the NGO's statute (Law on Freedom of Association Article 16(2)). Although there are no explicit legal provisions on this matter, in practice the Government of Kosovo generally allows NGOs to engage in economic activities as long as they do not constitute the principal activities of the organization.

Certain special rules apply to NGO microfinance institutions. If the NGO microfinance institution has a charitable purpose as its mission, it should register at the Central Bank of Kosovo (CBK) as an NGO and register at the Ministry of Public Administration to obtain its tax exempt status. An NGO microfinance institution is not permitted to sell or transfer its business or merge, divest, or otherwise change its structure, mission, or ownership; nor is it allowed to distribute or in any manner pay out income, profits, surplus or other assets, liabilities or capital, except in compliance with the law and with the written approval of the CBK (Law on Banks and Microfinance Institutions Article 95(1.6)-(1.7)).

## **E. POLITICAL ACTIVITIES**

NGOs may not engage in fundraising or campaigning to support political parties or candidates for political office ([Law on Freedom of Association](#) Article 15). However, this prohibition does not appear to extend to involvement in lobbying or other kinds of political activities.

## **F. DISCRIMINATION**

The Constitution of the Republic of Kosovo guarantees all persons in Kosovo the right to all fundamental freedoms without discrimination on any grounds, and incorporates the rights and protections set forth in numerous international conventions and declarations on human rights (Constitution Article 22). Moreover, the Constitution provides comprehensive rights for members of all ethnic communities as well as guarantees for the protection of the national, linguistic, and religious identity of all communities (Constitution Articles 57-62). The Constitution guarantees that no one shall be discriminated against on the grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability, or other personal status (Constitution Article 24). The Constitution confirms that the Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders.

The principles set forth in the Constitution are effectuated by the Anti-Discrimination Law. The Law applies to both individuals and legal persons in the public and private sectors, and covers any action or failure to act that affects the rights of a person to access employment or education opportunities, among other things (The Anti-Discrimination Law Article 4). Recipients of public contracts, loans, grants, or other benefits are required to execute a statement that they will act in compliance with the Anti-Discrimination Law and will promote a non-discrimination policy in carrying out their obligations under the public award (The Anti-Discrimination Law Article 6). The Law authorizes claims as well as sanctions for violation of its provisions (The Anti-Discrimination Law Articles 7 and 9).

## **G. CONTROL OF ORGANIZATION**

There are no restrictions on the participation of or management by foreign individuals or entities of NGOs. Foreign persons may found, be members of, and manage an NGO in Kosovo (Law on Freedom of Association Article 5). Therefore, it is possible that an NGO in Kosovo may be controlled by a for-profit entity or an American grantor charity.

## **V. TAX LAWS**

### **A. TAX EXEMPTIONS**

Registered NGOs with public benefit status are exempt from the corporate income tax to the extent that the income is used exclusively to further the organization's public benefit purposes ([Law on Corporate Income Tax](#) Article 7(1.1)). This includes income derived from foreign grants and donations. An exemption also applies to income generated from

contracts with a non-local contractor for the supply of goods or services to the United Nations or any of its specialized agencies; foreign governments, their organs and agencies; the European Union and the Specialized Agencies of the European Union; the World Bank; the IMF; and international inter-governmental organizations for the supply of goods or services in support of programs and projects for Kosovo (Law on Corporate Income Tax Article 7(1.6-1.7)). Other legal entities pay profit tax at the rate of 10 percent on taxable profit. [3] NGOs without public benefit status are taxed on their profits in the same manner as other legal entities.

## **B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS**

Donations by legal entities and individuals made for humanitarian, health, educational, religious, scientific, cultural, environmental protection, and sports purposes may be deducted from income up to a maximum of 10 percent of taxable income (Law on Corporate Income Tax Article 10(1); Law on Personal Income Tax Article 28). The donation must be made to an NGO that has received and maintained public benefit status or to “any other non-commercial organizations that directly perform activities in the public interest and are not-for-profit,” including medical, educational, and other specified types of institutions (Law on Corporate Income Tax Article 10(2.2); Law on Personal Income Tax Article 28(2.2)). Taxpayers who make such donations in particular subject areas may receive an additional allowance of up to 10 percent of their income for deduction purposes, if so prescribed by separate Kosovo laws (Law on Corporate Income Tax Article 10(5); Law on Personal Income Tax Article 28(5)).

Deductions are not allowed if the contribution will directly benefit a person related to the donor (Law on Corporate Income Tax Article 10(3); Law on Personal Income Tax Article 28(3)).

## **C. VALUE ADDED AND TURNOVER TAXES**

The standard VAT rate is 18 percent (Law on Value Added Tax Article 26(1)). A reduced VAT rate of 8 percent applies to certain goods and services listed in Article 2 of the VAT Law, which mainly include food items, books, and medical products. The list of products may be expanded or reduced by the relevant Minister. Further, under Article 27, certain goods and services associated with the public interest are exempt from VAT altogether, including: hospital supplies and services; medical and dental supplies and services; goods closely linked to welfare and social security work; and supplies and services related to education, sports, cultural events, and the media (Law on Value Added Tax Article 27). Likewise exempted are subscription services and goods provided to their members by nonprofit organizations with political, trade-union, religious, patriotic, philosophical, philanthropic, or civic purposes, as long as this exemption is not likely to cause distortion of competition (Law on Value Added Tax Article 27(1.11)) Many activities carried out by institutions of religious communities including those related to welfare and charity, religious training, and religious education are also exempt (Law on Value Added Tax Article 27(1.17)).

## **D. TAX DECLARATION**

Kosovo law requires that NGOs register with the Tax Administration, obtain a fiscal number when engaging in economic activities (Law on Tax Administration and Procedures Article 11) and submit to the Tax Administration or its agent a completed tax declaration as required by the Law on Tax Administration and Procedures (Law on Tax Administration and Procedures Article 17).

## **E. DOUBLE TAX TREATIES**

Kosovo and the United States have not entered into any tax treaties.

## **VI. KNOWLEDGEABLE CONTACTS**

Shqipe Pantina: [shpantina@yahoo.com](mailto:shpantina@yahoo.com)

## **FOOTNOTES**

[1] The Law on Freedom of Association uses the term "public beneficiary status," while the Income Tax Law and the Corporate Tax Law reference "public benefit status." This Note preserves the language used in the respective laws.

[2] In April 2009, the Constitution of Kosovo entered into force. Article 44 of the Constitution guarantees the freedom of association and the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization, and to participate in the activities of an organization.

In addition, the Constitution provides that the human rights and fundamental freedoms guaranteed by the Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights (Constitution Article 53).

[3] The 10 percent profit tax rate does not apply to insurance and re-insurance companies licensed by Central Bank, which pay 5 percent of gross premiums accumulated over the taxation period.