RUSSIA

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

The Russian Federation (Russia) recognizes many organizational forms of non-governmental, non-commercial organizations (NCOs). [1] The Civil Code provides the primary legal framework for NCOs. It divides these into two classes: Non-Commercial Corporate Organizations and Non-Commercial Unitary Organizations. Non-Commercial Corporate Organizations comprise NCOs whose founders have the right of participation (i.e., membership), and may form their own supreme governing body. Among these are NCOs including public organizations, associations (unions), and others.

Non-Commercial Unitary Organizations, by contrast, comprise NCOs whose founders do not have membership rights. This class of NCOs includes foundations, institutions, and autonomous non-commercial organizations.

The Federal Law on Non-Commercial Organizations ("NCO Law") provides additional regulations for certain NCO forms, including: public associations, associations (unions), foundations, institutions, non-commercial partnerships, and autonomous non-commercial organizations. The Federal Law on Public Associations specifically addresses the sub-category of NCOs called "public associations," which consists of public organizations, mass movements, public foundations, public institutions, and other forms. Finally, the Charities Law provides for a sub-category of NCOs called "charity organizations." This is a particular status for public associations, foundations, institutions, and others forms which entails certain limitations on NCO activities and provides unique tax benefits.

International grantmakers most commonly encounter five organizational forms of NCOs in Russia:

1. Public organizations;
2. Foundations;
3. Institutions;
4. Autonomous non-commercial organizations; and
5. Associations (unions).

B. TAX LAWS

The Tax Code of the Russian Federation provides that certain types of income shall not be included in an NCO's tax base for the purpose of calculating its "tax on profits" (hereinafter referred to as "income tax"). Russian law exempts, for example, income derived from "donations" and "grants." Criteria for transactions to be recognized as such are defined in both tax and civil legislation.

NCOs pay tax on income generated from their economic activities in the same manner as commercial entities, without any benefits. A gratuitous transfer of property to NCOs for the purpose of implementing their primary statutory activity, and that does not relate to economic activity, is not subject to VAT. Goods and services provided on a gratuitous basis as part of charitable activities in compliance with applicable laws are also exempt from VAT.

The Tax Code provides VAT exemptions to NCOs providing certain social services (i.e., in the areas of culture, art, health care, education, and services to the needy) (Tax Code Article 149.2). Furthermore, the Tax Code encourages NCOs to carry out economic activities by allowing them to accumulate savings to secure future expenses relating to economic activities (i.e., to establish a reserve fund). Assets contributed to a reserve fund by an NCO are deductible from the NCO's taxable income for the purposes of profit tax. The maximum amount of contributions permitted in a reserve fund is limited to 20 percent of the gross revenue over the reporting period (Tax Code Articles 265, 119.3, and 267.3).

Legal entities do not receive any federal tax deductions or credits for grants or donations to NCOs, including charities. Subject to specific rules, individuals may deduct from their taxable income charitable contributions provided to various NCOs, including registered

charities, socially oriented organizations (SOOs), and religious organizations, as well as to NCOs that use such contributions for the purpose of building an endowment. The maximum amount of a deduction shall not exceed 25 percent of the taxable income received by an individual during the reporting period (Tax Code Article 219).

Individual beneficiaries of charitable assistance are exempt from paying income tax on the value of the charitable assistance received. Charitable assistance provided in-kind and in cash is exempt from income tax when provided by registered charities. The Tax Code does not restrict the amount of income tax-free charitable assistance to individuals (Tax Code Article 217, 8.2).

Russia's structure adds another layer of complexity to the legal and regulatory framework, as Russia is a federation with 85 territorial jurisdictions. [2] Under the Tax Code, regional laws may provide benefits to NCOs beyond those offered under federal law. [3] Accordingly, while this Note focuses primarily on federal legislation, it would also be prudent to review the regional and local legislation where a prospective grantee is registered, in order to obtain a full understanding of the applicable regulations.

With regard to financial reporting requirements, NCOs – including branches, representative offices, and affiliates of foreign NCOs – whose receipt of funds and other assets for the previous reporting year does not exceeded three million rubles (approximately $50,000 US), have the right to apply simplified accounting (financial) reporting. However, this provision on simplified accounting (financial) reporting does not apply to NCOs performing the functions of a “foreign agent” (discussed further, below), and several other categories of NCOs (Federal Law No 402-FZ “On Accounting Reporting” of December 12, 2011, Article 6(4)). The head of the NCO may conduct the accounting for these NCOs (Ibid Article 7(3)).

II. APPLICABLE LAWS

- Constitution of the Russian Federation, December 12, 1993
- Civil Code of the Russian Federation, Part I, Federal Law No. 51-FZ, November 30, 1994, as amended
- Civil Code of the Russian Federation, Part II, Federal Law No. 14-FZ, January 26, 1996, as amended
- Tax Code of the Russian Federation No. 146-FZ, July 31, 1998, as amended
- Administrative Code of the Russian Federation No. 195-FZ, December 30, 2001, as amended
- Federal Law No. 7-FZ, "On Non-Commercial Organizations," January 12, 1996, as amended (hereafter “NCO Law”)
- Federal Law No. 135-FZ, "On Charitable Activities and Charitable Organizations," August 11, 1995, as amended (hereafter “Charities Law”)
- Federal Law No. 82-FZ, "On Public Associations," May 19, 1995, as amended (hereafter “Law on Public Associations”)
- Federal Law No. 259-FZ, "On Amending Part One, Two, and Three of the Civil Code of the Russian Federation," July 29, 2017 (hereafter “Law on Hereditary Foundation”)
- Federal Law No. 95-FZ, "On Gratuitous Assistance," May 4, 1999, as amended (hereafter “Law on Gratuitous Assistance”)

- Federal Law No. 275-FZ, "On Procedure of Establishment and Use of Endowment for Designated Purpose by Non-Commercial Organizations," December 30, 2006 (hereafter "Law on Endowments")
- Federal Law No. 3266-1, "On Education," July 7, 1992, as amended
- Federal Law No. 327-FZ, "On the Patronage Activity," November 4, 2014, as amended
- Federal Law No. 149-FZ, "On Information, Information Technologies, and Information Protection," July 27, 2006, as amended
- Federal Law No. 115-FZ, "On Counteraction to Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism," August 7, 2001, as amended
- Federal Law No. 161-FZ, "On the National Payment System," June 27, 2011, as amended
- Federal Law of the Russian Federation No. 272-FZ, "On Measures Affecting Persons Related to Violations of Basic Human Rights and Freedoms of Citizens of the Russian Federation," of December 28, 2012
- Resolution of the Government of the Russian Federation #485, June 28, 2008, regarding the list of international organizations whose grants (free aid) obtained by Russian organizations shall be tax exempt and shall be accounted for as taxable income of taxpayers – recipients of such grants, as amended
- Order of the Ministry of Justice of Russia, November 30, 2012, No. 223, "On procedure of Maintaining Registry of Non-Commercial Organizations, Carrying Functions of Foreign Agents"
- Resolution of the Constitutional Court of the Russian Federation (CCRF) No. 10-P, April 8, 2014, "On the Conformity of the Norms of the Legislation on NGOs Performing the Functions of a Foreign Agent to the Constitution of the Russian Federation"

III. RELEVANT LEGAL FORMS

LEGAL HIERARCHY

In analyzing the forms of NCOs in Russia, it is helpful to keep in mind a hierarchy of legal norms that moves from the general to the particular, beginning with the Civil Code, to the NCO Law, and finally to the Law on Public Associations. As a rule, the provisions of the more general laws apply to all NCOs unless a more specific piece of legislation holds otherwise. With regards to tax treatment, Tax Code provisions have priority over provisions in other legislation.

A. GENERAL LEGAL FORMS

Russian law contains many legal forms of NCOs, resulting in a complex and often contradictory regulatory framework. The primary requirements are that NCOs, whatever their form, do not have the generation of profit as their primary objective and do not distribute any such profit among their participants (Civil Code Article 50(1)).

In the context of international grantmaking, the following five forms of NCO are the most common:

1. Public organizations;

2. Foundations;
3. Institutions;
4. Autonomous non-commercial organizations; and
5. Associations (unions).

A **public organization** is the form most comparable to an "association" as used in international parlance. [4] A public organization is a membership-based organization of individuals who associate on the basis of common interests and goals stipulated in the organization's charter (Civil Code Article 123.4; Law on Public Associations Article 8; NCO Law Article 6). Public organizations register at various jurisdictional levels (international, national, inter-regional, regional, and local) depending on the territorial scope of their activities (Law on Public Associations Article 21).

Foundations are property-based, non-membership organizations created by individuals and/or legal persons to pursue social, charitable, cultural, educational, or other public benefit goals (Civil Code Article 123.18; NCO Law Article 7; Law on Public Associations Article 10).

The **institution** (*uchrezhdeniye*) is a form that exists in Russia and several other countries of the former Soviet Union. Like foundations, institutions do not have members. Unlike foundations, however, institutions do not acquire property rights in the property conveyed to them (Civil Code Article 123.21; NCO Law Article 20). Moreover, the founders are liable for any obligations of the institution that it cannot meet on its own (Civil Code Article 123.22 and 123.23; NCO Law Article 9(2); Law on Public Associations Article 35). Because of the founders' inability to shield themselves from the institution's liabilities, private founders tend not to use private institutions and generally seek other legal forms to undertake their activities. Public institutions are generally created using state assets. Schools, health care facilities, and cultural organizations are common examples of public institutions.

An **autonomous non-commercial organization** (ANO) is a non-membership organization undertaking services in the field of education, social policy, culture, and similar fields. In practice, an ANO often generates income by providing its services for a fee (Civil Code Article 123.24; NCO Law Article 10).

An **association** (union) is an alliance of legal entities and/or individuals which is established to promote mutual interests or public benefit aims (Civil Code Article 123.8). [5]

Charities

A public association, foundation, or institution may also register as a charity pursuant to the Charities Law (Charities Law Article 7). An institution can register as a charitable organization only if another charitable organization serves as its founder. Other forms of NCOs may register as charities only if “stipulated by the federal laws for charitable organizations.” Russian legislation does not specifically permit ANOs to register as charities.

Registration as a charity subjects an organization to stricter regulation in terms of activities, expenditures, and internal governance, in return for limited tax benefits. [6] Other than tax

benefits, federal law currently does not provide any particular benefits that are exclusive to registered charities.

The recently adopted federal law on patronage activities established the legal framework for patronage activities in the Russian Federation, as well as rights and duties of patrons and recipients of patronage support. The law defines patronage activities as "activities for gratuitous transfer of property, including money, or the rights of possession, use, disposition of property and (or) gratuitous performance of work and rendering services in the sphere of culture and education in the field of culture and the arts directed on preservation of cultural values and development of activity in the sphere of culture and education in the field of culture and art."

Endowments

Certain forms of NCOs, including public organizations, religious organizations, foundations and ANOs, may establish endowments (Law on Endowments Article 2). An endowment can be established using funds given by donors to an NCO. Donations to the endowment can only be made in the form of money, qualified stock, or real property. The law requires that endowments be managed by a qualified management company under a contract with the NCO owner of the endowment. Income generated from an endowment can be used by an NCO to finance its statutory activities. The minimum term for establishing an endowment is ten years.

As of September 1, 2018, Russian law will provide for a new legal entity, the “hereditary foundation.” Under the Law on Hereditary Foundations, a hereditary foundation is formed pursuant to a testament and administers hereditary property after the death of a testator indefinitely or within a given time.

B. PUBLIC BENEFIT STATUS

An NCO may register as a charity pursuant to the Charities Law. Charitable status provides the organization with unique tax benefits. [7]

Under the NCO Law, there are two legal statuses related to public benefit that may enable organizations to qualify for tax benefits or other form of governmental support. The NCO Law provides that an NCO may have status as a socially oriented organization, or “SOO,” defined as an organization that is established in any form under the NCO Law (except for state corporations, state companies and political parties) and that undertakes certain activities directed at addressing social problems and the development of civil society, as specified in the NCO Law (NCO Law Article 2). Article 31.1 of the NCO Law contains a fairly broad list of qualifying activities for SOOs, including “charitable activities, as well as activities facilitating charities and voluntarism.” Federal and local legislation may establish additional types of activities which would allow non-commercial organizations to qualify as SOOs. As of April 2018, the federal government does not provide for any special tax benefits for SOOs or their supporters. SOOs may be eligible, however, for governmental support in various other forms, as defined in the NCO Law (NCO Law Articles 31, 31.1, 31.2, 31.3).

The NCO Law also provides a separate status for “a non-profit organization, rendering socially useful services.” The Law defines an organization with this status as “a socially

oriented non-profit organization, which renders adequate socially useful services for one year or longer, is not a non-commercial organization performing functions of a foreign agent, and does not have tax or levies liabilities or other arrears regarding regulatory charges envisaged by the legislation of the Russian Federation." A list of socially useful services is set forth by executive order and includes services aimed at social integration and the fostering of abandoned children; services aimed at the medical and social rehabilitation of persons addicted to alcohol, drugs, or other toxic substances; and many other services. [8] The status is accorded to organizations for a two-year period by the Ministry of Justice; the Ministry determines whether an organization meets the requirements to enjoy such status and enters organizations that qualify into the relevant register.

This legal status of non-profit organizations rendering socially useful services gives organizations priority in receiving state and municipal support in the following forms: allocation of subsidies; transfer of property for temporary use; allocation of free broadcasting time, free printed publications, or publishing materials on the Internet; organizing or assisting in organizing education, professional retraining, and skills improvement for employees and volunteers of organizations; and holding educational, scientific, and action-oriented events. As of April 2018, the register of non-profit organizations rendering socially useful services contained 109 NCOs.

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

NCOs generally cannot distribute profits to insiders (Civil Code Article 50(1)). The Law on Public Associations states that public foundations must use their assets for public benefit purposes, and prohibits founders and managers from using assets for their personal interests (Law on Public Associations Article 10). In addition, several provisions of the NCO Law are intended to address private inurement and self-dealing by NCO directors and officers. Specifically, an NCO may not remunerate, except for directly related expenses, members of its governing body for the performance of their governance functions (NCO Law Article 29(5)). Fiduciaries of NCOs are required to follow an established procedure of disclosure and recusal in circumstances where there is a conflict of interest with the organization (NCO Law Article 27).

Institutions face a situation that is distinct from other NCOs. By law, founders of institutions have broad discretion in extracting surplus property or funds from the institution's asset base and using them at their discretion (Civil Code Article 296; Law on Public Associations Article 35).

Issues of unreasonable compensation and other forms of private inurement are not explicitly addressed in Russian legislation.

B. PROPRIETARY INTEREST

The Civil Code and NCO Law state that members of public organizations may not assert proprietary interests over property they have contributed to a public organization, including membership fees (Civil Code Article 123.4; NCO Law Article 6(2)). The Law on Public Associations expands on this slightly with respect to public organizations, by explicitly precluding their members from asserting an ownership interest over the assets of the

organization (Law on Public Associations Article 32). Property contributed to a foundation by its founder(s) becomes the property of the foundation (NCO Law Article 7(1)).

Private and public institutions pose particular challenges for issues of proprietary interest, since the founders maintain their property rights and merely assign them to the organization for operational purposes only (Civil Code Article 123.21; NCO Law Article 9; Law on Public Associations Article 35). As provided by law, founders of an institution can reserve for themselves, dispose of, or reallocate any surplus or unused property or income earned in the course of the institution's activities (Civil Code Article 296).

An important caveat exists regarding donations: To qualify for preferential tax treatment, such income must be provided on a "gratuitous basis" and "for designated purposes," and it must be used by the recipient for such designated purposes. It includes income received for the "maintenance of non-commercial organizations" and for "implementation of their statutory activities." In order for tax benefits to apply, an NCO is "required to maintain separate accounting" for its taxable and non-taxable income and expenditures. Thus, it would be possible to determine the number and size of an organization's conditioned gifts and thereby determine any proprietary interests that may exist relating to the organization's assets.

Local experts also believe that, in the case of grants, the explicit requirement (for tax treatment) that grants be provided on a "non-refundable basis" necessarily means that a grantor cannot demand the repayment of a grant, even in case of its use for purposes other than those designated.

C. DISSOLUTION

Upon dissolution of an institution, any remaining assets generally revert back to the founder unless the charter stipulates otherwise. For other forms of NCOs, assets remaining upon liquidation are to be utilized for the same objectives for which the liquidating organization was created in accordance with its governing documents, or to charitable purposes (Civil Code Article 63(8); NCO Law Article 20(1)) [9]. If it is not possible to use the property in accordance with the organization's governing documents, it reverts to the state (NCO Law Article 20(1)).

Public associations are similarly obligated to distribute remaining assets to advance the organization's objectives, and, in the absence of any indication in the governing documents about how this is to be done, the general assembly votes on how to distribute the remaining assets (Law on Public Associations Article 26). In the case of charities, remaining assets must be distributed for charitable purposes under the procedure stipulated in the charity's charter, or, in the absence of such provisions in the charter, as determined by the liquidation commission (Charities Law Article 11). [10]

D. ACTIVITIES

1. GENERAL ACTIVITIES

Public associations, with the exception of specialized organizations such as trade unions and political associations, have virtually no restrictions on the activities they may pursue as their primary objectives (Law on Public Associations Article 5), including mutual benefit activities (Civil Code Article 123.4; NCO Law Article 6(1); Law on Public Associations Article

8). All **foundations** are required to engage in public benefit activities (Civil Code Article 123.18; NCO Law Article 7(1); Law on Public Associations Article 10). The primary activities of **institutions** are broadly defined as any social, cultural or other activities of a not-for-profit nature (Civil Code Article 123.21; NCO Law Article 9; Law on Public Associations Article 11). **Charities** are required to promote at least one of the enumerated charitable activities indicated in the law (Charities Law Article 2).

An NCO may generate income from economic activities, provided that (i) income-making activities are stipulated by NCO's by-law, and (ii) the income is applied to pursuing the NCO's not-for-profit purposes (Civil Code Article 50(4); NCO Law Article 24). Registration as a charity does not affect or limit the right of an NCO to engage in economic activities (Charities Law Article 12). [11]

2. PUBLIC BENEFIT ACTIVITIES

NCOs may carry out activities that serve multiple purposes, including: the pursuit of social, charitable, cultural, educational, scientific, and managerial activities; health protection, fitness and sports activities; the satisfaction of spiritual and other non-material needs; the protection of the rights and lawful interests of citizens and organizations; the resolution of disputes and conflicts and the provision of legal aid; and other purposes directed toward the achievement of the public good (NCO Law Article 2).

Russian laws use a number of terms to define activities for “public benefit purposes.” The term is used explicitly, for instance, in the definition of a donation, per Article 582 of the Civil Code. However, neither the Civil Code nor any other current legislation of the Russian Federation specifically defines “public benefit purposes.” Several Russian laws include closely related concepts; although these laws use terminology other than “public benefit,” their interpretation of might be instructive, for instance, as to what is intended with regard to the use of the term in the definition of “donation.”

In the absence of a clear definition of “public benefit purposes,” some Russian legal experts and government officials have equated the concept with the term “charitable purposes” as defined in the Charities Law. [12] For example, a decision of a Moscow court concluded that funds received by a non-commercial organization on a gratuitous basis and used according to its designated purposes (in this case, the research and analysis of social and economic issues) is nevertheless taxable income because such activities are not recognized as serving “charitable purposes,” which the court treated as synonymous with “public benefit purposes.” [13] Another opinion common among local experts as to the definition of “public benefit purposes,” however, is that they comprise the purposes pursued by NCOs that are listed in Article 582 of the Civil Code. [14]

Charities and foundations are limited to activities of general public benefit (Charities Law Article 6; Law on Public Associations Article 10; NCO Law Article 7). Charities must engage in charitable activities, which are defined as "voluntary activities of individuals and legal entities involved in the altruistic (gratuitous or on privileged terms) provision to individuals or legal entities of property, including money and the altruistic provision of services or other support" directed towards achieving any of the indicated objectives that generally correspond to public benefit activities (Charities Law Articles 1 and 2(1)). Foundations that

are not charities must undertake "public benefit" activities but, as discussed above, the law does not define the term.

3. ECONOMIC ACTIVITIES

An NCO may not have the generation of profit as its primary purpose, but it may engage in economic activities to the extent they advance the purposes for which the organization was created (Civil Code Article 50(4); NCO Law Articles 2 and 24(2); Law on Public Associations Article 37; Charities Law Article 12). With some exceptions, detailed in Section V below, profit from the economic activities of NCOs, including charities, is taxed in the same manner as that of commercial organizations.

E. POLITICAL ACTIVITIES

Neither the Civil Code nor the NCO Law expressly limits the ability of NCOs to engage in political activities. [15] All forms of public associations may participate in advocacy and lobbying, for instance. Further, NCOs generally may also engage in election campaigns for federal and local elections, subject to federal election laws (Law on Public Associations Article 27). Russian law provides for one exception to this rule: NCOs that receive money and other assets from U.S. citizens and organizations on a gratuitous basis, or implement projects, programs, or other activities on the territory of the Russian Federation that are deemed to constitute threats to the interests of the Russian Federation, have had their political activities suspended. [16] The assets of an NCO whose activities have been suspended under the law are also subject to seizure, based on a court decision.

Charities are expressly prohibited from using their assets to support political parties, movements, and campaigns (Charities Law Article 2(2)-2(3)). In addition, religious organizations, governmental and municipal institutions, international public associations, international movements, and foreign citizens are prohibited from making donations to political candidates (Federal Law No. 19-FZ "On RF President Elections," of January 10, 2003, Article 58(6); Federal Law No. 51-FZ "On RF State Duma Deputies Elections," of May 18, 2005, as amended, Article 64(7)). However, these prohibitions do not appear to extend to involvement in lobbying or other politically-related activities.

According to Article 2 of the NCO Law, an NCO is considered to carry out a political activity if, regardless of its statutory goals and purposes, it “pursues activities in the area of state-building; protection of constitutional framework of the Russian Federation and federal structure of the Russian Federation; protection of sovereignty and securing territorial integrity of the Russian Federation; supporting law and order, state and public security, national defense, foreign policy, social, economic and national development of the Russian Federation; development of political system, activities of state bodies, local self-governing bodies; legislative control of rights and freedoms of man and citizen in order to influence development and implementation of the state policy, setting up state bodies, local self-governing bodies or their decisions and actions.” If an NCO carries out such activity on the territory of the Russian Federation, it falls within the ambit of the NCO Law, regardless of whether an NCO is conducting them in the interest of foreign funding sources or without such purpose. [17] An NCO is also considered to be carrying out a political activity even if it only participates in such activities as organized and financed by other organizations.

Activities that otherwise might be considered political may be conducted in the following forms:

- Participation in organizing public activities in the forms of meetings, rallies, demonstrations, marches, or picketing, or in various combinations of these forms; organizing and holding public debates, discussions, and talks;
- Participation in activities aimed at achieving a specific outcome of elections or a referendum, in monitoring a process of elections, referendum, in creation of elections commissions, referendum commissions, in activities of political parties;
- Public addresses to the state bodies, local self-governing bodies, and their appointed officials, as well as other activities, influencing activities of these bodies, including those aimed at adoption, amendment, or abolition of laws and other legislative instruments;
- Dissemination, including via modern information technology tools, of opinions about decisions of the state bodies and their policies;
- Forming public political opinions and beliefs, including by conducting public opinion polls and publishing their results or conducting other forms of social studies;
- Involvement of citizens, including minors, in the above activities; and
- Financing of the above activities.

For example, an NCO addressing a state body for clarification regarding current legislation would not be considered a form of political activity. Issuing opinions about the decisions of a state body, on the other hand, would be.

Certain activities are explicitly excluded from the scope of “political activities,” specifically those in the following areas: science, culture, the arts, and disease prevention; the protection of health, social welfare, and social support; the protection of citizens, motherhood and childhood; social support for the disabled; the promotion of healthy living, physical culture, and sports; the protection of plant and animal life; and charitable activities.

According to the CCRF, an organization “shall be considered performing functions of a foreign agent if it participates in political moves in order to influence decision-making process of the state bodies and their state policy regardless of the fact what kind of opinions – ether positive (approving) or negative (disapproving) – this organization holds.”

F. DISCRIMINATION

The Russian Constitution generally guarantees individual rights regardless of sex, race, nationality, language, origin, property or employment status, residence, or religious belief (Constitution of the Russian Federation Article 19(2)). Article 5 of the Federal Law on Education (No. 12-FZ, 13/01/1996) guarantees citizens of the Russian Federation the opportunity to receive an education regardless of race, gender, nationality, language, origin, residence, religion, involvement in public associations, age, or health, among other characteristics.

Notwithstanding, Russian law stipulates an exception to the general non-discrimination rule with regard to the membership and management of some NCOs: By law, individuals with dual U.S.-Russian citizenship are prohibited from being members or managers of Russian NCOs or offices of international or foreign NCOs operating in Russia, if such NCOs

participate in political activities. Violation of this prohibition will result in suspension of the NCO's activities (Law on Measures of Affecting Persons Related to Violation of Basic Human Rights and Freedoms, Rights and Freedoms of the Citizens of the Russian Federation Article 3).

Another exception to the general non-discrimination rule is the recent adoption of the so-called law on "undesirable organizations" (Federal Law No. 129-FZ "On Amendments to Certain Legislative Acts of the Russian Federation," May 23, 2015). According to the law, a foreign or international organization may be considered undesirable if it is a non-governmental organization which "represents a threat to the fundamentals of the constitutional system of the Russian Federation, the country's defense and state security." The Prosecutor General or his deputies make this determination in coordination with the Foreign Ministry. Revocation of "undesirable" determinations is carried out in a similar manner. The Ministry of Justice maintains and makes public the list of "undesirable organizations."

The law restricts any activities, including the formation of branches of the "undesirable organizations" on the territory of the Russian Federation and distribution of its informational materials. If an organization is included on the list of "undesirable organizations," financial institutions will refuse to conduct financial and property transactions with it. The banks are required to notify the Federal Financial Monitoring Service, and the latter must in turn notify Prosecutor General's Office and Ministry of Justice.

The law also provides for administrative punishment in the form of fines for participation in "undesirable organizations." If the violations are systematic, in particular if administrative punishment is imposed more than twice in one year, the case becomes a criminal one. In such situations, the penalties may include a fine of 300,000 to 500,000 Rubles (approximately $5,000-8,300); community service for up to 360 hours; forced labor for a period of up to five years with imprisonment for up to two years; or imprisonment for two to six years, with disqualification from holding certain positions or engaging in certain activities for up to ten years. The law stipulates that a person who has voluntarily ceased to participate in an "undesirable organization" shall be exempt from criminal liability.

G. GOVERNANCE REQUIREMENTS

In general, foreign citizens and stateless persons who are legally residing in the Russian Federation may be founders, members, or participants in NCOs or in public associations (NCO Law Article 15; Law on Public Associations Article 19).

However, certain persons may not become founders, members, or participants, including:

- Foreign citizens or stateless persons whose stay in Russia is deemed "undesirable;"
- Persons appearing on a money laundering and anti-terrorist financing watch list maintained by the Russian government;
- Public associations and religious organizations that have been suspended under the Federal Law on Countering Extremist Activities (Law No. 114-FZ, of July 25 2002);
- Persons found by a court decision to show signs of participating in extremist activity;
- Persons who are currently incarcerated as a result of conviction of a crime;
- Persons who do not meet the requirements provided by federal laws for the founders, members, or participants of NCOs; and

- Persons who previously held position of the head, or part of the governing body of a public or religious association or other organization, the activities of which were suspended by a court, according to Federal Law "On Countering Extremist Activity" or the Federal Law "On Countering Terrorism," may not be the founder or participant of the nonprofit organization for ten years from the date of the court decision's enforcement.

Legal persons, including commercial entities, may generally serve as founders for all forms of NCOs except for public associations. Public organizations, however, by definition can only be created by individuals (Civil Code Article 123.4).

Russian Law also sets limitations on the participation of certain categories of Russian citizens in the activities of non-governmental, non-commercial organizations in the territory of the Russian Federation. For example, Russian citizens holding state or municipal offices as well as positions in the state or municipal service are not able to serve as members of the governing bodies, supervisory boards, or other boards of foreign nonprofit nongovernmental organizations and their branches, representative offices, or affiliates (NCO Law Article 30.1).

H. GOVERNMENT REPORTING REQUIREMENTS AND CONTROL OVER FOREIGN FUNDING

NCOs that participate in political activities carried out in the territory of the Russian Federation are prohibited from receiving monetary and other assets from US citizens and organizations on a gratuitous basis, or implementing projects, programs, or other activities on the territory of the Russian Federation that constitute threats to the interests of the Russian Federation. If an NCO violates this requirement, then the activities of the NCO will be suspended (Law on Measures of Affected Persons Related to the Violation of Basic Human Rights and Freedoms, Rights and Freedoms of the Citizens of the Russian Federation Article 3).

Russian law requires NCOs to report on all funds received from foreign sources and to detail how these funds are allocated or used (NCO Law Article 32.3). [18] Foreign grantmakers need not comply with these reporting requirements unless they have a registered subdivision (i.e. a branch, representative office, or affiliate) (NCO Law Article 32.4). All NCOs that have received foreign funds are required to post online reports on their activities, which must contain information submitted in reports to government authorities (NCO Law Article 32.3.2).

Under the NCO Law, foreign organizations operating in Russia through registered offices are subject to additional requirements. They must undergo an annual, independent audit by a Russian auditing company and submit the resulting audit report to the Ministry of Justice of the Russian Federation (MoJ). The MoJ will post all such reports, as well as other reports on the finances and activities of foreign organizations operating in Russia, on its website and provide them to the media. In addition to the mandatory independent audit, the MoJ also has the authority to conduct its own inspections of the registered offices of foreign organizations.

Furthermore, the law allows the MoJ to terminate any existing program of a subdivision of a foreign non-governmental, non-commercial organization (FNNO) (NCO Law Article 32.12). The law does not stipulate the grounds on which the MoJ may decide to do so. Failure to comply with the MoJ's decision will result in the exclusion of the branch or representative office of FNNO from the registry or the dissolution of its affiliate. The branch or representative office of the FNNO might also be excluded from the registry pursuant to the Ministry of Justice's voluntary decision if it does not present its audit report on time (NCO Law Article 32.8), or if its activities do not match the reported information or information on the registration form (NCO Law Article 32.9). The law further allows the MoJ to prevent an FNNO's subdivision from transferring funds or other resources to identified recipients, if its prevention will "protect … the basis of the Constitutional system, morality … with the aim of defending the country and the state security." Implementation will reveal how broadly the government construes this language (NCO Law Article 32.13).

The Code of Administrative Offences allows officers of the MoJ to draw up protocols on administrative violations while supervising the activities of subdivisions of a foreign non-governmental, non-commercial organizations (Article 28.3 of the Administrative Code).

Additional, special reporting requirements and controls are imposed on NCOs that receive foreign funding and also conduct political activities. Under the NCO Law, "non-commercial organizations that receive funds and other property from foreign states, their government bodies, international and foreign organizations, foreign citizens, persons without citizenship or persons authorized by them, and/or Russian legal entities receiving funding and other property from said sources" (hereafter referred to collectively as "foreign sources") are to be called "NCOs performing the functions of a foreign agent" (hereafter referred to as "NCO-foreign agents") (NCO Law Article 2). [19] The NCO Law requires all such NCOs to register in a registry of foreign agents prior to receiving funds from foreign sources, if they intend both to receive foreign funds or other property and to conduct political activities. The MoJ also has the power to unilaterally add an NCO to the above-mentioned register, if it determines that the NCO is a foreign agent (Civil Code Article 32(7)).

The NCO Law provides a procedure to remove NCO-foreign agents from the registry of foreign agents. An NCO-foreign agent has the right to file a statement with the MoJ, provided that the results of an unscheduled inspection finds that:

- The organization during the year preceding the day of filing the statement had not received money and other property from foreign sources, and (or) did not participate in political activities on the territory of the Russian Federation;
- With regard to an organization previously excluded from the registry, it was revealed by the inspection that this organization during the three year period prior to the date of filing the statement had not received money and other property from foreign sources and (or) did not participated in political activities on the territory of the Russian Federation;
- The organization, no later than three months from the date of inclusion in the registry, stopped receiving money and other property from foreign sources, and returned the money and other property to foreign donors.

The MoJ makes a determination, based on the statement, as to the removal of the NCO-foreign agent from the foreign agent registry within three months.

The NCO Law also does not provide for any threshold amount below which receipts would not be considered funds or property from foreign sources for the purpose of the “foreign agent” provisions (NCO Law Article 2). Political activities do not have to be funded by foreign sources, nor does an NCO have to represent foreign interests, in order to be required to register as a “foreign agent.” [20]

The NCO Law increases the administrative burden on NCO-foreign agents by requiring them to: 1) submit activity reports on a biannual basis; and 2) submit reports on expenditures of funds and other property on a quarterly basis (unlike other Russian NCOs, which are required to submit activity and expenditure reports only annually). Like foreign organizations, NCO-foreign agents are also required to submit to an annual independent audit. Reporting forms are to be determined by the authorized government agency and could be burdensome and overly complex.

The MoJ has discretion to decide whether an NCO qualifies as a “foreign agent” (i.e. whether an NCO received or has the intent to receive funding from foreign sources and whether an NCO conducted or has the intent to conduct political activities). Further, an authorized government official has discretion to decide whether to suspend the activities of any NCO if, according to the official’s opinion, the NCO carried out the functions of a foreign agent but failed to apply for registration as such, regardless of how defensible this decision may be.

An NCO whose activities have been suspended has the right to appeal the MoJ’s suspension decision to either the highest body of the MoJ or to a court. Criminal sanctions of up to two years in prison are provided for persons who willfully evade registration of an NCO as an NCO-foreign agent. In addition, an NCO whose activities have been suspended will be prohibited from conducting mass actions and public events, and from making bank deposits (with the exception of settling accounts related to economic activities and labor contracts, paying assessed damages resulting from its activities, and paying taxes, dues, and penalties).

With regard to government inspections, unscheduled inspections of NCOs may be conducted in the following cases:

- If an NCO fails to resolve violations contained in warnings previously issued by MoJ or its territorial body before the required deadline;
- If the MoJ or its territorial body receives information from state bodies or municipalities about inappropriate NCO activities and (or) the presence of extremism in its activities;
- If the MoJ or its territorial body receives a submission from the Election Commission of the Russian Federation to conduct an unscheduled inspection;
- If an order (decree) by the head of the MoJ or its territorial body is issued in accordance with the instructions of the President of the Russian Federation or the Government of the Russian Federation or on the grounds of the NCO's conduct.

V. TAX LAWS

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee. As with other Country Notes, this section does not provide any form of guidance or advice on tax law, and readers should not rely on this Note when making tax-related decisions.

A. TAX EXEMPTIONS

The Tax Code of the Russian Federation provides that certain types of income shall not be included in the tax base of NCOs for the purpose of determining profits tax (Tax Code Article 251(2)). Such income is defined as "receipts for designated purposes" ("целевые поступления"). In order for this tax benefit to apply, the NCO is "required to maintain separate accounting" for its taxable and non-taxable income and expenditures.

Article 251(2)(1) of the Tax Code specifically lists donations as one type of "receipts for designated purposes." The Article does not otherwise define the term "donations," referring instead to its recognition under, and conformity with, Russia's civil legislation. Therefore, income must conform to the definition of "donation" under Article 572 of the Civil Code and as elaborated in related laws, in order to be non-taxable on this basis. The interplay among the Tax Code, the Civil Code, and other civil legislation creates a number of uncertainties in the tax treatment of donations in Russia. [21] The determination of whether income is a non-taxable donation will ultimately depend on a number of considerations, including the purpose of the donation and its use by the recipient organization.

In order to be recognized as a donation, income must be provided on a gratuitous basis for a designated purpose for the "maintenance of NCOs" and for "implementation of their statutory activities," and the NCO must use the income for the designated purpose. An NCO that receives a donation must maintain a separate accounting of the donation's income and expenditures in order to receive this tax benefit.

Although in-kind contributions (services) are not donations, NCOs do not have to pay profit tax on them (Tax Code Article 251.2.1).

The term "grant" as listed in Article 251(1)(14) of the Tax Code is one of several types of income that shall not be included in an NCO's tax base for the purpose of profit tax. Like donations, grants are gratuitous transfers made for "designated purposes" and must be used accordingly. Grant recipients must maintain separate accounting of the grant income and expenditures in order to receive this tax benefit. Although there are similarities between grants and donations under Russian law, there are also a number of key differences. For instance, a grant may only include monetary and other assets; a transfer of property rights will not constitute a grant. Grants can be provided only for the purposes listed in Article 251(1)(14) of the Tax Code, and thus a grantor should specifically include only one or more of the listed purposes in the grant agreement. [22] Unlike donors, a grantor is obligated to require reports from the recipient on the use of the grant. According to local experts, grantors may impose other requirements on the recipient, so long as the criteria that the grant be gratuitous and non-refundable are maintained.

An otherwise eligible grant may not qualify for tax exemption if the donor is a foreign or international grantmaker. Such a grant is non-taxable only if the grantmaker appears on an

official government list in a Resolution of the Russian Government (hereinafter referred to as the "Resolution") (Russian Presidential Decree #485 of June 28, 2008). The list includes thirteen multinational organizations; as of October 2014, only one such organization had been added to the list since the Resolution was issued. Several of the government agencies that are eligible to propose foreign NGOs for inclusion on the list submitted their recommendations in 2009, but the Government has yet to act on these recommendations. The grants of any foreign organization not on the list are considered taxable income for recipients unless they qualify as non-taxable "donations." A foreign organization that wants to be placed on the list must go through a process of approval. The Resolution provides that the Russian Government is to develop accreditation procedures, but as of October 2014 it has not done so.

The Tax Code encourages NCOs to carry out economic activities by allowing them to accumulate savings to secure future expenses related to such activities – that is, to establish a reserve fund. Assets to be contributed to a reserve fund by an NCO are considered expenses that are deductible from the NCO's taxable income for the purposes of profit tax. The maximum amount of contributions to a reserve fund is limited to 20 percent of the gross revenue over the reporting period (Tax Code Articles 265(19.3); 267.3). Establishment of a reserve fund helps NCOs to better plan economic and other statutory activities, puts them in better standing when they seek loans from a financial institution, and allows them to better promote the interests of other organizations that engage in business transactions with NCOs. [23]

Additional benefits (e.g., some exemptions from VAT and from income tax on profits generated from economic activities) are allowed for certain religious organizations and public organizations of the disabled.

Certain tax benefits are attached to donations forming an NCO's endowment, and also to income generated by the endowment. For example, the following are not included as taxable income for the purposes of income tax for recipients: money; qualified stock; real property received by NCOs from foreign or Russian grantmakers for the purpose of establishing an endowment; and, in compliance with the law on endowments, such assets received by NCOs from companies managing their endowments as income from the management of the endowment (Tax Code Article 251.2.13-15).

B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Legal entities cannot claim a tax deduction or credit at the federal level for contributions made to NCOs, including charities. Individuals, however, may deduct from their taxable income charitable contributions given to a wide variety of NCOs, including registered charities, socially oriented organizations, and religious organizations, as well as NCOs that use such contributions for the purpose of building an endowment. This type of contribution is deducted from an individual's taxable income. The maximum amount of a deduction shall not exceed 25 percent of an individual's taxable income during the reporting period (i.e. calendar year) (Tax Code Article 219).

C. VALUE ADDED TAX

As a general rule, all organizations, including NCOs, must pay VAT, regardless of whether they engage in entrepreneurial activities. [24] There are some general exceptions, however.

The provision of assets to an NCO on a gratuitous basis is not subject to VAT if the assets are provided for the implementation of the NCO's statutory goals and unrelated to any commercial operation (Tax Code Article 39(3)(3)). Donations or grants to NCOs that meet this criteria, including those from abroad, are not subject to VAT. In addition, the gratuitous provision of goods or services (with the exception of excisable goods), provided in conjunction with charitable activities, is exempt from VAT (Tax Code Article 149(3)(12)). This exemption is not limited to registered charities.

Other VAT exemptions are also granted to certain organizations on services that they provide, including educational and cultural institutions, health-care providers, and scientific institutions (Tax Code Article 149(2)). Also exempt from VAT are goods (except excisable goods) imported under an approved humanitarian or technical assistance program pursuant to the Gratuitous Assistance Law (Tax Code Article 149(2)(19), 150(1)), if certified by a special commission within the Government of the Russian Federation.

In addition, the Tax Code relieves mass media outlets which gratuitously broadcast social advertisements or public service announcements (PSAs) from paying VAT on the assessed value of the PSAs. Previously, many mass media outlets were reluctant to post PSAs because they were required to charge VAT based on the cost of advertisements of similar scope.

D. PROPERTY TAX

The Tax Code grants only a few exemptions from property tax that are relevant to NCOs. Exemptions from property tax are granted on property of (1) religious organizations that use the property for religious activities; (2) national public associations of the disabled under certain circumstances; (3) bar associations, law firms, and legal advisors; and (4) certain kinds of state scientific centers (Tax Code Article 381).

E. TRADE TAX

The Tax Code of the Russian Federation has been amended with a new Chapter 33, "Trade Tax," which is a local tax (Federal Law No 382-FZ "On amendments to the second part of Tax Code of the Russian Federation, "November 29, 2014). This tax is imposed on trading activities and is paid by both commercial and noncommercial organizations. In the Moscow region, Chapter 33 came into force on July 1, 2015.

F. CUSTOMS DUTIES

As a general rule, no exemptions or reductions in customs duties are extended to goods imported for or by NCOs. An exception does exist, however, under the Law on Gratuitous Assistance. Pursuant to this law, donations of funds, goods, and services (with the exception of excisable goods) imported for not-for-profit and charitable purposes may be exempt from custom duties if they are provided in conjunction with an accredited project or program in the form of gratuitous technical or humanitarian assistance. [25] It is forbidden to sell gratuitous assistance imported pursuant to the Law on Gratuitous Assistance.

G. DOUBLE TAX TREATIES

The Russian Federation and the United States have a double tax treaty, dated June 17, 1992: "On Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital."

VI. Knowledgeable Contacts

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FOOTNOTES

[1] In this Note the term “Non-Commercial Organization” or “NCO” will be used for non-governmental, non-commercial organizations. The Russian word “некоммерческая” has been translated into English in multiple ways, including, *inter alia,* “nonprofit,” “non-commercial,” or “not-for-profit.” This Note uses the term Non-Commercial Organization throughout but recognizes that these other terms may be used in translations to signify the same concept.

It is important to note that Russia’s NCO Law includes state corporations and state companies among the possible forms of NCOs. These forms of NCOs are usually used by the state for social, administrative, and public functions (NCO Law Article 7.1 and 7.2). Thus, under the NCO Law the definition of “NCO” includes state organizations as well.

[2] Following Russia’s annexation of Crimea in March 2014, the number of Russian territorial jurisdictions is a matter of some controversy for the global community.

[3] For example, the Moscow region granted tax deductions to legal entities employing disabled people of up to 4 percent of the regional profit tax due (Moscow Region Law No. 151/2004-ОЗ “On tax benefits,” November 24, 2004, as amended Article 9(2)).

[4] Public organizations are one form of "public associations," as defined under the Law on Public Associations. Other forms of public associations include “public foundations” and “public institutions,” which are similar to organizational forms regulated by the NCO Law (i.e., foundations and institutions). The key difference between them is that forms included in the NCO Law can be established by a single founder; in contrast, all public associations should have at least three founders. Public associations in all forms are also subject to different reporting requirements and other regulations compared to NCOs established under the NCO Law.

[5] The new definition of an association (union) was introduced into the Civil Code by Federal Law No. 99-FZ, on May 05, 2014. The main substantive change to this definition is that associations (unions), in spite of their membership nature, may now engage in public benefit activities. The “mutual interest” activities of associations often include activities related to professional interests.

[6] For example, a registered charity must expend at least 80 percent of the charitable donations (in monetary form) that it receives within a year after the donation is received (Charities Law Article 16(4)).

[7] While the charitable status of an NCO is important for taxation purposes, certain tax benefits are granted for charitable activities without requiring that the organization have charitable status. For example, contributions from domestic and foreign charities are not taxable income for individuals (Tax Code Article 217(8.2)). On the contrary, charitably transferring goods (services) or property is not subject to VAT (Tax Code Article 149.3(12)). In this case it does not matter if an organization has charitable status or not.

[8] See Decree of the President of the RF #398, dated August 8, 2016, "On Approval of the Priority Areas in Rendering Socially Useful Services," and Executive Order of the RF Government #1096, dated October 27, 2016, “On Approvals of the List of Socially Useful Services and Their Quality Evaluation Criteria.”

[9] In the case of a foundation’s dissolution, assets remaining after satisfying all creditors are to be distributed to the purposes specified in the charter of the foundation, except in cases where the law requires the return of such property to the founders.

[10] Although there are no explicit limitations on how the liquidation commission can dispose of the assets, presumably it must observe the general provision allowing distribution only to charitable purposes.

[11] The recent amendments to the Civil Code prohibit economic activities (for NCOs other than autonomous non-commercial organizations), but allow “income-generating activities” if stipulated in the NCO’s by-laws. For an NCO’s activities to be considered "income-generating" there must be a minimum chartered capital provided to companies with limited liability (i.e., the property value must be not less than 10,000 rubles, or approximately $167).

[12] Article 2 of the Charities Law provides a list of “charitable purposes,” including: social support and protection of individuals, including the improvement of the material situation of low-income people and social rehabilitation of the unemployed, disabled and other persons, who, due to their physical or intellectual characteristics and other circumstances, are unable to independently realize their rights and legal interests; helping the population to overcome the aftermath of natural, ecological, industrial, or other kinds of catastrophes and to prevent accidents; rendering assistance to the victims of natural, ecological, industrial and other kinds of catastrophes and of social, national and religious conflicts, and to victims of reprisals, refugees and forced migrants; assisting the strengthening of peace and friendship among peoples and in preventing social, national and religious conflicts; assisting activities in the spheres of education, science and culture, art and education, and in the intellectual development of personality; promoting activities in the field of physical culture and sports (except for professional sports); protecting flora and fauna; protecting and properly maintaining buildings and other constructions which have cultural and historic value; preserving nature or cultural value; preparing people and territories to protect against fire and other calamities; social rehabilitation of orphans and children in difficult life circumstances; providing free-of-charge legal aid and legal education; promoting volunteerism; participating in activities dedicated to the prevention of crime by youths; promoting the development of science, skills, and creative activities by children and youths;

promoting patriotic, spiritual and the moral upbringing of children and youth; supporting youth initiatives and projects of public benefit, youth movements, and youth organizations; promoting activities producing and/or distributing social advertisement; and promoting the prevention of socially dangerous behavior of citizens.

[13] Local experts are not aware of any occasions when funding for activities having "charitable purposes," as defined in the Law on Charity, was treated as taxable income by tax authorities on the grounds that the funding was not for "public benefit purposes."

[14] See Resolution of the Ninth Arbitration Court of Appeal, of July 27, 2006, August 1, 2006 N09AP-7850/2006-GK in case NA40-12569/06-39-102; Decision of the Arbitration Court of the Moscow Region, of February 4, 2004 in case NA41-K2-20022/03.

[15] The NCO Law may, however, restrict the ability of NCOs to engage in certain political activities by controlling their financing. The Ministry of Justice can prevent a foreign non-governmental organization's branch, representative office, or affiliate from transferring funds or other resources to recipients, if doing so will "protect[] the basis of the Constitutional system... with the aim of defending the country and the state security." The language of the Law could be construed to cover a range of political activities (Law on NCOs Article 32(13)).

[16] The Federal Law of the Russian Federation No. 272-FZ "On Measures Affecting Persons Related to Violations of Basic Human Rights and Freedoms of Citizens of the Russian Federation," of December 28, 2012.

[17] According to the Federal Law on Introducing Amendments to Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Noncommercial Organizations Performing the Functions of Foreign Agents dated July 20, 2012, N121-ФЗ.

[18] Counter-terrorism law also mandates reporting for the receipt and use of foreign support exceeding a certain value. Actions taken to obtain cash, property, or other support from foreign governments, international and foreign organizations, foreign citizens and stateless persons, as well as to spend such money and/or other property shall be subject to mandatory reporting, if the amount in question (or its equivalent in foreign currency) is equal to or more than 100,000 rubles (Federal Law No. 115-FZ, "On Counteraction to Legalization (Laundering) of Proceeds from Crime and Financing of Terrorism," Article 6(1.2). The Federal Financial Monitoring Service of the Russian Federation (*Rosfinmonitoring*) is responsible for controlling these operations.

[19] The Russian translation of the term "foreign agent" ("иностранныйагент") carries a negative connotation and is usually interpreted as a synonym of a "foreign spy."

[20] It is the understanding of some observers that an NCO must register as a foreign agent if it carries out any political activities and receives any foreign funds, even if it does not use any foreign funds to support activities recognized by the government as "political," and it does not represent the interests of any "foreign sources."

Although the resolution of the Constitutional Court of the Russian Federation (CCRF) from April 2014 did not precisely settle this question, it has significantly narrowed the scope of the norms of the legislation on NCOs performing the functions of a foreign agent. As the CCRF noted, for NCOs' activities to be recognized as political activities, they should impact

state policy or the formation of public opinion. In the absence of such reasons, even if the organization is engaged in criticism of authority or creates a spirit of opposition in the society, it cannot be considered to be performing the functions of a foreign agent. The CCRF also ruled that the rates of administrative fines for individuals and legal entities contradict the Constitution of the Russian Federation on the grounds that they do not allow sentencing below the lower limit. The CCRF ordered the legislator to amend the Administrative Code of the Russian Federation.

As a final note, the complaint to the CCRF was brought by the Ombudsman for Human Rights in the Russian Federation Vladimir Lukin; citizens S.M.Smirenski, V.P.Yukechev, and L.G.Kuzmina; and the foundation "Kostroma Center of Community Initiatives."

[21] Simply meeting the definition of a “donation,” as gleaned from the Civil Code and other civil laws, is not necessarily dispositive of its status as non-taxable. For example, there are two definitions of “donation:” One can be found in the Civil Code and another in the Federal Law on Charity. While the definition of “donation” in the Federal Law on Charity allows for donations to be made on a preferential basis, tax authorities follow the Civil Code and generally do not recognize donations as non-taxable because there is an exchange of goods (property rights).

[22] Grants may be provided “for carrying out specific programs in the sphere of education, art, and culture; protection of the health of the population; environmental protection; protection of individual rights and freedoms, as defined in legislation of Russian Federation; social service to the poor and to socially unprotected groups of citizens…”

[23] NCOs currently pay income tax at a basic rate of 20 percent (Tax Code Article 284).

[24] VAT at 10 percent - 18 percent, according to Section 164 of the Tax Code.

[25] Humanitarian assistance is broadly defined as health care or social support to help disadvantaged segments of the population as well as victims of natural disasters or other emergencies. Technical assistance is broadly defined, as well, and includes equipment and services designed to support economic and social reforms and disarmament (Law on Gratuitous Assistance Article 1).