

# NONPROFIT LAW IN SERBIA

*Current as of July 2019*

*This section describes the legal framework governing nonprofit organizations (also known as non-governmental organizations or NGOs) in Serbia, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.*

*These reports have been prepared by the [International Center for Not-for-Profit Law](#) (ICNL). Please direct corrections and comments to [Lily Liu](#).*

*We include hyperlinks to the following information, to the extent available:*

- Longer country reports analyzing various aspects of local legislation; and
- Texts of local laws that affect the decision whether or not to qualify a grantee (generally in translation, although ICNL and the Council cannot warrant the accuracy of any translation; in addition, legislative excerpts were selected by in-country contacts, and ICNL and the Council cannot warrant that all relevant provisions have been translated).

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## I. SUMMARY

### A. TYPES OF ORGANIZATIONS

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

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

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

### B. TAX LAWS

The Income Tax Law generally exempts NPOs from taxation on grants, donations, membership dues, and non-economic sources of income. Property tax is not levied on non-monetary gifts, as long as the transfer of those gifts is subject to VAT. Profits from related and unrelated economic activities are exempt up to 400,000 Serbian dinars (RSD) (approximately \$3,767), provided that certain conditions are satisfied.

The VAT standard tax rate is 20 percent, with a reduced tax rate of 8 percent or 10 percent for certain goods and services. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods. There are limited incentives for philanthropy, and the concept of “public benefit” status is still not fully developed.

## II. APPLICABLE LAWS

- *Constitution of Serbia*, Official Gazette No. 98/06
- *Law on Associations*, Official Gazette No. 51/09, 99/11
- *Law on Endowments and Foundations*, Official Gazette No. 88/10, 99/11,
- *Property Tax Law*, Official Gazette No. 26/01, 45/02; FRY Official Gazette No. 42/02; RS Official Gazette No. 80/02, 135/04, 61/07, 5/09, 101/10, 24/11, 78/11, 57/12, 47/13, and 68/14
- *Anti-Discrimination Law*, Official Gazette No. 22/09
- *Law on Volunteering*, Official Gazette No. 36/10
- *Law on Social Protection*, Official Gazette No. 24/11
- *Corporate Profit Tax Law*, Official Gazette No. 25/01, 80/02, 43/03, 84/04, 18/10, 101/11, 119/12, 47/13, 108/13, 68/14, 142/14, 91/15, 112/15, and 113/17
- *Value-Added Tax Law*, Official Gazette No. 84/04, 86/04 (correction), 61/05, 61/07, 93/12, 108/13, 68/14, 142/14, 5/15, 83/15, 5/16, 108/16, 7/17, 113/17, 13/18, 30/18
- *Games of Chance Act*, Official Gazette No. 88/11, 93/12 and 30/18
- *Law on Accounting*, Official Gazette No. 62/13, 30/18
- *Law on Auditing*, Official Gazette No. 62/13, 30/18

- *Law on Public Assembly*, Official Gazette No. 6/16
- *Law on Public Order and Peace*, Official Gazette No. 6/16 and 24/18
- *Law on the Central Register of the Real Owners*, Official Gazette No. 41/18
- *Law on Amendments to the Companies Act*, Official Gazette No. 44/18

### **III. RELEVANT LEGAL FORMS**

#### **A. GENERAL LEGAL FORMS**

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

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

*Foundations and Endowments.* The Law on Endowments and Foundations (“Law on Foundations”) was adopted in 2010. The law provides for two categories of non-membership organizations: a foundation, which is defined as a “not-for-profit, non-membership, and non-governmental legal entity pursuing public interest objectives,” and an endowment, which is defined as a “not-for-profit, non-membership, and non-governmental legal entity whose founder designated specific property to support its public or private interest objectives” (Law on Foundations Article 2). The categories are based not only on the nature of the entity’s goals, but also on the capital requirement.

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

*There is no capital requirement to establish a foundation. In order to establish an endowment, however, a minimum capital amount of Serbian dinars equivalent to 30,000 Euros (approximately \$33,274) is required. There are two exceptions: a) If the competent state authority determines that an organization pursuing a public interest objective can accomplish such objective without the minimum capital requirement, the authority has discretionary power to allow the endowment’s establishment; or b) If the endowment’s property was confiscated after the Second World War, the minimum capital requirement does not apply (Law on Foundations Article 12).*

#### **B. PUBLIC BENEFIT STATUS**

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

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

#### **A. INUREMENT**

*The Law on Associations and the Law on Foundations each contain a general requirement that the property of an organization must only be used to advance its statutory goals. In addition, the laws also prohibit any distribution of an organization’s property to its founders, members, managers, employees, and persons affiliated with the organization. [3] The non-distribution constraint does not pertain to appropriate monetary awards and necessary costs that the foregoing persons have incurred in the course of realizing the statutory goals of an organization (Law on Associations Article 41; Law on Foundations Article 47).*

## **B. PROPRIETARY INTEREST**

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

## **C. DISSOLUTION**

*The assets of a dissolved association or foundation may only be distributed to another domestic not-for-profit organization (membership or non-membership) pursuing the same or similar statutory goal, as stipulated in the organization's statute (Law on Associations Article 42; Law on Foundations Article 55). [4] If, at the time of an organization's dissolution, it is not possible to transfer the remaining property to an organization designated in the statute, or if the statute is silent on that point, the remaining property will become the property of the Republic of Serbia, which will transfer the right to use it to a municipality in which the dissolved association had its seat (Law on Associations Article 43; Law on Foundations Article 55).*

## **D. ACTIVITIES**

### **1. GENERAL ACTIVITIES**

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

### **2. PUBLIC BENEFIT ACTIVITIES**

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

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

*As discussed in Section V, tax law provides for a narrower definition of public benefit than does the NPO framework laws. Deductions are provided only for donations that advance health care, cultural, educational, scientific, humanitarian, religious, environmental, and sport-related purposes, as well as donations to organizations that provide social services.*

### **3. ECONOMIC ACTIVITIES**

*Associations, foundations and endowments pursuing public interest objectives may engage directly in economic activities insofar as the following conditions are met: 1) the activities are related to the organization's statutory goals; 2) they are envisaged in the organization's statute; 3) they are incidental in terms of their volume, or are carried out in volume which is deemed necessary to advance the organization's statutory goals (Law on Associations Article 37; Law on Foundations Article 45). [5] In addition, an NPO must register one economic activity—the so-called major economic activity it seeks to directly engage in—with the Companies Register, but may directly engage in other economic activities insofar as they are envisaged in its statute. [6] This rule has been inconsistently applied, as the supervising state authority has occasionally taken the position that an NPO may directly engage only in the economic activity which is registered with the Agency. Fines are levied on NPOs that do not meet the foregoing criteria (Law on Associations Article 72; Law on Foundations Article 62).*

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

### **E. POLITICAL ACTIVITIES**

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

### **F. DISCRIMINATION**

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

### **G. CONTROL OF ORGANIZATION**

*There are no restrictions on foreign legal and natural persons as founders of associations. Both for-profit and not-for-profit legal entities may be founders of an association (Law on Associations Article 2 and 10).*

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

*The Law on the Central Register of Beneficial Owners, which came into force in January 2019, requires associations, foundations, and endowments to register a "beneficial owner" in a new national registry. The "beneficial owner" must be a natural person who has primary influence over the organization's operations and decision-making. Organizations that do not register an owner will face criminal penalties. The law was adopted to improve the detection and prevention of money laundering and terrorist financing, and to harmonize Serbia's legal framework with international standards in this field. The Central Register of Beneficial Owners is accessed via the website of the [Serbian Business Registers Agency](#). The Ministry of*

*Economy and the Serbian Business Registers Agency have both issued guidance for organizations seeking to register their “beneficial owner.”*

## **V. TAX LAWS**

### **A. TAX EXEMPTIONS**

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

- a. *Income from economic activities did not exceed a given threshold of RSD 400,000 (approximately \$3,909);*
- b. *Earnings were not distributed to the founders, employees, members of the management board, or any affiliated person thereof;*
- c. *Salaries for the members of the management board and employees do not exceed double the average salary paid by organizations engaged in the same activities in the commercial sector;*
- d. *All earned profit was used to further the objectives for which the organization was created; and*
- e. *The NPO's economic activities do not give rise to unfair competition with the private business sector, as defined by the antitrust law (Legal Entity Profit Tax Law Article 45).*

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

*Corporations may deduct up to 5 percent of their expenditures for health care, cultural, cinematography, educational, scientific, humanitarian, religious, environmental protection, and sport-related purposes, including contributions to social service providers established in compliance with the Law on Social Protection.*

*In practice, however, companies report difficulties when attempting to obtain tax deduction. Corporations may claim deductions only if they donate to entities registered according to specific laws to carry out these activities and if funds are intended for these specific purposes.*

*It is unclear how these tax provisions relate to public benefit concepts found in the NPO framework legislation. [7]*

*The Personal Income Tax Law does not address charitable contributions.*

### **C. VALUE ADDED TAXES**

*According to the VAT Law, foreign grants and donations are not subject to VAT (VAT Law Article 24). Foreign donors are also exempt from paying VAT on humanitarian goods imported to Serbia (VAT Law Article 26). The Law does not provide NPOs as such with specific exemptions; however, it does exempt a number of services and supplies that may be provided by NPOs, including services—and, generally, goods related to those services—in the fields of medicine, social welfare, culture, education, science, religion, and sports (VAT Law Article 25).*

### **D. DOUBLE TAX TREATIES**

*The United States has no double tax treaty with Serbia.*

## VI. KNOWLEDGEABLE CONTACTS

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## FOOTNOTES

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

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

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

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

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

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

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