

# U.S. INTERNATIONAL GRANTMAKING

## Country Information

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### Serbia

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### I. Summary

#### A. *Types of Organizations*

The enactment of the Constitutional Charter of Serbia and Montenegro in February 2003 resulted in a loose confederation whose prerogatives were never clearly spelled out. In May 2006, Montenegro held a referendum on independence. Following the referendum, the Union of Serbia and Montenegro has given way to two fully independent states. This

Note focuses on the NGO legal framework in Serbia; a separate Note addresses the NGO legal framework in Montenegro.

Framework legislation at the (former) federal level, which is still in force in Serbia, and at the republic level governs the formation, registration, activities, dissolution, and general life cycle of nongovernmental organizations (“NGOs”). The federal and republic level laws have not been harmonized, reflecting in part the political situation in the country. Additional confusion arises because the laws were enacted during different eras and reflect disparate concepts of the NGO sector's role and purpose. For example, the Serbian Law on Associations, enacted in 1982, reflects socialist precepts whereas the federal Law on Associations of 1990, which is still in force in Serbia, reflects a more progressive approach to NGO regulation.

Organizational forms, therefore, depend on the jurisdiction. Common forms include the following:

- Associations/Social Organizations ("Associations"). [\[1\]](#)
- Foundations;
- Legacies; and
- Funds.

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

## **B. Tax Laws**

The Income Tax Law generally exempts NGOs from taxation on grants, donations, membership dues, and non-economic sources of income. Profits from related and unrelated economic activities are exempt up to 300,000 dinars (US \$5,500), provided that certain conditions are satisfied.

A VAT regime went into effect on January 1, 2005, with a standard tax rate of 18 percent, and a reduced tax rate of 8 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 not well developed.

## **II. Applicable Laws**

- [Constitution of Serbia](#);
- [Law on Association of Citizens in Associations, Social Organizations and Political Organizations Established for the Territory of Socialist Federal Republic of Yugoslavia \(1990\) \(“Federal Law on Associations”\)](#);

- [Law on Social Organizations and Associations of Citizens of the Socialist Republic of Serbia \(1982\)](#) (“Law on Associations”);
- [Law on Legacies, Foundations and Funds of the Republic of Serbia \(1989\)](#) (“Law on Foundations”);
- [Law on the Protection of Ethnic Minorities \(2002\)](#);
- Corporate Income Tax Law (2001) ; and
- [Value-Added Tax Law \(2004\)](#) (“VAT Law”)

### III. Relevant Legal Forms

#### A. General Legal Forms

As already noted, the Federal Law and the Serbian Law both remain applicable in Serbia. Indeed, most associations have chosen to register under the Federal Law rather than the Serbian Law, based on the relative stringency of registration requirements and practice. The Serbian Government has recently submitted to Parliament a draft Law on Associations to replace the 1982 Serbian Law on Associations and the 1990 Federal Law on Associations. The draft law largely complies with international standards and regional best practices.

*Associations and Social Organizations [Federal Law].* Under the federal law, associations and social organizations are functionally equivalent. They are essentially defined as membership organizations with national activities and membership. ([Article 1, Federal Law on Associations](#)).

*Associations and Social Organizations [Serbian State Law].* Under Serbian law, associations and social organizations are defined as groups of “working people and citizens” organized for “developing personal inclinations and creativity in social, humanitarian, economic, technical, scientific, cultural, educational, sports and other activities.” ([Article 4, Serbian Law on Associations](#)).

*Foundations, Legacies, and Funds.* Serbian law provides for three categories of non-membership, property-based organizations. All must pursue public interest objectives. Categories are based on the type of founders and source of funding: [\[2\]](#)

- A “foundation” can be established only by legal persons using “socially owned resources” (i.e., public property or that belonging to a collective).
- A “legacy” can be established only by natural persons using private resources. A legacy may be established *inter vivos* or by a testamentary act.
- A “fund” can be established by natural or legal persons using “socially owned resources” or a combination of “socially owned resources” and private assets.

#### B. Public Benefit Status

The concept of “public benefit” is not well-developed in NGO legislation. For example, the law provides that foundations must serve the public benefit, but it is unclear what

criteria registration officials use to make this determination. Moreover, the framework laws and tax laws reflect different concepts of public benefit (see Section V, below). Therefore, NGO framework and tax legislation provide only limited guidance to U.S. grantmakers seeking to determine whether a prospective grantee is the equivalent of a U.S. public charity under U.S. law.

## **IV. Specific Questions Regarding Local Law**

### ***A. Inurement***

Relevant legislation does not adequately address the issue of private inurement. The federal law is silent on this issue. Serbian legislation contains general provisions suggesting that assets must be used for the purposes of the organization, but these provisions are vague and limited in scope. Therefore, when making an equivalency determination, it is essential that a U.S. grantmaker ensure that a prospective grantee's governing documents explicitly prohibit private inurement.

### ***B. Proprietary Interest***

The Federal Law on Associations is silent on the issue of proprietary interest. Problems arise under the Law on Foundations, because many foundations and funds were established with “socially owned resources.” This was a socialist concept, and it is currently unresolved whether the state or anyone else has a proprietary interest in these assets. In addition, the Law on Foundations and the Serbian Law on Associations do not seem to preclude organizations from returning contributions to founders and/or members upon dissolution. Therefore, it would seem prudent for a U.S. grantmaker undertaking an equivalency determination to ensure that a prospective grantee's governing documents prohibit proprietary interests.

### ***C. Dissolution***

The Federal Law on Associations does not address the distribution of assets upon dissolution of an association. Under Serbian law, the assets of a dissolved association are distributed in accordance with the statute of the organization ([Article 54, Serbian Law on Associations](#)). For legacies and foundations, the rules are much more complex. The organization's statute, founder, manager, the Ministry of Culture, and the local government can influence the distribution of assets under various circumstances. [3] Moreover, there is no explicit limitation on how the remaining assets can be used, which is problematic for U.S. grantmakers.

## ***D. Activities***

### **1. General Activities**

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

### **2. Public Benefit Activities**

Associations, under the Federal Law on Associations, may be established for mutual benefit or public benefit purposes. Serbian law also allows associations to pursue mutual benefit or public benefit activities. By contrast, legacies, foundations, and funds must promote "creativity," humanitarian purposes, or "other goals of public interest." The law does not define these terms.

As discussed in Section V, below, tax law provides deductions for donations that advance medical, educational, scientific, humanitarian, religious, environmental, and "sport" purposes. There is ambiguity, however, as to how the relevant authorities define and apply these terms.

### **3. Economic Activities**

Federal Law on Associations does not address the extent to which NGOs may directly engage in economic activities.

Under Serbian law, "Citizens' associations may directly engage in economic activities" so long as they heed the laws pertaining to the particular activity (e.g., zoning, sanitation). ([Article 16, Serbian Law on Associations](#)) In addition, tax legislation refers specifically to "NGOs that generate income from economic activities"; no distinction is drawn between related and unrelated economic activities. ([Article 44, Corporate Income Tax Law](#))

## ***E. Political Activities***

None of the applicable laws address the extent to which NGOs may engage in political activities. In fact, many organizations have engaged directly in lobbying campaigns for candidates and parties. Therefore, when making an equivalency determination, a U.S. grantmaker should examine a proposed grantee's governing documents as well as its activities to ensure that problems do not arise under U.S. law.

## ***F. Discrimination***

The Serbian Constitution contains provisions prohibiting discrimination on the basis of ethnicity, race, and similar categories. Serbia has also enacted a law regarding the protection of ethnic minorities (Official Gazette of FR Yugoslavia, no. 11/2002). Local experts believe that the constitutional provisions bar racial discrimination in both private and public schools, though schools are permitted to engage in affirmative action to benefit certain underrepresented groups, such as Roma, Hungarian, Albanians, and the disabled.

## ***G. Control of Organization***

The Federal Law on Associations requires that associations be founded by ten “citizens” eligible to vote. This would seem to preclude for-profit corporations and foreigners from founding an association under federal law. The law is not clear on whether foreigners and legal entities could join (as opposed to found) an association.

The Serbian Law on Associations uses slightly different terminology: “working people and citizens.” It also contains a section on the establishment of “associations of foreigners” ([Articles 69-71, Serbian Law on Associations](#)). The law seems to preclude a legal entity, including a for-profit entity, from being a founder of an association. Nonetheless, it is not clear whether legal entities could join an association registered under the Serbian law, so control issues may still arise.

The Law on Foundations explicitly permits foreign individuals to establish funds, legacies, and foundations; and legal persons (presumably including for-profit entities) to form funds and foundations.

Therefore, control issues may need to be addressed in a prospective grantee’s equivalency affidavit.

## **V. Tax Laws**

### ***A. Tax Exemptions***

Associations, foundations, legacies, and funds 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 Corporate Income Tax Law, profit generated by an NGO is exempt from income tax, provided that:

- a) its income from economic activities did not exceed a given threshold (300,000 dinars or US \$5,500);
- 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 NGO's economic activities do not give rise to unfair competition with the private business sector, as defined by the antitrust law.

## ***B. Deductibility of Charitable Contributions***

Corporations may deduct up to 3.5 percent of their income for “medical, educational, scientific, humanitarian, religious, environmental protection and sport purposes.” In addition, corporations may deduct up to 1.5 percent of income for “cultural purposes” (Article 15, Corporate Income Tax Law). The Personal Income Tax Law does not address charitable contributions.

It is unclear how these tax provisions relate to public benefit concepts found in the NGO framework legislation. [\[4\]](#)

## ***C. Value Added Taxes***

The VAT Law came into effect on January 1, 2005. The Law sets a standard rate of 18 percent, and a reduced rate of 8 percent for certain goods and services, including textbooks and monographs ([Article 23, VAT Law](#)). Any organization with an annual turnover of less than 2,000,000 dinars (approximately \$34,000) is exempt from paying VAT ([Article 33, VAT Law](#)). Foreign grants and donations are not subject to VAT ([Article 55, Serbian VAT Law](#)). Further, under amendments to the VAT Law that came into force in July 2005, foreign donors are exempt from paying VAT on humanitarian goods imported to Serbia. The Law does not provide NGOs as such with specific exemptions; however, it does exempt a number of services and supplies commonly provided by NGOs, including services (and, generally, goods related to those services) in medicine, social welfare, culture, education, science, religion, and sports ([Article 25, VAT Law](#)).

## ***D. Double Tax Treaties***

The United States has no double tax treaty with Serbia.

## VI. Knowledgeable Contacts

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### **Footnotes**

[1] Associations and social organizations are functionally equivalent, so for ease of reference, future sections will refer only to associations.

[2] For purposes of this Note, the term “foundation” will be used in the general sense to refer to all three of these forms under the Serbian law unless otherwise indicated.

[3] For a fund, the Municipal Assembly is responsible for transferring management over the fund to another organization or, if there is no such organization, to the Municipal Assembly (Article 32 Serbian Law on Foundations).

[4] For example, foundations must serve the public benefit. It is unclear, however, whether a donor could make a tax-deductible contribution to a foundation that pursued a public benefit purpose other than those enumerated in the tax laws.

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