

Hungary

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Table of Contents

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

I. Summary

A. Types of Organizations

Hungary is a civil law country, and as such it recognizes two traditional civil law forms of nongovernmental, not-for-profit organizations (NGOs) – the association and the foundation.

Hungary recognizes additional organizational forms, including, nonprofit corporations and public chambers. The nonprofit corporation (or "nonprofit company") is a new category (it replaces the former category of public benefit companies which is no longer in existence as of July 1, 2009). It is not a separate form but the non-profit distributing version of an otherwise for-profit company form (e.g., partnership, limited partnership, limited liability company, or shareholder company). These companies are able to apply for PBO status in the same way as foundations or associations. Public chambers arise rarely, as these are formed by an act of Parliament. From 1994 to 2006, Hungarian legislation permitted the establishment of a public foundation (a foundation created by

the Parliament, central or local government), but this form was discontinued as of January 1, 2007.

In addition, Hungarian legislation enables NGOs to qualify as "Public Benefit Organizations," or PBOs. This legislation is [Act CLVI of 1997](#). Many Hungarian organizations qualify for PBO status and because that status will bring the organization closer to being an IRC section 501(c)(3) equivalent, grantmakers should inquire as to whether an NGO is a PBO. According to the latest (2007) data of the Central Statistical Office, 54% of NGOs have public benefit status in Hungary.

For practical purposes, then, a potential grantee will likely be organized under [Act IV/1959](#), as amended, as

1. an association,
2. a foundation, or
3. a nonprofit corporation.

Regardless of its legal form, the organization may have PBO status under Act CLVI/1997, as amended.

B. Tax Laws

An NGO's income from grants, donations, and membership fees is exempt from corporate income tax. Hungary also exempts from corporate income tax an association's or foundation's income derived from statutory or related economic activities, with unrelated economic income subject to tax under certain circumstances. Such a distinction does not apply to nonprofit corporations; thus, their economic activities are taxable (with the exception of income from public benefit activities for the implementation of which the corporation has a contract with a state body.) Hungary also subjects certain sales of goods and services to VAT, with a limited list of exempt activities.

The corporate income tax law provides a tax benefits for donors. Hungary and the United States have entered into a double taxation treaty.

II. Applicable Laws

- [Act IV/1959](#), as amended by [Act XCII of 1993](#)
- [Act CLVI/1997 on Public Benefit Organizations](#)
- [Act II/1989 Law on Associations](#)
- [Act CXXVI/1996 on public application of a certain portion of personal income tax](#)
- [Act LXXXVI/1991 on Corporate Tax](#), as amended by Act LXXVII of 2009

- Act CXXV/2003 on Equal Treatment and Promotion of Equal Opportunities
- Act IV/2006 on Companies
- [Act CLXXXI of 2007 on Transparency of Subsidies Provided from Public Funds](#)

III. Relevant Legal Forms

A. General Legal Forms

Association

An association (sometimes referred to as a "voluntary association," a "social organization," or a "society") is a self-governed, voluntarily established organization which is formed for a purpose defined by its charter and which organizes its members' activities in order to achieve its aim [Act IV/1959 § 61]. An association has members – called a "registered membership" under local law. At least ten natural persons and/or juridical entities are required to form an association [Act II/1989 § 2 (1) and § 3 (4)]. An association cannot be formed for the primary purpose of performing economic activities [Act IV/1959 §62(3)], nor can it be formed for criminal, military, totalitarian, or unlawful purposes [Act II/1989 §2(2), (3)].

Foundation

A foundation is an organization established through a "Letter of Establishment" by any natural or legal person or by a business partnership without legal personality. A foundation must be established for long-term (or long-lasting) public interest purposes [Act IV /1959 §74/A(1)]. A foundation must have and disclose sufficient assets to achieve its purposes – or at least to start its operations -- and an administering organ (i.e., a board) must be appointed [Act IV/1959 §§74/B(1)(c), 74/C]. After establishing a foundation, founders have only a limited power over its operations [Act IV/1959 §74/C(3)].

Nonprofit Corporation

A nonprofit corporation is the non-profit distributing version of an otherwise for-profit company form (e.g., partnership, limited partnership, limited liability company, or shareholder company). In other words, all company forms can operate in a nonprofit manner. A nonprofit corporation may conduct ancillary economic activities, but its profits may not be distributed among its members [Act IV/2006 § 4 (3)].

Public Chamber (Public Body)

A public chamber is a self-governed organization with a registered membership, which is established by an act of Parliament. A public chamber fulfills a public task connected with its members or with the activity performed by its members [Act IV/1959 §65(1)]. Legislation may delegate certain public responsibilities to public chambers (such as certifying professional qualifications) and may prohibit non-members from engaging in

those activities [Act IV/1959 §65(3, 4)]. Where not stated otherwise, the rules for associations apply to public chambers [Act IV/1959 §65(6)].

B. Public Benefit Status

Public Benefit Organization – Any organization registered as one of the four general legal forms—and except for insurance associations, political parties, and interest groups of employees (i.e., trade unions) or employers--may register as a PBO in order to receive certain tax advantages [Act CLVI/1997 §2(1)]. As of July 2006, a number of other forms have been added to the pool of potential PBOs. As a result, eligible forms include: a national professional sports federation, a non-budgetary (i.e. private) higher education institution, a social services cooperative conducting public benefit activities, and the Hungarian Higher Education Accreditation Committee and the Higher Education and Science Council [Law CXXXIX of 2005]. The requirements for status as a PBO are stringent. For an organization to register as a PBO, its governing documents must contain the following provisions:

1. A description of the activity of the organization and a statement that the organization does not exclude non-members from its services;
2. A statement that the organization pursues economic activity only in the interest of realizing its public benefit objectives, without jeopardizing them;
3. A statement that the organization does not distribute profits; and
4. A statement that the organization does not pursue direct political activity [Act CLVI/1997 §4].

A subset of PBOs, known as "outstanding" or "prominent" PBOs, perform governmental responsibilities and receive additional tax advantages [Act CLVI/1997 §5].

IV. Specific Questions Regarding Local Law

A. Inurement

In order to qualify as a PBO, an organization's governing documents must state that "the organization does not distribute profits, but spends them on the activity defined in its founding document" [Act CLVI/1997 §4(1)(c)]. But this requirement is not broad enough to encompass all inurement possibilities. Situations may occur where inurement issues arise, most notably upon dissolution of certain kinds of organizations (*see Section C, below*).

B. Proprietary Interest

Foundations and nonprofit companies can permissibly be formed such that founders retain a proprietary interest in the organizations. This is true even for organizations registered as PBOs, because Act CLVI/1997 does not preclude such interests. The founders of both foundations and nonprofit companies are entitled to reacquire their contributed assets upon dissolution as long as the founding documents contain such a provision (*see C.2. and C.3., below*). Any remaining assets must be distributed for public benefit purposes.

Founders do not retain proprietary interests in associations, but members may have reversionary interests in non-public-benefit associations. Public chambers and public foundations, which have state bodies or the Parliament as a founder, permit reversion of assets to the founder.

C. Dissolution

1. Associations

The general assembly or board of directors has the ultimate decision-making power over the dissolution or merger of an association [Act II/1989 §12(1)]. If the articles of incorporation do not specify how the remaining assets are to be distributed, then the board of directors must decide how to distribute them. The only limitation is that the board must first pay creditors. Should the board fail to decide how to distribute the remaining assets, the government acquires the assets and uses them for public interest purposes [Act II/1989 §21]. The law permits non-public-benefit associations to distribute remaining assets to members upon dissolution.

2. Foundations

The founder of a foundation may reclaim donated assets. If the "Letter of Establishment" does not specify how the remaining assets are to be distributed on dissolution, the court overseeing the dissolution will transfer them to a foundation with a purpose similar to that of the dissolved foundation [Act IV/1959 §§74/E(5)].

3. Nonprofit Corporation

A nonprofit corporation can only transform, merge or split up into nonprofit corporations [Act IV/2006 § 4 (4)]. In the case of termination without a successor, (1) the organization's debts must be liquidated, (2) then the members of the company are entitled to receive the amount of the nominal capital they contributed, and finally (3) any remaining assets must be spent for public benefit purposes, in a manner that must be specified in the articles of incorporation [Act IV/1959 §59 (3), § 60 (1), (3)].

4. Public Chambers

The rules on dissolution of associations apply to public chambers [Act IV/1959 §65(6)].

5. Public Benefit Organizations

If an organization loses its PBO status, the PBO law requires that within a reasonable time, the organization must pay taxes and other debts owed to the state and fulfill its duties under contracts for the performance of public services [Act CLVI/1997 § 20]. If, however, the organization dissolves upon losing its PBO status, the rules governing dissolution are determined by its specific legal form (as described above); the PBO law does not impose separate rules.

In practice, the courts increasingly deny PBO status to a foundation or association if its governing documents do not specify another PBO with similar purposes that will receive the assets upon dissolution. This rule is not specified in the law but depends on the court that handles the case.

D. Activities

1. General

NGOs in Hungary are generally permitted to engage in all lawful activities, but they are restricted to the activities specified in their charters. Foundations must serve public benefit or public interest purposes; associations are not so restricted. PBOs, however, must undertake activities listed in the law.

2. Public Benefit Activities

The activities that PBOs may carry on are as follows:

1. maintenance of health, prevention of illness, medical care and health rehabilitation activities;
2. social activities, family aid, care of elderly people;
3. scientific activities, research;
4. education and instruction, development of skills, dissemination of general knowledge;
5. cultural activities;
6. preservation of cultural heritage;
7. protection of monuments;
8. preservation of nature, protection of animals;
9. protection of the environment;
10. protection of children and youth, representation of the interests of children and youth;
11. promoting equal opportunities for groups in a disadvantageous social position;

12. protection of human and civil rights;
13. activities related to national and ethnic minorities in Hungary and to Hungarians living beyond the borders;
14. sports, with the exception of sports activities pursued on the basis of employment or commission as defined by the civil law;
15. protection of public order and traffic safety, voluntary firefighting, rescue, and disaster prevention;
16. consumer protection;
17. employment rehabilitation;
18. promotion of training and employment for those having a disadvantageous position in the labor force market, and related services;
19. promotion of Euroatlantic integration;
20. services provided for and only available to public benefit organizations;
21. activities related to the performance of flood prevention and protection against ground water inundation [Act XIV/1998 added this purpose to Act CLVI/1997];
22. activities related to the improvement, maintenance and operation of roads, bridges or tunnels open to traffic [Act XIV/1998 added this purpose to Act CLVI/1997];
23. crime prevention and protection of victims [Government Decree 1009/2004 added this purpose to Act CLVI/1997].

3. Economic Activities

The law in Hungary does not restrict NGOs from engaging in any economic activities. Thus, NGOs in Hungary may pursue any sort of income-generating activity (investment, trade, etc.) to help finance their operations. However, associations and foundations must not have as their primary purpose the performance of economic activities [Act IV/1959 §§ 62 (3) and 74/B (6)]. And none of the legal forms may distribute profits to any person – all profits must be used to carry out the purposes of the organization. This is required by statute, in the case of PBOs [Act CLVI/1997 § 4 (1)(c)]; and by judicial practice, in the case of other NGOs. A nonprofit corporation may conduct ancillary economic activities, but its profits may not be distributed among its members [Act IV/2006 § 4 (3)].

For PBOs, § 26(c) of Act CLVI/1997 gives a definition of public benefit activity with an exhaustive list of the preferred fields (see above). PBOs are barred from pursuing economic activities that do not advance their public benefit objectives [Act CLVI/1997 § 4 (1) (b)].

Under the corporate tax law, Hungary generally taxes an organization's "entrepreneurial activities," defined as "economic activities aimed at or resulting in the acquisition of

income or property" [Act LXXXI/1996 §1.1]. Associations' and foundations' income from economic activities is not taxed, and not deemed "entrepreneurial," if the activities are related to the organization's public benefit activities or statutory purposes. Income from unrelated economic activities is subject to taxation as "entrepreneurial" [[Act LXXXI/1996 Schedule No. 6](#)]. Such a distinction does not apply to nonprofit corporations; thus, their economic activities are taxable (with the exception of income from public benefit activities for the implementation of which the corporation has a contract with a state body).

E. Political Activities

[Act IV/1959](#), as amended, places no restrictions on legislative or political activities of NGOs. Foundations and associations may nominate and support candidates and legislation freely.

However, if the organization is registered as a PBO under [Act CLVI of 1997](#), its founding documents must state that it does not pursue direct political activity, it is independent of political parties, and it does not provide financial support to them [Act CLVI/1997 Ch. 2 §4(d)]. Under Act CLVI/1997 §26 (d), "direct political activity" includes "political party activity and nomination of candidates for Parliamentary and local governmental elections at the county level, including the city of Budapest." The prohibition does not apply to the nomination of candidates for local elections at the municipal level (including districts of the capital). Similarly, although PBOs cannot support political parties, political parties may support PBOs.

F. Discrimination

Act CXXV/2003 bars racial discrimination by any school that uses a state-accredited curriculum or that receives direct or indirect financial support from the government, which accounts for the vast majority of Hungarian schools.

G. Control of Organization

In general, no restriction exists on the control of not-for-profit organizations by other organizations or persons. It is possible that a Hungarian NGO may be controlled by a for-profit entity (which will lead to additional IRS scrutiny) or by an American grantor charity (which requires that the charity specifically so provide in the affidavit).

V. Tax Laws

A. Tax Exemptions

Hungary generally taxes an organization's "entrepreneurial activities," defined as "economic activities aimed at or resulting in the acquisition of income or property" [Act

LXXXI/1996 §1.1]. For a foundation or an association "the tax base ... is the pre-tax result of its entrepreneurial activities" [Act LXXXI/1996 §9].

For associations and foundations, all income related to their statutory activities is deemed non-entrepreneurial and therefore exempt from corporate tax. This exemption includes an NGO's income from grants, donations, membership fees, and related economic activities. Only income from unrelated economic activities is subject to taxation as entrepreneurial [[Act LXXXI/1996 Schedule No. 6](#)].

B. Tax Deductions, Credits, and Rebates for Charitable Contributions

Tax deductions and credits

Individuals are not entitled to a tax credit for charitable donations. For companies, donations to Hungarian NGOs with PBO status are tax-deductible under some conditions [[Act LXXXI/1996 § 7\(1\)\(z\), § 7 \(7\)](#)]. Donations to other organizations (with the exception of churches) are not deductible.

For donations (including services as in-kind donations) to "prominent" PBOs, which perform governmental services, companies may deduct 50% of the amount of donations up to 100% of pre-tax income. If a company contracts for a "long-term donation", i.e. multi-year support for at least four consecutive years with a PBO or a prominent PBO, 20% of such donations are eligible for a tax deduction each year.

Rebate of individual taxes to charity

Individuals living in Hungary who pay income tax are also entitled to apply one percent of their income taxes to specific NGOs that carry on public benefit or public purpose activities [[Act No. CXXVI/1996](#)]. For a discussion of the requirements of this legislation, see ICNL's paper "[Hungarian Tax Rebate Provision – The One-Percent Rule](#)," www.onepercent.hu.

C. Value Added Tax

Generally, all organizations engaged in economic activities are subject to the VAT. The standard rate is 25%, with a few goods and services taxed at 5%.

Certain services are exempt if provided by so-called public service providers. The following organizations may be public service providers: budgetary organs; organizations providing social insurance; associations; foundations; churches; public benefit companies and nonprofit companies. The exempt services include: health, social services, public education, child and youth protection, day care, psychological assistance, folk art, sports related services. Furthermore, member services of membership based nonprofit organizations may be exempt if the board and officers of the organization are volunteers and if their activities further certain common interests (including political, employers' or

employees' interests, other professional interests, religious, patriotic, humanitarian, charitable or cultural interests) [Act CXXVII/2007 § 85 (1) and (4)].

Any product mailed or transported outside the European Union may be exempt of tax if the receiver is a public benefit organization, which will use the product for its humanitarian, charitable or educational activity outside the Union and will have proof of such use [Act CXXVII/2007 §100].

D. Double Tax Treaty

Hungary has entered into double tax treaties with a number of countries, including the United States. When such a treaty is in existence, dividends, interest, and royalties arising in one country and paid in another are subject to tax only in the country where paid.

VI. Knowledgeable Contact

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