

# U.S. INTERNATIONAL GRANTMAKING

## Country Information

---

### Romania

Current as of October 2008

#### 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 in General
  - e. Political Activities
  - f. Discrimination
  - g. Control of Organization
- V. Tax Laws
  - a. Tax Exemption
  - b. Deductibility of Donations to Romanian NGOs by Individuals and Corporations Based in Romania
  - c. Value Added Tax
  - d. Double Tax Treaties
- VI. Knowledgeable Contacts

#### I. Summary

##### A. Types of Organizations

Romania is a civil law country and as such it has two traditional civil law forms for nongovernmental, not-for-profit organizations (NPOs) -- the association and the foundation. In addition, two or more associations or foundations may join together to form a federation. These three entities are commonly referred to as "not-for-profit organizations" in Romanian legislation, though some laws use "nongovernmental organizations" or "civil society organizations;" the terms are synonymous.

NPOs are defined in the Fiscal Code, Law 53/2003 (Art. 7). The principal regulations governing them appear in Governmental Ordinance 26/2000, which, as a result of lobbying and advocacy by NPOs in 2005, was substantially amended by Law 246/2005.

This Note does not discuss forms of Romanian not-for-profit organizations that have little interaction with foreign grantmakers, including trade unions (governed by Law 54/2003), householders' associations (Law 114/1996), political parties (Law 14/2003), employers' syndicates (Law 356/2001), and informal organizations that lack the status of legal entities (Governmental Ordinance 26/2000).

## B. Tax Laws

As detailed below, Romania exempts from corporate income tax the income of certain NPOs carrying out specific types of activities, with unrelated business income subject to tax under certain circumstances. Romania also subjects certain sales of goods and services to a Value Added Tax (VAT), with a fairly broad range of exempt activities. The income tax law and the corporate tax law provide tax benefits for donors. Romania and the United States have entered into a double taxation treaty.

## II. Applicable Laws

- Constitution of Romania
- Governmental Ordinance 26/2000
- Fiscal Code, Law 53/2003
- Governmental Ordinance 26/2006
- Law on Sponsorship
- Volunteer Law
- Education Law

## III. Relevant Legal Forms

### A. General Legal Forms

#### Association

An association is defined as a “subject of law constituted of three or more persons who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, of community interest or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest.” [Governmental Ordinance 26/2000 §4] The new Law 246/2005 eliminates the lists of qualifying general interest and community interest activities that appeared in earlier legislation. "General interest" and "community interest" are discussed further in the next section.

The founding members of an association must compose a statute and constitutive act that govern the association. [Governmental Ordinance 26/2000 §6] An association acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters.

### Foundation

A foundation is defined as a “subject of law created by one or more persons who, on the basis of an act of will inter vivos or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of community interest.” [Governmental Ordinance 26/2000 §15] Like an association, a foundation acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters.

### Federation

Two or more foundations or associations may establish a federation. A federation acquires legal status upon registration with the clerk’s office in the jurisdiction in which it will have its headquarters. Federations are generally subject to the law regulating associations. [Governmental Ordinance 26/2000 §§35-36] The foundations and associations that make up the membership of a federation retain their own separate legal status as well as their patrimony. [Governmental Ordinance 26/2000 §36(2)]

### B. Public Benefit Status

NPOs that have activities of "general interest" or “community interest” are eligible to attain a special status: Public Utility Status. All foundations must serve these purposes and are therefore eligible to apply for Public Utility Status. An association or federation must state in its governing statute whether it pursues "general interest" or "community interest" goals or "mutual benefit" goals.

To qualify for Public Utility Status, an NPO must meet the following conditions:

- It has carried out its activity for the general or community interest;
- It has operated for at least three years and achieved the majority of its proposed goals;
- It presents a report showing the accomplishment of significant prior activities through programs or projects specific to its purpose, together with balance sheets and budgets for the last three years; and
- The value of the patrimonial assets for each year is at least equal to the value of the initial patrimony.

[Governmental Ordinance 26/2000 §38 as amended by Law 246/2005]

The Government may waive the first two conditions when the applicant represents a merger of two or more associations or foundations, and each of the predecessor entities

would have met the conditions. [See Governmental Ordinance 26/2000 §38(2) as amended by Law 246/2005]

A federation may gain Public Utility Status if at least two-thirds of its constituent organizations hold that status. [Governmental Ordinance 26/2000 § 45 as modified by Governmental Ordinance 37/2003 § I point 26]

It should be noted that Law 246/2005 simplifies the certification process for Public Utility Status. Previously, different ministries or central authorities imposed different requirements. Now, all applications are submitted to the General Secretariat of the Romanian Government, which must obtain recommendations from the pertinent ministries or central authorities within 60 days.

Public Utility Status confers the following rights and obligations:

1. the right to obtain free public goods;
2. the right to publicize its Public Utility Status in all documents;
3. the obligation not to let its level of activity and performance fall below that set forth in its application for Public Utility Status;
4. the obligation to report regularly to the competent administrative authority on its activities, finances, and any modifications to its constitutive act or statute (these reports are available to the public); and
5. the obligation to publish excerpts of its activity reports and annual balance sheets in the Official Gazette of Romania, Part IV, as well as in the national registry of legal persons without patrimonial aim.

#### IV. Specific Questions Regarding Local Law

##### A. Inurement

###### Association

Romanian law does not specifically prohibit inurement. As a general matter, a member with a personal interest in an issue on the agenda of the association's general assembly must not take part in the discussion of the issue or vote on it. [Governmental Ordinance 26/2000 §22(1)] The labor relationships between NPOs and their employees are governed by the same rules applied to the business sector – the Labor Code. The Fiscal Code permits members of the board of directors to be paid in their capacity as members of the organization's Board of Directors or as employees.

###### Foundation

Inurement is not specifically prohibited. The conflict of interest rules applicable to members of an association also apply to the members of a foundation's board of directors. [Governmental Ordinance 26/2000 §29(4)]

## B. Proprietary Interest

### Association

On the basis of an agreement, the members of an association share, inter alia, their material contributions with the organization without being entitled to restitution of their individual contributions. [See Governmental Ordinance 26/2000 §4] As discussed below, an association may not distribute the assets remaining after liquidation to its members or any natural persons. [Governmental Ordinance 26/2000 §60(1)]

### Foundation

A foundation is created by one or more persons who establish a patrimony dedicated permanently and irrevocably to achieving a goal of general or community interest. [Governmental Ordinance 26/2000 §15(1)] A foundation may not distribute the assets remaining after liquidation to natural persons or to the founders. [Governmental Ordinance 26/2000 §60(1)]

### Federations

Associations and foundations that form a federation maintain their own legal status, including their own patrimony. If an association or foundation leaves the federation, however, it receives its share of the federation's total assets, after a financial report is approved by auditors or an external financial expert.

## C. Dissolution

In the case of dissolution, the remaining assets of an association or foundation must be transferred to legal persons that pursue purposes identical or similar to those of the dissolving entity. [Governmental Ordinance 26/2000 §60(2)] This transfer will be carried out in accordance with the provisions of the organization's governing documents. [See Governmental Ordinance 26/2000 §6(3)(f) (associations) and §16(3)(f) (foundations)] The assets may not be distributed to natural persons. [Governmental Ordinance 26/2000 §60(1)]

The court has the authority to distribute the assets of an association or foundation remaining after liquidation under any of the following circumstances:

- the liquidators fail to transfer the remaining assets within six months of the liquidation [Governmental Ordinance 26/2000 §60(2)];
- the charter of the association or foundation does not stipulate a procedure for transferring the assets; or
- the stipulation in the charter is contrary to law or the public order. [See Ordinance 26/2000 §60(3)]

When an association or foundation is dissolved by court decision, the remaining assets will be taken over by the state or, if the entity's purposes were principally local, by the municipality. [Governmental Ordinance 26/2000 §60(4)]

## Federations

When a federation dissolves, the assets remaining after liquidation shall be transferred, in equal shares, to its member foundations and associations unless otherwise stipulated by its statute. If an association or foundation leaves the federation, it likewise receives its share of the total assets, but only after a financial report is approved by auditors or an external financial expert.

## NPOs with Public Utility Status

NPOs with Public Utility Status must keep track of which assets and goods come from public sources and which come from private sources. When an NPO with Public Utility Status dissolves, the assets purchased with public money that remain after liquidation will be distributed, by Government decision, to other associations or foundations pursuing similar purposes, or to public institutions. Assets that came from private sources will be distributed according to the rules stated above for associations and foundations.

## D. Activities

### 1. General Activities

#### Association

Associations carry out activities to pursue goals, as stipulated in their constitutive statute, “of general interest, or community interest or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest.”

#### Foundation

A foundation must devote its activities to achieving the objectives of general or community interest, as stated in its constitutive statute. [Governmental Ordinance 26/2000 §15(1)]

### 2. Economic Activities

An association or foundation may directly carry out economic activities that have an “accessory character” and are closely connected to the main purpose of the organization. Income from these related economic activities is exempt from corporate tax if the income falls below 15,000 EUR or 10% of the entity's total not-for-profit income, whichever is less. For income exceeding those thresholds, and for all income from unrelated economic activities, the NPO pays taxes at the same rate as commercial firms. There is one

exception: foundations established by legacy are exempt from paying profit tax altogether. [Fiscal Code §15(1)]

The Fiscal Code extends a profit tax exemption to income generated by NPOs from "occasional [economic] activities." [Fiscal Code §15(2)] The activities must be used for social or professional purposes, in accordance with the organization's statute. Examples include: fund-raising events with an admission fee, festivals, raffles, and conferences.

An association, foundation, or federation can establish a commercial company, provided that all dividends from the company are used to advance the purpose of the NPO or are reinvested in the company; they must not be distributed to any other shareholders. [See Governmental Ordinance 26/2000 §47, Governmental Ordinance 37/2003] An NPO (association, foundation, or federation, including those that have Public Utility Status) is required to pay tax on the dividends.

#### E. Political Activities

Not-for-profit organizations may engage in political activities so long as those activities are not specifically covered by the Political Parties Law. They can contribute funds to political parties or for electioneering. [Law 334/2006 regarding financing political parties' activities and electioneering campaigns.] Foreign NPOs are not eligible to finance political parties.

#### F. Discrimination

The Romanian Constitution prohibits discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property, or social origin. [Constitution §4] Further, the Education Act states that "citizens of Romania have equal rights to access to all educational levels and educational forms, irrespective of social or material condition, sex, race, nationality, political or religious adherence." [Law 84/1995 §5(1)] Educational establishments, including private institutions, must comply with this law. [Constitution §32(5)]

#### G. Control of Organization

Foundations and associations may be established by natural or legal persons, whether domestic or foreign. Under §76 (1) of Governmental Ordinance 26/2000, "foreign legal persons without patrimonial aim may be recognized in Romania, under condition of reciprocity, on the basis of prior approval from the Government, by registration in the Registry of associations and foundations with the clerks' office at the Bucharest tribunal, if they are validly established in the state whose nationality they possess, and if the purpose in their statute does not run counter to the public order in Romania." For the procedure to be followed in this respect, see Governmental Ordinance 26/2000 §76 (2) and (3).

It is possible that a Romanian NPO 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).

The sponsorship law [Law 32/1994] prohibits the sponsorship of an NPO by a sponsor that directs the activity of the beneficiary. (See Section V, B below for additional information on sponsorships.) In this respect, if a commercial firm is the sole founder of an NPO or has a position on the NPO's Board of Directors, it cannot make a legal donation to the NPO.

## V. Tax Laws

### A. Tax Exemption

The profit tax rate in Romania is 16%; exceptions are listed in §33 and §38 of the Fiscal Code. [See Fiscal Code § 17(1)]

A number of entities are exempt from paying profit tax altogether. These include Romanian foundations established as a result of legacies; religious denominations on income obtained from economic activities that is used for the support of activities with a charitable purpose; accredited and authorized private education institutions on income used according to Law 84/1995 as republished; and Romanian legal persons that pay tax on the income of micro-enterprises. [Fiscal Code § 15(1)]

In addition to the foregoing exemptions, all Romanian not-for-profit organizations are exempt from profit tax on certain types of revenue, including:

- donations, money, or goods obtained through sponsorship,
- sports taxes, visas and penalties (these are income sources that sports associations acquire as a result of participation in different sport competitions),
- dividends and interest,
- cash or in-kind contributions from members or supporters,
- membership fees,
- registration fees as established under effective legislation,
- resources from the public budget or from non-reimbursable financing,
- income obtained from occasional activities -- such as fundraising events with admission fees, festivals, raffles, and conferences -- used for social or professional purposes, according to the organization's statute,
- exceptional income resulting from certain assignments of the organization's assets, and
- income obtained from advertising and publicity, realized by not-for-profit organizations of public utility, according to the law of organization and operation, in the fields of culture, scientific research, education, sports, and health.

[Fiscal Code § 15(2)]

In general, associations and foundations are liable for profit tax on all of their business activities beyond a certain threshold. Foundations established as a result of a legacy are an exception and are exempt from all profit tax. [Fiscal Code § 15(1)]

## B. Deductibility of Donations to Romanian NPOs by Individuals and Corporations Based in Romania

The deductibility of contributions (whether individual or corporate) to NPOs is regulated by the Law on Sponsorship, which lists the types of "sponsorship" that qualify as deductible (Law 32/1994), and the Fiscal Code, which imposes limits on the amount that a donor can deduct.

"Sponsorship," under Romanian law, occurs where two parties agree on the transfer of ownership of goods or financial means to support the not-for-profit activities of the beneficiary. Under Law no. 204/2001, published in the Official Journal in July 2001 (approving Governmental Ordinance 36/1998), the following entities are eligible to be beneficiaries of sponsorship:

- any not-for-profit organization that, in Romania, undertakes activities intended to promote sports; religion; culture; art; the environment; scientific research; charity; human rights protection; economic, health, social services and social assistance; social and community development; professional interest representation; and maintenance, renovation, preservation, and valorizing of historical monuments;
- any public authorities or institutions that engage in the activities listed above;
- radio or TV broadcasts or books or other publications relating to the activities listed above; and
- any individual living in Romania who develops activities in the areas listed above, provided that this activity is recognized by a not-for-profit organization or by a public institution engaged in the domain for which sponsorship is sought. [See Law 32/1994 § 4 as modified by Governmental Ordinance 36/1998 and by Law no. 204/2001]

Under the Sponsorship Law, a sponsor can be a business company or a natural person.

The Fiscal Code establishes the rates governing deductions. A business company that grants sponsorships under the Sponsor Law (or the Library Law) can deduct up to 0.3% of its turnover or 20% of the profit tax due, whichever is less.

Individuals can designate that 2% of their annual income tax will provide sponsorship to NPOs legally operating under Governmental Ordinance 26/2000 regarding associations and foundations. [See Fiscal Code § 84(2) as modified by Governmental Ordinance 138/2004] An individual receiving commercial income from independent activities (e.g., work as a lawyer or notary when the individual is not affiliated with a particular company) or from intellectual property rights qualifies for a sponsorship deduction of up to 5% of the taxable base, in addition to the 2% of annual income tax that he or she can

designate for sponsorship of a particular NPO. [See Fiscal Code § 48(5) as modified by Governmental Ordinance 138/2004]

### C. Value Added Tax

The basic VAT rate in Romania is 19%. A lower rate, 9%, applies to books, medicines, and certain other goods and services. Entities can be exempted from paying VAT if their economic activities generate a turnover of less than 35,000 Euro for the current fiscal year. Turnover does not include revenues from not-for-profit activities (e.g. grants and member contributions).

If an NPO's income from economic activity exceeds 35,000 Euro, the NPO must register as a VAT taxpayer. Below this threshold, registration as a VAT taxpayer is optional. Romania exempts from VAT the following goods and services provided by NPOs or other private or public entities:

- medical treatment;
- educational activities provided under the Law on Education, 84/1995;
- goods and services closely related to social assistance or social protection performed by public institutions or other entities recognized as having a social character;
- goods and services closely related to the protection of children and youth performed by public institutions or other entities recognized as having a social character;
- goods and services furnished for the collective benefit of members, in exchange for a fixed subscription fee, by organizations without a patrimonial purpose that have an objective of a political, trade union, religious, patriotic, philosophical, philanthropic, ownership, professional or civic nature, as well as the objective of representing the interest of their members, on the condition that such exemption does not cause distortions of competition;
- cultural services, or goods closely related to such services, performed by public institutions, as well as operations that fall under the tax for performance;
- goods and services provided by persons whose operations fall in one of the above categories for exemption, in connection with events intended to raise financial support and organized for their exclusive benefit, on the condition that such exemptions do not produce distortions of competition;
- objects and apparel of religious bodies;
- the import of goods received free of charge as assistance or donations intended for religious, health or sanitation, state defense or national security, artistic, or sport purposes, or for environmental protection or protection and preservation of historical and architectural monuments, under the conditions established by regulations; and
- the import of goods financed by non-repayable loans granted by foreign governments, international organizations, or foreign or domestic not-for-profit organizations, under the conditions established by regulations.

#### D. Double Tax Treaties

Romania has entered into a double taxation treaty with the United States, but it does not specifically address the deductibility of contributions to NPOs.

(<http://www.irs.gov/pub/irs-trty/romania.pdf>)

#### VI. Knowledgeable Contacts

Octavian Rusu, 2k Splaiul Independentei, Entrance 1, Floor 4-5, Bucharest 3, Romania.

Phone: +40 742 127 721, fax: +40 21 310 01 80. [octavian\\_rusu@yahoo.com](mailto:octavian_rusu@yahoo.com)