



**AN OVERVIEW OF LEGAL AND TAX REGULATIONS FOR ASSOCIATIONS
AND FOUNDATIONS IN BiH
AND
RECOMMENDATIONS FOR AMENDMENTS**

Sarajevo, 2011

Publisher:

Centre for Promotion of Civil Society, Sarajevo
Resource Centre, Secretariat of the *Sporazum plus* (Agreement Plus) Network
Kalesijska 14, Sarajevo
033/ 644 819, 611 798, 611 834
www.civilnodrustvo.ba, www.cpcd.ba,

Authors:

Dr. Dragan Golubović, European Centre for Non-Profit Law, Budapest
Almin Škrijelj, "Lawyer" Association, Sarajevo
Slaviša Prorok, LLB, Centre for the Promotion of Civil Society, Sarajevo

INTRODUCTION:

For the purposes of the Seventh forum of the *Sporazum plus* (Agreement Plus) Network, held in Sarajevo on 1 June 2011, on the topic “Campaigning for Improved Legal and Fiscal Treatment of Civil Society Organizations in BiH”, a draft “Analysis of Legal and Tax Regulations for Associations and Foundations, and Recommendations for Amendments” was presented (heretofore: Analysis).

Prior to the Forum and the presentation of the Analysis, a questionnaire entitled "Let's Make our Obstacles More Visible" was distributed to the Network members. The questionnaire contained eight questions from the legal and tax domains for NGOs in BiH.

The questionnaire was answered by over 100 Network members. The results of the questionnaire were included in the Analysis, which was also expanded to include the suggestions of the participants of the Seventh Forum.

Bearing in mind that the Analysis deals with issues important to every association and foundation in BiH, it was distributed to members of the Agreement Plus Network, the Network for Peace Building, the Council of NGO Networks, the Justice Network and Volunteer Network, for final comments prior to the completion, printing and distribution of the document.

We thank all members of the Agreement Plus Network and the others networks for their help and support in drafting this Analysis.

1. EMPLOYMENT AND LEGAL STATUS OF ASSOCIATIONS AND FOUNDATIONS

Introduction

Associations and foundations (hereinafter: Association) may be established in accordance with the four laws on associations and foundations. None of the four laws regulate issues related to labour relations. In Bosnia and Herzegovina, employment is regulated by four labour laws that apply to all matters related to employment. The entity Labour Laws and the Labour Law of the Brčko District of BiH apply the principle of territorial implementation of its provisions. The Law on Labour in BiH Institutions regulates the issue of the implementation of the Law, by giving an exhaustive list of institutions and organizations are obliged to apply its provisions. Thus, Article 1 Paragraph (2), Item C, among other things, mentions associations and foundations in Bosnia and Herzegovina. Given that neither the laws on associations and foundations, nor any labour law, specially regulate the issue of employment in associations, all the rights and obligations arising from employment in all other legal entities in Bosnia and Herzegovina apply equally to

all those employed at associations and foundations. In accordance with the applicable labour laws, there are five basic types of contracts that can be signed, and they are:

- Indefinite term contract
- Fixed term contract
- Temporary and casual services contract,
- Training contract (internship contract)
- Volunteering contract

In addition to labour laws, numerous other regulations are applied to employment, which are the result of employment, in particular, regulations for hiring workers, provisions for payment of contributions for compulsory insurance, and income tax regulations.

1. 1.ISSUE OF REGULATING EMPLOYMENT

| Law on Labour in BiH Public Institutions |
|---|
| <p>Article 1, Paragraph 2 stipulates:</p> <p>c) “employees in public enterprises, associations and foundations in BiH, inter-entity corporations and other institutions that carry out additional competencies in Bosnia and Herzegovina, unless otherwise prescribed.”</p> |
| Suggested amendments: |
| <p>The term “<i>associations and foundations in Bosnia and Herzegovina,</i>” should be deleted.</p> |
| Rationale |
| <p>The proposal would delete the article in question, thus allowing for the labour and legal status of employees to be regulated by the Labour Law (in the Federation of BiH (also: FBiH), the Republic of Srpska (also: RS) or the Brčko District), which is applied according to the location of the headquarters of the association and the employee’s place of residence.</p> |

Employment is regulated by the relevant labour law, depending on the level of registration of the association. A particular problem is the application of the Law on Labour in BiH Public Institutions to regulate employment in associations. First and foremost, there is the question of whether it is justified to apply this law to employment in associations. Although the Law in includes associations and foundations of Bosnia and Herzegovina, in Article 1 Paragraph (2), item C, there are still several dilemmas regarding its application. The first dilemma is reflected in the name of the law, which suggests that it relates to labour “within the institutions of BiH.” The name itself is no indication that the Law applies to any other legal entity except the institutions of BiH.

However, in Article 1, the Law also extends its application to “*other legal entities including Associations*”, as well as public companies of Bosnia and Herzegovina, inter-entity corporations or other legal entities established by Bosnia and Herzegovina. Another dilemma is reflected in the wording of Article 1, which speaks of “associations and foundations of Bosnia and Herzegovina”. The question is whether this provision applies to associations established by Bosnia and Herzegovina (such as public companies or other legal entities established by BiH), or whether it applies to *associations established at the level of Bosnia and Herzegovina*. Although the law does not explicitly prohibit the establishment of associations and foundations as legal entities, by government institutions or administrative organizations, it seems more probable that this wording follows on the name of the Law on Associations and Foundations of Bosnia and Herzegovina. These two dilemmas would not be particularly poignant if the provisions of the Law on Labour in BiH Public Institutions were not tailored throughout the Law to the specific labour law issues of recruitment in the public institutions of BiH. This particularly applies to the provisions relating to *publicly advertising* the position, which specifies that a call for applications has to be published in at least one high-circulation daily newspaper, which would create more problems for associations.

As regards to the application of other regulations relevant to exercising the rights of employment, particularly those relating to health care and social security, the Law refers to the application of entity laws, depending on the employee’s place of residence. This de facto means that the association, depending on the residence of its employees, must apply one to three sets of regulations related to contributions and taxes. Moreover, taking into account the ruling of the Constitutional Court in the case U 12/09, any difference in the rights arising from these different systems could be declared discriminatory in accordance with Article II / 4 of the BiH Constitution.

1.2. CONCLUDING CONTRACTS IN ACCORDANCE WITH LABOUR LAWS

| Labour Law of FBiH and Brčko District – Temporary and Casual Service Contracts |
|---|
| The FBiH and Brčko District do not have the possibility of signing this kind of contract. |
| Labour Law of the RS – – Temporary and Casual Service Contract |
| <p>Article 34</p> <p>A contract on performing temporary and casual services may be concluded for the performance of temporary and casual work, with the condition that:</p> <ul style="list-style-type: none"> - the temporary and casual work is defined in a collective agreement or rules and regulations of employment; - that the work is not one for which indefinite or fixed term contracts are concluded, full time or part-time; - their duration does not exceed 60 days within one calendar year. |

| Suggested amendments |
|--|
| <p>At the end of Paragraph 1, add a new indent as follows:</p> <p>“3. In special cases, a contract for temporary and casual work can be signed for a period of 90 days in one calendar year, for employees of associations and foundations.”</p> |
| Rationale |
| <p>Most associations do not have a permanent source of funds, and are therefore more focused on concluding contracts that are not for an indefinite term of employment. For this reason, a temporary and casual service contract becomes a good solution. The introduction of this solution would, inter alia, promote employment in this sector, increase employee security, facilitate the planning of human resources within organizations, and in general encourage economic growth.</p> |

| Labour Laws – Severance Compensation |
|--|
| <p>Labour Law of the RS, Article 141 Labour Law of the FBiH, Article 100 Labour Law of the Brčko District, Article 85</p> <p>“The employer is obliged to pay severance compensation to an employee who signed an indefinite term contract, and whose employment ceased with the termination of the employment contract by the employer, after at least two years of continuous service to the employer...”</p> |
| Suggested amendments |
| <p>In the articles above, a new paragraph should be added at the end of the article in each Law, which would read: the provisions of these articles do not apply if the place of work is one in a citizens’ association or foundation, and was established and is related to the financing requirements of a project, and if there is no other suitable replacement position within the association or foundation.</p> |
| Rationale |
| <p>Bearing in mind the fact that associations are financed on the basis of projects, the employment of the majority of employees is determined by the period of the implementation of project activities, and the project completion deadline. After the execution of project activities, the association, as an employer, incurs the obligation to pay severance, which it is unable to satisfy, as it does not have the necessary funds, nor have these funds been approved by the donor (be they the authorities of BiH or international agencies). However, if the association does pay the severance compensation, the only option is to draw the funds from the project budget which brings the association into a situation of unjustified expenditures of project funds, which still result in a negative evaluation of the donor.</p> |

The labour laws allow for the signing of five kinds of employment agreements. Taking into account that the solutions offered in these laws are the result of the attempts of legislators to regulate employment issues in the profit sector, these laws create problems for associations. There is almost no association in BiH that has a permanent source of funding or cash reserves, because their approved funds are exclusively linked to the implementation of project activities, are associations are therefore more likely to offer fixed term contracts. Moreover, associations must pay special attention in the cases of extending fixed term contracts, so that the contract does not become a tacit indefinite term contract.

With the termination of an employment contract, which usually happens due to the closing of a position in an organization, and is conditioned by the completion of a project, the association, as the employer, is, unless the contract is terminated by a mutual termination agreement, liable to pay severance compensation, for which associations had neither provided nor approved funds. In the event of a claim for severance compensation, the association has two options: the association is forced to draw funds from an ongoing project or, if there are no ongoing projects, to raise the funds from voluntary contributions of the rest of the staff. If the association chooses the first option, it is faced with the inability to justify this cost, and can thus be liable for an unauthorised spending of funds. Therefore, the amendment proposal suggests that, with multi-year projects, after a position is opened necessary for the implementation of a specific project, and after a contract is signed, based on which the employee can exercise all the rights according to applicable labour laws, the contract be bound to the date of expiration and funding of the project, and that, after the project's completion, if the same or similar position ceases to exist, the association as an employer is under no obligation to pay severance compensation, if the employment ends with a termination of an indefinite work contract.

1.3. EMPLOYING VOLUNTEERS

| Law on Volunteering of FBiH |
|--|
| A Law on Volunteering in FBiH should be passed, as prescribed by the Labour Law of FBiH. A Law on Volunteering in the Brčko District should also be passed. |
| Suggested amendment |
| The goal of the Law should be to give an incentive, and not a hindrance, to the development of volunteering. |
| Rationale |
| A large number of volunteers are employed within many projects in several associations throughout the Federation of BiH. It is necessary to define volunteering, as work by personal choice, as a private and legal relation, and to that effect draft a regulation which would determine the insurance, rights and obligations of volunteers and volunteering organisers. |

| Law on Volunteering of the RS |
|---|
| Article 19. |
| (1) In a Volunteering Contract, the volunteer and the organizer of the volunteering activity agree on mutual rights and obligations, and on the particularities necessary for a specific volunteering activity, or for providing specific volunteering services |
| Amendment proposal |
| A new paragraph should be added, 1a) “A volunteering contract must be signed only for long-term volunteering activities, whereas with short- term volunteering, the organiser is obliged to acquaint the volunteer with the principles of volunteering.” |
| Rationale |
| Due to frequent volunteer employment for brief and one-day events, signing individual contracts increases the transaction expenditures of volunteering organisers. |

In the Republic of Srpska, a volunteer's legal status is regulated by a special volunteering law; a similar law also is in preparation in the Federation of BiH. The Law on Volunteering of the RS treats volunteering more as a *legal employment* relation rather than as a private and voluntary activity of citizens; this can be seen through the legal provisions, which prescribe the signing of a volunteering contract in writing (for longterm volunteering), and determine its obligatory content, and also through the legal obligations of the organisers of volunteering activities, which include the obligation to submit a report on volunteering to the competent ministry. This regime of obligations significantly increases the expense of employing volunteers, and as such, contrary to what the law intended, discourages the volunteering organiser from employing volunteers. Finally, the Law defines volunteering as a voluntary activity which is “of interest to the Republic of Srpska“, but not of interest to Bosnia and Herzegovina, which implies that it is not possible to employ volunteers for performing voluntary activities which are not only of interest to the RS, but also to the Federation of BiH, and to Bosnia and Herzegovina itself. The Draft Law on Volunteering of the Federation of BiH is largely based on the Law on Volunteering of the RS and other laws in the region, which treat volunteering as a labour-legal, rather than a private-legal relation.

It is necessary to specify that the goal of volunteering is not exclusively to gain the work experience necessary for taking the official internship exam (thus equalizing a volunteer and an intern), but to perform activities which are of interest to the community (and is regulated as a private-legal relation), and define the difference between long-term and short term volunteering. It is also necessary to establish mechanisms of monitoring the implementation of the Volunteering Law in the RS.

1.4. Applying the Law on Contractual Relations in Recruiting Employees

Law on Contributions of FBiH – Piece Work and Authorship Contract
Law on Contributions of the Brčko District –Piece Work and Authorship Contract
Law on Contribution of RS –Casual and Temporary Service Contract

FBiH - Piece Work and Authorship Contract, Article 5, Indent 7

- The contract is signed by employees that receive income from other types of self-employment and part-time employment in accordance with the regulations of the Income Tax Law.

Brčko District - Piece Work and Authorship Contract, Article 77, Indent 11

Signed by authorship agencies, citizens' associations, other professional sports associations, organizers of sporting and other public events, for the participants of these events, the members of associations who are engaged in professional or other activities which generate income, and for top athletes as ranked by the Brčko District Sports Association or the Olympic Committee of Bosnia and Herzegovina.

RS – Casual and Temporary Service Contract, Article 4, Indent 27

- For persons who perform temporary or casual services in accordance with the regulations governing employment.

Suggested amendments

We should abolish all fees and contributions paid on piece work and temporary professional work contracts, since the person on whose behalf these taxes are paid is not eligible to use the rights afforded by the taxes. We should retain only the income tax obligation, as it is the only meaningful contribution.

For people who are employed in this way, employers pay the full labour contributions, whether the work is temporary or fixed. However, employees exercise no additional rights based on these paid contributions.

We should also abolish these liabilities in the case of casual and temporary work contracts, and retain only the income tax.

Another amendment proposal: In the case that an unemployed person is signing this type of contract, allow that employee to exercise the rights for which contributions are being paid, for the period that they are paid on the basis of the contract.

Thus, the proposal for amending the law takes two directions: either that all contributions, the payment of which does not allow the employee to exercise any of the paid rights, are abolished, or to allow employees to exercise those rights for the period the contributions are being paid.

Rationale

The problem with such contracts is the fact that this type of contract requires the payment of *several types of taxes and contributions* (income tax, retirement contributions, health insurance, water charges, protection from disasters), from which the employee has absolutely no benefit (although contribution is paid towards retirement, this will not be included in the employment record of someone who is unemployed and working on the basis of this kind of contract. A similar thing happens with the health insurance contributions, because, although they are paid, they do not enable the employee in this contract to receive healthcare). The proposal is, if the employees that are the subject of these types of contracts receive no benefit from these contributions, to eliminate all contributions paid on these contracts except income tax, or to allow, in the current arrangement, the employee to benefit from the above care on the basis of contributions paid.

The problem of how to deal with fixed term, casual or temporary service and other kind of service is one of the most common problems in the NGO sector. For this reason, a large number of associations are signing piece work or authorship contracts with those they employ, in accordance with the provisions of the Law on Contractual Obligations. In general, the piece work contract is concluded for the execution of physical or intellectual work, for a contracted fee, while a contract of authorship is concluded for copyrighted work. However, due to numerous constraints of the labour laws, associations often resort to signing these agreements.

The problem with piece work and authorship contracts in the Federation of BiH is the fact that this type of contract requires the payment of *several types of taxes and contributions* (income tax, retirement contributions, health insurance, water charges, protection from disasters), which in the Federation amounts to approximately 18% on piece work contracts for resident employees, and about 12% for non-residents, and to approximately 16.5% on authorship contracts. The user has absolutely no benefit from the payment of these contributions (although contribution is paid towards retirement, this will not be included in the employment record of someone who is unemployed and working on the basis of this kind of contract, regardless of the amount of the contribution or the fact that is paid in the same manner as on other contracts. A similar thing happens with the health insurance contributions, because, although they are paid, they do not enable the employee in this contract to receive healthcare).

The same situation exists in the RS as regards casual and temporary service contracts, which, in accordance with Article 8 of the Law on Contributions, require the payment of contribution on the following rates: pension and disability insurance: 18%; health insurance: 12.5% ; unemployment insurance: 1.0%, to 1.5%; child protection: 1.5%. An employee cannot exercise any rights based on the contributions paid. This rightly raises the issue of what the purpose of the contributions is.

For this reason, we propose to amend the law in two directions:

1. To abolish all contributions the payment of which does not allow the employee to exercise any of the paid rights,
2. To allow employees to exercise those rights for the period the contributions are being paid.

The Health Law of the Brčko District determines who pays tax for health insurance, while other contributions are regulated by the laws of FBiH and RS, depending on the employer, which means that any other contributions are governed by the Contribution Laws applicable in the RS and FBiH respectively.

1.5. Employing interns in associations

| Criteria for employing interns |
|--|
| <p>Documentation submitted by the employer</p> <p>- As proof – the employer should submit a certificate confirming they have covered all the liabilities pertaining to taxes and contributions on and from salaries, dated not later than three months from the date of application.</p> |
| Suggested amendments |
| <p>As an exception, for employing interns for work at associations and foundations, it is not necessary to submit proof of payment of contributions for employees, if the association has no permanent employees.</p> |
| Rationale |
| <p>Many associations do not have full-time staff, for which they would have to pay contributions on and from their salaries, which is a major problem when applying for funds for the employment of interns. Bearing in mind the fact that associations do have a need for additional staff in which, seeing as they are necessary resources, they invest a great deal, in terms of education and giving them responsible individual tasks in different areas, interns can receive better training when working at associations without permanent employees, than in firms with 10 or so employees. It is necessary to open up the possibility for all associations to apply for grants to hire interns, regardless of whether they have permanent employees or not.</p> |

Rather than enable all associations to participate in calls for the recruitment of interns - young people without experience, most employment bureaus (for example, the Sarajevo Canton Sarajevo Employment Bureau) set a barrier to associations without permanent employees, by demanding that associations submit a large number of documents in order to apply for funds to recruit interns. These documents also include documentation proving the payment of contributions for employees, a condition which associations that have no permanent staff cannot satisfy, and thus cannot apply for such grants. With respect to associations, the state could perhaps, in order to verify their credibility, seek certain documents that provide insight into already implemented projects and activities, the amount of funds successfully obtained through grants in a given period, a review of

donor organizations, the main users of an association's services etc. This would bypass the current discrimination exercised by employment bureaus (at the cantonal and entity levels, and that of the Brčko District) towards associations and foundations, and allow an insight into their credibility.

1.6. Issues relating to covering travel expenses, hotel accommodation and other expenses for participants of conferences, seminars and other events

| Law on Financial Operation of the Federation of BiH, the Republic of Srpska and the Brčko District, and corresponding rules and regulations |
|---|
| Suggested amendments |
| <p>In all the three laws, and through additional regulations, allow for associations, whose statutory objectives include providing education and training, to organise seminars and carry out bank payments of travel expenses without the additional tax burdens. The amount paid for travel expenses should be the price of the return ticket taken by the cheapest mode of transport, based on the tickets presented by the participants. The payment of accommodation fees for participants is carried out through a R1 invoice.</p> |
| Rationale |
| <p>Almost all associations in BiH are faced with the difficulty of the increased costs when reimbursing travel and accommodation costs for those who attend training sessions, seminars and other events. A cash payment of these costs is not allowed. In order to satisfy positive legal regulations, these costs are in practice covered through temporary work agreements for each participant, which require the payment of taxes, which then increases the costs of organizing such events.</p> <p>On the other hand, from the viewpoint of the participants of training sessions or seminars, since travel expenses are reimbursed in this form (through temporary work contracts), participants, who have initially paid for the travel themselves, and have thus borne the expenses, will be compensated for the travel in the form of royalties, which means that the funds they thus receive are treated as income. An income "acquired" in this way must be registered by all participants in their tax returns at the end of the year.</p> |

When organizing free education, forums, seminars and other project activities, associations need to pay travel expenses and hotel accommodation for its members participating at these events, which the lawmakers did not bear in mind. Most associations plans these costs for its members, end users or the representatives of other organizations, in order to enable them to attend various events (training sessions, seminars, activities to establish coalitions, networks, etc.). A cash payment of accommodation and travel expenses is not permitted under law. In order to satisfy positive legal regulations, these costs are in practice covered through temporary work agreements for each participant. An additional problem is the payment of travel expenses through a transaction account, which implies that a certain period of time has to pass before the costs are incurred and their reimbursement. This puts participants into a

problematic position, because it is assumed each participant in advance knows and has the amount that will cover travel and accommodation costs, and it also happens that participants increasingly forced to give up their planned participation at the said trainings and seminars etc. For the participants themselves, a problem is that the tax administration characterizes their real costs as revenue or royalties. Participants who are minors present a particular problem: being underage, they cannot open a deposit account to receive a reimbursement of these costs; as a result, piece work contracts are signed with minors, who as such are not allowed to work under law. By submitting a tax return for such a person, the resulting effect is that this person has done work through a piece work contract. The payment of travel expenses for persons who are not in full work capacity is then carried out by bank transfer to the account of their parents or guardians.

The cost accepted would amount to the cost of the submitted travel tickets, or to the maximum amount of the price of two return tickets by the cheapest means of transport. The costs would be paid by bank transfer. Invoices recognised in this way would be sufficient proof to be submitted into the register of accounts. A further proof to support the payment of travel costs is an original and certified list of participants, which also specifies the mode of transportation.

The same would apply to paying for the accommodation of participants, where associations would pay these costs through a submitted invoice (for hotels, hostels, etc.). In the current legal framework, which has made associations equal to profit sector organizations, these and similar legal arrangements hamper the work of associations and the development of civil society in BiH.

2. THE TAX STATUS OF ASSOCIATIONS AND FOUNDATIONS

2.1. THE FEDERATION OF BIH

2.1.1. TAX RELIEFS FOR FUNDS GRANTED BY LEGAL PERSONS - TAX PAYERS FOR USEFUL SOCIAL CAUSES

| Law on Corporate Income (Profit) Tax of the Federation of BiH |
|---|
| Article 11 of the Law: “(2) Donations made to charitable, cultural, educational, scientific and sport purposes (except for professional sports), are recognized as expenditures in the amount up to 3% of the total revenue with the tax period.” |
| Suggested amendments: |
| Article 11 of the Law:¹ (2) Donations made to charitable, cultural, educational, scientific, sports purposes (except for professional sports), as well as donations for the promotion and protection of human, civil and minority rights, the promotion of democratic values and institutions, the fight against corruption, environmental protection, rural development and development of tourism, European integration and international understanding, sustainable development, gender equality, promotion of social and medical care, including care of individuals with disabilities, care of children and assistance to the elderly, consumer protection, animal protection, and to other purposes of public interest² are recognized as an expenditures in the amount of up to 3% of the total revenue within the tax period. (3) Donations to associations and foundations that work towards public interest, as specified under Paragraph 2 of this Article, shall be recognized as expenditures only if the recipient of the donation is an association or foundation entered into a register of associations and foundations, and has worked for at least one year. (4) An association and foundation will also be considered to work towards the public interest specified in Paragraph 2 of this Article when its activities are focused on a specific group of people belonging to certain professions, ethnic, linguistic, cultural and religious groups, genders or races, or people who live in a particular area. (5) An association and foundation working towards the public interest specified in Paragraph 2 of this cannot be aimed at satisfying the interests of one or more persons who are determined individually and in advance. |

¹ The bolding refers to the changes of the existing text, as well as new paragraphs added to the Article.

² The Ministry needs to be consulted as to whether, norm-wise and technically, the more acceptable term would be: for purposes of public (general) interest, or for public purposes.

European regulations:

The recommendation of the Committee / Council of Ministers of the Council of Europe concerning the legal status of civil society organizations in Europe (CM/Rec/2007/14): Basic Principles: "8. The legal and tax regime for associations should have an instigative effect on their establishment and operation."

The European Commission has adopted the practice that the Annual Progress Report of Candidate States towards the EU also includes an assessment of the legal and institutional position of civil society.

The Progress Report for BiH, as of 5 November 2008, SEC (2008) 2693, pages 18-19, stated: further steps necessary to strengthen the institutional structure of civil society.

Justification of suggested amendments:

Under the Provisions of Article 11, Paragraph 2 of the Law on Corporate Income (or Profit) Tax³, donations made to charitable, cultural, educational, scientific and sport purposes (except for professional sports), are recognized as expenditures in the amount up to 3% of the total revenue with the tax period.

The positive side of this provision, in terms of encouraging a culture of giving, is that it takes the total income, rather than the profit, as the basis for calculating the recognised expenditures, which increases the absolute amount of the donation that is accepted as expenditure. Another advantage is that expenditures are recognized for investments made for a specific purpose, regardless of whether the purposes are being realised by associations or government agencies (the non-discrimination principle). Finally, on the grounds of the provisions of Article 3 of the Law (which refers to taxpayers who are not subject to paying tax on profit), it follows that donations can be both in money and in "kind", that is, in goods and services that have monetary value, which is also in line with comparative good practices.

However, the legislator opted to qualify the above mentioned purposes (activities) *numerus clausus* as purposes (activities) of public interest. This restrictive approach is difficult to justify. For example, Article 11, Paragraph 2 of the Law does not recognize the promotion and protection of human and minority rights, consumer protection, environmental protection, support to the development of democratic institutions, the fight against corruption, European integration and other such actions as activities of public interest, although they have both in other countries and in Bosnia and Herzegovina been recognized as such.

In the comparison, the provisions of Article 11 of the Corporate Income (Profit) Tax Law

³ The term "Corporate Income Tax" is used in many English versions of Bosnian laws to refer to Profit Tax.

are very similar to the provisions in force in most countries of the former Yugoslavia, which were taken from the previous political regime, and which do not correspond with new social needs and demands of our time. The situation is somewhat better in Croatia, where the list of activities (purposes) of public interest is not determined by *numerus clausus*.

The proposed changes have been conciliated not only with comparative practices, but also correspond to the new social needs of BiH. It should also be noted that the draft of the proposed changes has no negative implications on the projected budget flow. Namely, the proposed changes do not encroach on the percentage to which the law recognizes a tax expense for donations for public purposes, and only extends the circle of purposes (activities) of public interest recognised for tax expenditure.

In discussing the proposed amendments to Article 11 of the Law on Corporate Income (Profit) Tax, from the standpoint of legal certainty, it is necessary to give a clear answer to the question of whether donations are recognized as an expenditure only if they are given to associations, public institutions and other entities referred to in Article 3 of the Law, or is justified to leave the possibility that legal persons- tax payers can directly carry out certain activities for public purposes? For example, the Law on Corporate Income (Profit) Tax of the Republic of Serbia stipulates that the costs that a legal person – tax payer incurs in directly carrying out (organising) cultural and sporting activities are recognized as tax expenditure. On the other hand, expenditures for charitable purposes are recognized only if they carried out through humanitarian organizations registered for these purposes. Depending on the answer to these questions, further considerations are necessary in amending Article 11 on the Law on Corporate Income (Profit) Tax.

Finally, the proposed amendments also set out the basic conditions that must be satisfied in order for donations to associations and foundations to be recognized as a tax expenditure. In determining these conditions, we were guided by the principles of rationality and efficiency, as well as the existing development of a culture of giving in Bosnia and Herzegovina.

2.1.2. Business operations and the establishment of enterprises

| Corporate Income (Profit) Tax Law of the FBiH |
|---|
| Article 11 “(2) Donations made to charitable, cultural, educational, scientific and sport purposes (except for professional sports), are recognized as expenditures in the amount up to 3% of the total revenue with the tax period.” |
| Suggested amendments |
| In Article 11, after Paragraph (2), add a new paragraph, (2a), with the following: “In exceptional cases, donations to an association/foundation that will be used to achieve the statutory goals of the association or foundation, and that are granted by a company that itself established by the association receiving the donation, will be recognized as expenses in the amount of 50% of total income in the tax period.” |
| Rationale |
| Associations which, due to legal barriers, cannot produce profit, have the ability to establish enterprises to meet their statutory objectives. However, in order to justify their establishment and existence, these enterprises should be allowed to make a higher percentage of donations to the associations that established them, and that their donations are recognised as non-taxed. In this way, the association would justify the establishment of an enterprise, while the enterprise would invest in the development of the association, and thus meet the needs of end users. |

| Corporate Income (Profit) Tax Law of the Brčko District |
|---|
| Article 8 (Adjusting expenditure) (2) Expenditures that will be recognized and deducted from income are: f) contributions to public institutions and donations for humanitarian, cultural, educational, scientific and sporting purposes, amounting to up to 3% of total income in that tax year. |
| Suggested amendments |
| Add a new item, f-a) : “In exceptional cases, donations to an association/foundation that will be used to achieve the statutory goals of the association or foundation, and that are granted by a company that itself established by the association receiving the donation, will be recognized as expenses in the amount of 50% of total income in the tax period.” |

Rationale

Although the legal system allows associations to carry out similar economic activities, as well as establish companies to conduct unrelated activities, there are no special provisions made to simplify the work of such legal enterprises, even though revenues are mainly used for carrying out the statutory objectives of the founding association. A recommendation would be to consider models that would provide incentives for this type of enterprises, in accordance with the specific purpose of their economic activities, as well as a model by which to exempt the total amount of revenue from related activities, as well as donations, from taxes on corporate income (profit), which is also the European standard.

In accordance with the provisions of the Law on Associations and Foundations, associations cannot be founded so that their basic business activity is the making of profit. However, these laws allow associations to carry out economic activities that are related or are directly linked to achieving the associations' basic statutory goals and activities. The revenue realized by such economic activities must be invested in the basic statutory activities of the association. Since there is a possibility that the association might still not be able to acquire the necessary revenue from its business activities during one calendar year, the difference in the revenue should not be shown as profit, *but can only be forecasted in the budget for following year*. In the case that the association should register this as profit, it would have to pay the full amount of tax on the profit.

If the association believes that such actions too are necessary to achieve the objectives of its establishment, it may found a separate legal entity that will carry out unrelated business activities. This legal entity is formed in accordance with the laws governing the operation of companies, will have the same status, rights and responsibilities and will work under the same conditions as all other business entities in the profit sector. The laws provide no relief for such legal entities, although they are established to use the revenues acquired by the association, and not solely for the purpose of making a profit. In reality, this kind of legal entity, since they have a distinct status under the law, can only transfer the profit they acquire to the association in the form of donations. The legal entity does not pay profit tax on donations, but only to the extent of 3% of total revenue for that calendar year.

2.1.3. TAX EXEMPTIONS FOR ASSETS OF ASSOCIATIONS AND FOUNDATIONS

| Property Tax Law of the Canton Sarajevo (03. 03. 09) |
|---|
| <p>Article 4 of the Law stipulates:</p> <p>The following entities do not pay tax on property:</p> <ul style="list-style-type: none">a) the state of Bosnia and Herzegovina and its offices;b) the entity governments and their offices;c) the Brčko District of Bosnia and Herzegovina;d) the cantons and their offices;e) units of local self-government;f) foreign states, only if there is a condition of reciprocity;g) the disabledh) religious institutions on the property that they use themselves. |
| Suggested amendments |
| <p>Article 4:</p> <p>e) Associations and foundations that work for public interest, in accordance with the regulations governing profit taxation in the Federation BiH, for the property they use themselves.</p> |
| European regulations |
| <p>Recommendation of the Committee / Council of Ministers of the Council of Europe concerning the legal status of civil society organizations in Europe (CM/Rec/2007/14): Basic Principles: "8. The legal and tax regime for associations should have an instigative effect on their establishment and operation."</p> <p>The European Commission has adopted the practice that the Annual Progress Report of Candidate States towards the EU also includes an assessment of the legal and institutional position of civil society.</p> <p>The Progress Report for BiH, as of 5 November 2008, SEC (2008) 2693, pages 18-19, stated: further steps necessary to strengthen the institutional structure of civil society.</p> |

Justification of suggested amendments:

The Property Tax Law of the Sarajevo Canton defines those who shall be liable to pay tax on property, as well as the movable and immovable property which is subject to taxation. The provisions of Article 4 of the Law specify the legal and natural persons who are exempt from paying property tax - this list includes religious institutions, but not associations, including those working in public (social) interest. Thus, the provisions of Article 4 lead to a situation where everyone is a loss. On the one side, the budget influx from property tax paid by associations and foundations is insignificant, given that these

organizations generally have modest or no assets. On the other hand, the regulation may adversely affect the long-term financial sustainability of the association. Therefore, the proposed changes in Article 4 of the Law will not have any negative implications from the viewpoint of the projected budget flows, but may contribute to long-term financial sustainability of associations and foundations. In addition, the proposed changes are also consistent with the principle of fairness, as they eliminate a discriminatory treatment of associations and foundations that operate towards public interests, in comparison to religious institutions.

The proposed amendments to the Property Tax Law apply only to associations and foundations that meet the requirements prescribed by the Proposal of Amendments to the Corporate Income Tax Law of the Federation (Article 11, Paragraphs 2 to 5).

2.1.4. TAX EXEMPTIONS FOR THE TRANSFER OF OWNERSHIP OVER IMMOVABLE PROPERTY AND RIGHTS TO ASSOCIATIONS AND FOUNDATIONS

| |
|--|
| Law on the Tax on the Sales of Immovable Property and Rights of the Sarajevo Canton |
| <p>Article 17 of the Law stipulates: “The Sales Tax on Immovable Property is not paid for....: 13. the transfer of ownership of immovable property given to waqfs, religious endowments and foundations 14. the transfer of ownership of immovable property bought by religious communities for their own needs.”</p> |
| Suggested amendments |
| <p>Article 17 of the Law should say: “The Sales Tax on Immovable Property is not paid for....: 13. the transfer of ownership of immovable property given to waqfs, religious endowments and foundations, as well as associations and foundations that work towards public interests, in accordance with the regulations governing corporate income (profit) taxation in the Federation of BiH. 14. the transfer of ownership of immovable property bought by religious communities, associations and foundations that work towards public interests, in accordance with the regulations governing corporate income (profit) taxation in the Federation of BiH, for their own needs.”</p> |
| European regulations |
| <p>Recommendation of the Committee/ Council of Ministers of the Council of Europe concerning the legal status of civil society organizations in Europe (CM/Rec/2007/14): Basic Principles: "8. The legal and tax regime for associations should have an instigative effect on their establishment and operation."</p> |

The European Commission has adopted the practice that the Annual Progress Report of Candidate States towards the EU also includes an assessment of the legal and institutional position of civil society.

The Progress Report for BiH, as of 5 November 2008, SEC (2008) 2693, pages 18-19, stated: further steps necessary to strengthen the institutional structure of civil society.

Justification of suggested amendments:

Article 2 of the Law on Sales Tax on Immovable Property and Rights of the Canton Sarajevo determines that the sale of immovable property refers to the “sale, exchange or other transfer of ownership over immovable property ...” From this, it follows that the transfer of immovable property and rights over (industrial) property also implies a transfer without compensation (gift), both *inter vivos*, as well as *mortis causa*. Article 17 of the Law also specifies the entities exempt from the payment of taxes on the transfer of immovable property. These exceptions include the transfer of ownership over immovable property given to waqfs, as religious endowments and foundations, as well as the transfer of ownership of immovable property both by religious communities for their own needs. On the other hand, the transfer of ownership over immovable property provided to associations, including those that operate for public purposes, as well as the purchase of such property by these associations, are not exempt from taxes on the property.

The proposed changes would have no negative impact on the projected budget flows, given that very few organizations possess immovable property, or are the legal bearers of industrial property rights. Therefore, the changes would have a stimulating effect on the financial viability of the associations acting in public interest. Namely, we should bear in mind that this tax liability – which is relatively small in comparison - can pose a serious financial burden for an association, which can only pay this tax from the institutional reserves i.e. from the funds generated on the basis of passive income or by doing business, but not on the basis of actual donations or gifts from either the country or abroad (due to strict contractual terms and conditions on how to use the donation). However, most associations have no institutional reserves, nor generate passive income or income from business activities. In addition, the proposal would bring associations which toward a public interest into an equal position with religious organizations. From the standpoint of public policy, there is no convincing reason why religious organizations should enjoy a privileged tax treatment in relation to other organizations that operate for public purposes – as religion is just one of a number of other public purpose activities.

The proposed amendments to the Law on the Tax on Immovable Property apply only to associations and foundations that meet the requirements prescribed in the Proposal of Amendments to the Corporate Income Tax Law of the Federation of BiH (Article 11, Paragraphs 2 to 5)

2.2. THE REPUBLIC OF SRPSKA

2.2.1. TAX RELIEF FOR DONATIONS MADE BY LEGAL ENTITIES - TAXPAYERS IN TO SOCIALLY USEFUL PURPOSES

| Corporate Income (Profit) Tax Law of the Republic of Srpska |
|---|
| <p>Article 4 of the Law stipulates:</p> <p>“(1) The Central Bank of Bosnia and Herzegovina is not liable to pay profit tax.</p> <p>(2) Public institutions and humanitarian organizations do not pay tax on profit acquired in these ways:</p> <ul style="list-style-type: none">a) revenue from the budget or public funds;b) sponsorship given in cash or in kind;v⁴) interest, dividends and other investment income, include revenue from property;g) membership fees;d) income from the sale or transfer of assets, other than assets that are or have been used in business activity....” <p>Article 8 of the Law stipulates:</p> <p>“(1) In calculating the tax basis, we deduct from the income the expenditures that are directly related to income generated.</p> <p>(2) The expenditures that are recognized and deducted from income are:</p> <p>..... d) donations to public institutions, humanitarian, cultural and educational organizations, amounting to up to 3% of total income in that fiscal year, provided that the donations that exceed this amount can be transferred to the next three years, thus reducing the amount of future donations;.....”</p> |
| Suggested amendments |
| <p>Article 4 of the Law:</p> <p>(2) Public institutions, associations and foundations established to carry out humanitarian, cultural, scientific and sports activities (except professional sports), as well as activities aimed at promoting and protecting human, civil and minority rights, promoting democratic values and institutions, the struggle against corruption, environmental protection, promoting European integration and international understanding, sustainable development, gender equality, improving social and health care, including care of individuals with disabilities, child care and elderly assistance, consumer protection, animal welfare, as well as other activities of public interest, do not pay tax on the profit generated from the following income:...</p> |

⁴ The numbering of items in the Law is formatted according to the Cyrillic alphabet (a,b,v,g,d,d)

Article 8 of the Law:

d) Donations to public institutions, associations and foundations established to carry out humanitarian, cultural, scientific and sports activities (except professional sports), as well as activities aimed at promoting and protecting human, civil and minority rights, promoting democratic values and institutions, the struggle against corruption, environmental protection, promoting European integration and international understanding, sustainable development, gender equality, improving social and health care, including care of individuals with disabilities, child care and elderly assistance, consumer protection, animal welfare, as well as other activities of public interest, amounting to up to 3% of total income in that fiscal year, provided that the donations that exceed this amount can be transferred to the next three years, thus reducing the amount of future donations.

(e) Donations to associations and foundations working in the public interest are recognized as an expense only if the recipients are associations or foundations that have been entered into the register of associations and foundations, and have been in business for at least one year.

(f) An association or foundation shall be considered as working in public interest under Paragraph 2 of this Article even when their activity is focused towards a specific circle of people belonging to a set profession, an ethnic, linguistic, cultural and religious group, a gender or race, or towards people living in a particular area.

(g) An association and foundation working in public interest cannot be aimed at satisfying the interests of one or more persons that are individually determined in advance.

European regulations

Recommendation of the Committee / Council of Ministers of the Council of Europe concerning the legal status of civil society organizations in Europe

(CM/Rec/2007/14): Basic Principles: "8. The legal and tax regime for associations should have an instigative effect on their establishment and operation."

The European Commission has adopted the practice that the Annual Progress Report of Candidate States towards the EU also includes an assessment of the legal and institutional position of civil society.

The Progress Report for BiH, as of 5 November 2008, SEC (2008) 2693, pages 18-19, stated: further steps necessary to strengthen the institutional structure of civil society.

Justification of suggested amendments:

According to Article 4, Paragraph 2 of the Law on Corporate Income (Profit) Tax of the Republic of Srpska, public institutions and humanitarian organizations do not pay tax on profit attributable to the income from the budget or public funds, sponsorships or donations in cash or in kind, interest, dividends, real estate, membership fees or revenues from the sale or transfer of assets, except assets that are or were used in business activities. On the other hand, under the provisions of Article 8, Paragraph 2, item đ) of the Act, donations of legal entities liable to pay tax, to public institutions, humanitarian, cultural and educational organizations are exempt from taxation of up to 3% of total revenue in the fiscal year, bearing in mind that the donations that exceed this amount can be transferred into the next three years, thus reducing future donations.

The provisions of Articles 4 and 8 of the Law incorporate a number of good solutions from comparative practices. First of all, in accordance with Article 4 of the Law, the income of public institutions, humanitarian, cultural and educational organizations from budget grants (in cash and kind), as well as passive (investment) income, is exempt from tax. On the other hand, the provisions of Article 8 of the Law also have a stimulating effect on the culture of (corporate) giving, because they take as a basis for the recognized expense the total income, rather than the total profit, which increases the absolute amount that can be recognized as an expense. Also, and in the end, another good side of such positive legal provisions is that they allow for the transfer of donations into the next fiscal year.

However, these provisions have certain fundamental flaws. First of all, the law has opted to recognise the above tax deductions for legal entities liable to pay tax only for donations made to “charitable, cultural and educational organizations,” but also including donations to public institutions. From the legal provisions, it is not entirely clear what is meant by humanitarian, cultural and educational organizations, bearing in mind that in the Republic of Srpska humanitarian, cultural and educational organizations are not defined as status- and legally specific forms. The linguistic interpretation of Article 8 of the Law, or the fact that these terms are used exclusive of public institutions, indicates that the legislature under this term also implies private or non-profit organizations, or associations and foundations engaged in humanitarian, cultural and educational activities⁵. Accordingly, only donations to associations and foundations engaged in humanitarian, cultural and educational activities have the status of agencies of public interest, and are recognised as expenses. As a comparative analysis shows, it is difficult to defend this restrictive approach in defining the activities of public interest that can be granted tax relief. For example, Article 8 of the Law does not recognize as an expense donations aimed at promoting and protecting human and minority rights, consumer protection, environmental protection, support to the development of democratic institutions, fighting corruption, promoting European integration, etc. as activities (purposes) of public interest, although these activities, not only comparatively speaking, but also in the Republic of Srpska, are recognized as such.

⁵ Law on Associations and Foundations of the Republic of Srpska (Official Gazzette of the Republic of Srpska, no. 52/2001).

On the other hand, there is some inconsistency between the provisions of Articles 4 and 8 of the Law, with potentially serious implications for the financial viability of associations and foundations. Namely, in accordance with the provisions of Article 4, the revenue of public institutions and humanitarian organizations from the budget or from public funds, sponsorships or donations in cash or in kind, interest, dividends and other specified income, is not subject to profit tax. On the other hand, in accordance with the provisions of Article 8, donations of legal entities liable to pay tax are recognised as expenses if they are made to public institutions, and humanitarian, cultural and educational organizations. An analysis of Articles 4 and 8 suggests that cultural and educational organizations are not exempt from tax on profit from donations (and other income listed in Article 4), despite the fact that legal entities, as donors, enjoy tax reliefs for donations to cultural and educational organizations.

As comparative analysis shows, the provisions of Articles 4 and 8 of the Law on Corporate Income (Profit) Tax are very similar to the provisions in force in most countries of the former Yugoslavia, which were taken from the previous political regime, and which do not correspond with the new social needs and demands of the time. The situation is somewhat better in Croatia, where the list of activities (purposes) of public interest is not determined by *numerus clausus*.

The proposal of changes corresponds both not only good comparative practices, but also to the new social needs of the Republic of Srpska – as well as eliminates the inconsistency between Article 4 and Article 8, when it comes to encouraging the culture of giving and the financial viability of associations. Following in the example of good comparative solutions, the proposal leaves the list of activities of public interest open (for other activities of public interest), rather than closed (*numerus clausus*), as is the case now. Such a flexible approach recognises the fact that social values and priorities in contemporary society are changing dynamically - and opens up the possibility that tax authorities can also recognise other activities, not expressly stated in the proposed amendment, as those of public interest in particular cases, without requiring a change in the Law. In this way, we would also be reducing the transaction costs of the implementation of the Law.

It should be noted that the draft of proposed changes has no negative implications in terms of projected budget flows. Namely, the proposed changes do not impinge on the percentage amounts up to which the Law recognizes tax expenses for donations for public purposes, but only extends the circle of purposes (activities) of public interest for a tax expense is recognized.

In discussing the proposed amendments to Article 4 and 8 of the Law on Corporate Income (Profit) Tax, from the standpoint of legal certainty, it is necessary to provide a clear answer to the question of whether donations are recognized as an expense only if they are given to public institutions, associations and foundations, or whether is justified to leave the opportunity for legal entities that are tax-payers to directly perform some of the activities in public interest? For example, the Law on Corporate Income (Profit) Tax of the Republic of Serbia stipulates that costs incurred by a legal entity - taxpayer by

directly carrying out (organising) cultural and sporting activities are recognized as a tax expenditure. On the other hand, expenses for charitable purposes are recognized only if such activities are carried out by humanitarian organizations registered for these purposes. Depending on the answers to these questions, further work is necessary on the amendments to Article 8 Law on Corporate Income (Profit) Tax.

At the end, the proposed amendments also set out the basic conditions that must be met in order for donations to associations and foundations to be recognized as tax expenditure. In prescribing these conditions, we were guided by the principles of rationality and efficiency, as well as the existing development of the culture of giving in Bosnia and Herzegovina.

2.2.1.a BUSINESS ACTIVITY AND ESTABLISHING BUSINESSES

| Law on Corporate Income (Profit) Tax of the Republic of Srpska |
|--|
| <p>Article 7 stipulates:</p> <p>(2) The expenses recognised and deducted from the income are also: đ) Donations to public institutions, humanitarian, cultural and educational organisations, in the amount to up to 3% of total income in that fiscal year, provided that the donations that exceed this amount can be transferred to the next three years, thus reducing the amount of future donations;</p> |
| Suggested amendments |
| <p>We propose adding a new item, đ-a), with the following regulation: “Exceptionally, donations to associations / foundations that are used to achieve their statutory goals, and are made by a business entity established by the association receiving the donation, are recognized as expenses in the amount of 50% of the total income in the tax period.”</p> |
| Rationale |
| <p>Although the legal system allows the carrying out of similar economic activities by associations, as well as the establishment of companies to carry out the unrelated activities, there are no special provisions to simplify the work of such legal entities, even though their income is mainly used in carrying out the statutory objectives of their founding associations. It is recommended that models be considered that would provide incentives for these types of business entities, in accordance with the specific purpose of these activities, as well as a model by which revenue generated from related activities, or donations given would be made exempt from taxes on profit in the total amount, which is also the European standard.</p> |

In accordance with the provisions of the Law on Associations and Foundations, associations and foundations cannot be established with their main business activity to make profit. However, these laws allow associations to carry out economic activities that

are related or directly linked to achieving their basic statutory goals and activities. The income gained from these economic activities must then be invested in the basic statutory activities of the association. Since it is possible that an association is unable to invest the income earned in its activities during one calendar year, the difference in income should not be accounted for as profit, *and must only be registered in the budget for the following year*. In the case where an association would account for this amount as profit, it would have to pay the full amount of tax.

If the association believes that such activities are necessary for it to achieve the objectives of its establishment, the association may establish a separate legal entity that will perform unrelated business activities. This legal entity is formed in accordance with the laws relating to the operation of enterprises, has the same status, rights and responsibilities, and operates under the same conditions as all other entities in the profit sector. The law provides no tax relief for such legal entities, although they are established so as to be able to use income for the work of the associations, and not solely for the purpose of making a profit. In reality, a legal entity of this kind, as they have a distinct legal character, can only transfer the profit they make to an association in the form of a donation. The legal entity does not pay profit tax on the donation, but only to the amount of 3% of the total revenue for that calendar year.

2.2.2. TAX EXEMPTIONS ON THE IMMOVABLE PROPERTY OF ASSOCIATIONS AND FOUNDATIONS

| Law on Tax on Immovable Property of the Republic of Srpska |
|--|
| <p>Article 9 stipulates:</p> <p>“(1) The following real property is exempt from tax on immovable property:</p> <p>d) real property used for educational, cultural, scientific, social, health, humanitarian and sporting purposes...”</p> |
| Suggested amendments: |
| <p>Article 9 should read:</p> <p>e) the real property of public institutions, associations and foundations that operate for public purposes, in compliance with regulations governing the taxation of profit in the Republic of Srpska.</p> |
| European regulations |
| <p>Recommendation of the Committee / Council of Ministers of the Council of Europe concerning the legal status of civil society organizations in Europe (CM/Rec/2007/14): Basic Principles: "8. The legal and tax regime for associations should have an instigative effect on their establishment and operation." The European Commission has adopted the practice that the Annual Progress Report of</p> |

Candidate States towards the EU also includes an assessment of the legal and institutional position of civil society.

The Progress Report for BiH, as of 5 November 2008, SEC (2008) 2693, pages 18-19, stated: further steps necessary to strengthen the institutional structure of civil society.

Justification of suggested amendments:

The Law on the Taxation of Immovable Property of the Republic of Srpska determines the taxation of real estate in the Republic of Srpska, exemptions from taxes and the reduction of the tax base, the method of tax payment of taxes and the jurisdiction of the Tax Administration of the Republic of Srpska in the field of taxes on immovable property. The provisions of Article 9 of the Law also specify the immovable property that is exempt from property taxes. This list includes the real property used for educational, cultural, scientific, social, health, humanitarian and sports purposes, but not real property used for the protection of human and minority rights, environmental protection, consumer protection, the fight against corruption, etc. The proposed changes are consistent with the amendments proposed for the Corporate Income (Profit) Tax Law, when it comes to the definition of the activities of public interest, and will not have any negative implications from the point of the projection of budget flows, bearing in mind that, according to available information, the number of properties owned by associations and foundations in the Republic of Srpska negligible. On the other hand, these changes may contribute to long-term financial viability of associations and foundations in particular, and can also be motivating factor for the development of a culture of giving endowments in the Republic of Srpska. The proposal for amendments to the Law on Taxation of Immovable Property applies only to associations and foundations that meet the conditions set forth in proposed amendments to the Corporate Income (Profit) Tax Law of the Republic of Srpska (Art.8)

2.3. ASSOCIATIONS AND VALUE ADDED TAX (VAT):

2.3.1. IMPORTING GOODS FOR HUMANITARIAN PURPOSES

The Law on Value Added Tax prescribes that associations that received goods donated to charity from abroad, are entitled to a refund of the VAT on the said goods (Article 29, Paragraph 2). However, the system of refunds is unfavourable to associations, since it is unlikely that associations have the financial means to pay VAT. As a result, it happens that sometimes the donated goods are returned, in case the donor, for obvious reasons, does not want to pay the VAT or storage charge for such goods. A similar situation occurred in neighbouring countries (for example, in the Republic of Serbia), which as a result changed their law on Value Added Tax, so as exempt associations receiving donated goods from abroad from paying the VAT on the imported goods.

Suggested amendment:

Exempt associations from paying VAT on goods donated to charitable purposes from abroad, in cases where the association is the recipient of such goods.

i. ESTABLISHING A COMPENSATION FUND?

The VAT regime has an adverse effect the financial viability of associations, because the system treats associations as final beneficiaries, even when they are not. This is particularly relevant to humanitarian organizations, and organizations that provide social welfare services free of charge or at a price lower than the market price. For example, if the association organizes a soup kitchen for the poor, it has to pay VAT on all goods and services it needs to implement the soup kitchen, although the end user is actually not the association, but the users of the kitchen. This paradox is the result of the fact that the VAT system places an emphasis on the types of goods and services included in the tax system, and not on the entities participating in the trade of goods and services. When the Sixth Directive on VAT was adopted for the European Union, this problem was simply not recognized – but was later reported to have come up, especially in countries where associations play a significant role in the system of social protection and humanitarian help. A few years ago, an initiative was launched at the level of the EU by associations to solve this problem by adopting the appropriate changes to the Sixth Directive (European Charities' Committee on Value-Added Tax - ECCVAT, www.eccvat.org). After examining the request, the European Commission took the view that these changes to the VAT system are not possible, and this position was reiterated by the new session of the Commission. As an alternative, some countries (Ireland and Denmark) created a so-called compensation fund. This is a budgetary resource, from which the associations that operate for the common good are reimbursed for the VAT they paid, at the end of the fiscal year. Thus, the negative effects of the VAT regime on associations are neutralized (this, of course, refers to organizations that are registered in the VAT system). It is interesting that Slovenia was the first country to set up such a fund – even before this initiative is launched. However, the fund has not been put into practice, because of poor interest from the associations.

Whether a need will arise in the future for Bosnia and Herzegovina to adopt this or a similar solution will largely depend on the role that associations have in the system of social welfare and humanitarian assistance.



USAID
OD AMERIČKOG NARODA