TAX LAWS AFFECTING PHILANTHROPY IN THE COUNTRIES OF SOUTHERN EUROPE

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I. INTRODUCTION

This report presents an updated analyses of tax laws affecting philanthropy in the countries of Southern Europe (Western Balkans)—that is, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia, respectively, which was first published in June 2013. The revised report takes stock of changes in tax regimes governing philanthropy in those countries which have occurred in the interim and discusses those changes against the background of European best practices. The original report, as well as the ensuing country-specific recommendations and advocacy campaigns, was credited for subsequent changes in the tax framework governing philanthropy in Serbia and Montenegro, and therefore it is hoped that the revised report will encourage and facilitate the necessary changes in the tax law of other countries surveyed, as well as further fine-tuning of the regime in place in Serbia and Montenegro.

Likewise the original report, the revised report (report) primarily deals with pertinent provisions of income/profit and gifts tax laws which support or impede efforts to nurture the culture of philanthropic giving in Southern Europe. In addition, the report addresses the framework regulation for civil society organizations (CSOs) insofar as it may impact on the tax regime governing philanthropy. The tax and CSO framework regulation governing philanthropy is analyzed against the background of the legal regimes in place in a selected number of EU countries (infra, Chapter 3). In addition, the report briefly outlines the legal regime governing corporate volunteer activities in the countries surveyed, given their increasing role in the promotion of philanthropy. The structure of the report remains the same. Accordingly, following the introduction, the report is divided into four chapters. Chapter II defines major terms used in the report, to avoid potential misunderstanding and facilitate the translation of the report in local languages. Chapter III deals with the tax framework governing philanthropy in the EU countries in general, and in Germany, Poland and Slovenia in particular. Germany was chosen because of its traditionally strong influence on the legal systems of the South European countries. Poland and Slovenia were chosen as primers of the successful transformation from the state-run to market economy. In addition, Slovenia was chosen because of its strong historical, cultural, political and economic bonds with the countries of Southern Europe—which is also exemplified by the fact that the legal regime affecting philanthropy there gives rise to a number of issues mirroring the ones identified in the surveyed countries (infra, Chapters III., IV.). Equally important, the selected EU countries represent different models of addressing the issue of public benefit status/activities which is the centerpiece of any tax regime governing philanthropy. In Germany, the concept of public benefit is primarily a tax issue; in Poland

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1 The report is prepared by Dr. Dragan Golubović, permanent member of the Expert Council on NGO Law of the Conference of International NGO, which operates under the auspices of the Council of Europe.
there is a separate regulation governing public benefit organizations; and in Slovenia there is not a coherent concept of public benefit status. Chapter IV presents an analyses of tax law and CSO framework regulation as they impact on philanthropy in the countries concerned, exposing strengths and weaknesses of the current regime in place. Chapter V provides a summary of major findings of the analyses. The report takes into consideration pertinent legislation current as of December 2017.

II. NOTE ON TERMINOLOGY

Unless indicated otherwise, for the purpose of this report, the terms: "donations", "gifts" and "giving" (for public benefit/charitable purposes) are used inter-changeably, and are understood to represent a non-onerous agreement between the two parties in which one party (the donor) unilaterally commits to giving money or in-kind contribution to the other party (the recipient of donation - donee) for designated purposes i.e. to further the activities of the latter deemed for public benefit. Terms: "charitable", "benevolent" and "public benefit" purposes and activities are also used inter-changeably—and so are the terms: "taxable income" and "gross income". The term: "corporation" is understood to encompass all institutional forms of doing business which are recognized as legal entities in the surveyed countries. The term: "sponsorship" is understood to represent an onerous agreement between the two parties in which one party (the sponsor) commits to giving money or in-kind contribution to the other party in exchange for consideration (public acknowledgement or advertising of the sponsor, as set out in the sponsorship agreement). The term: "civil society organizations" (CSOs) is used in a general sense and interchangeably with the terms: "non-governmental organizations" (NGOs) and "organizations", and is understood to encompass all institutional forms which meet the following cumulative criteria: 1) they are established voluntarily by virtue of private law instruments (contract, decision on establishment), rather than by virtue of law; 2) they are established to pursue mutual or public benefit goals and activities, rather than generate profit; 3) they may be membership (universitas personam) or non-membership organizations (universitas rerum); 4) they are not part of the government structure, although they may be entrusted to perform some public services; 5) they are recognized as legal entities either by the framework regulation or by the tax law. Finally, the term: "CSO framework regulation" refers to law which governs the establishment, operations, internal governance, transformation and dissolution of CSOs (law on associations, foundations, private institutions, etc).
III. TAX REGIME AFFECTING PHILANTHROPY: EU COUNTRIES

1. General outline

The EU does not have jurisdiction over the issues of indirect taxation, but rather it falls under the jurisdiction of the member states. Nevertheless, in all EU member states corporations and individuals do enjoy tax benefits for giving to qualifying public benefit purposes. The only notable exceptions in this respect are Slovakia (for corporate and individual giving) and Lithuania (for individual giving). In most EU member states tax benefits are provided in the form of tax exemptions, while France, Lithuania and Hungary apply a tax credit system for giving by individuals. Tax benefits are provided for giving to qualifying public benefit purposes, irrespective of whether those purposes are carried by CSOs or public institutions. This approach is consistent with the principle of liberal political philosophy that nobody should have monopoly over public good: neither the government nor private actors. In most EU member states donations are recognized in the form of money, movable objects which carry monetary value, intellectual property, real estate and services (Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, the Netherlands). Among those countries, some recognize any kind of donation in the form of movable objects (Hungary), while other recognize donations in only certain kinds of movable objects; for example, Ireland recognizes only donations in securities. In some countries only donations in money are recognized (Finland, Belgium, and Italy). Tax benefits are provided not only for donors, but also for the recipients of donations: they are typically exempt from income tax on gifts received. As for CSOs, income generated from gifts is tax exempt if the following general conditions are met: 1) a CSO is registered as a public benefit organization (Poland, infra) or—in countries which do not have a distinct public benefit regulation—engage in activities which tax law deems for public benefit (Germany, infra); 2) it engages in activities deemed for public benefit directly and not through intermediary; and 3) it does not commit to any kind of consideration to a donor.

2. Germany

Corporate Income Tax. Corporations, associations, and foundations\(^2\) are exempt from the corporate income tax, as long as they are organized and operate for "public benefit, charitable, or church-related purposes" (Article 5 (1) No. 9, Corporate Tax Law). Following the breakthrough decisions of the European Court of Justice (ECJ) in the “Stauffer case”\(^3\) and the "Persche case”,\(^4\) respectively, public benefit organizations (PBOs) which operate outside Germany and which: (1) have their legal seat in one of the EU member states or in a

\(\text{\footnotesize \(^2\) The most common forms in which CSOs operate in Germany include associations, foundations, and limited liability corporations established to pursue public benefit purposes.}\)

\(\text{\footnotesize \(^3\) C-386/04, ECJ judgment of September 14, 2006.}\)

\(\text{\footnotesize \(^4\) C-318/07, ECJ judgment of January 27, 2009.}\)
country of the European Economic Area (Norway, Iceland, and Liechtenstein), and (2) which are tax-exempt in their domiciled countries according to regulations that are comparable to the German regulations (in terms of how they define public benefit purposes), are also granted tax exempt status on their income generated in Germany; this also means that giving to such an organization by a German taxpayer is deemed a deductible expense. This cross-border rule is now a norm in the EU, with few notable exceptions (see Croatia, IV. 2.).

Corporations may deduct up to 20 percent of their taxable (gross) income for donations to qualifying public benefit purposes (infra). Alternatively, they may choose to deduct up to 0.4 percent of the combined sum of their turnover, wages, and salaries. Donations exceeding the deductible limit may be carried forward to subsequent fiscal years. Donations are recognized in money, in-kind, real estate or any other goods with economic values, save for rights of usage and specific services.

**Personal Income Tax.** Individuals may deduct up to 20 percent of their taxable income to qualifying public benefit purposes (infra). Donations exceeding the deductible limit may be carried forward to subsequent fiscal years. In addition, an individual donor can deduct up to €1,000,000 for a donation to the endowment of a foundation with qualifying public benefit purposes. The deduction can be carried in the year the donation is made and/or divided over the following nine years. Donations can be in money, in-kind, real estate or any other good with economic values, save for rights of usage and specific services.

**Gifts Tax.** Gifts (donations which fall outside the realm of taxable income) to public benefit organizations are exempt from taxes. This exemption also applies to donations made to foreign organizations in cases of tax reciprocity.

**Inheritance tax.** A public benefit foundation is exempt from inheritance taxes if the inheritance is passed on it within two years after the succession (Article 13 section 1 No. 16 and Article 29 section 1 No. 4, Inheritance and Gift Tax Law).

**Public Benefit Status.** Public benefit status is governed by the General Tax Code (Abgabenordnung or AO), while tax benefits which pertain to the public benefit status are addressed in the Corporate Income Tax Law, Personal Income Tax Law and the Inheritance and Gifts Tax Law (supra). The Tax Code provides that CSOs are recognized as public benefit organizations (PBOs) and are entitled to the foregoing tax benefits if they engage in

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5 Transnational Giving Europe (TGE), European Foundation Centre (EFC), TAXATION OF CROSS-BORDER PHILANTHROPY IN EUROPÉ AFTER PERSCHE AND STAUFFER: From landlock to free movement? (2014), Chapter 5.1. Chart 4. p. 27.
"general public benefit" purposes/ activities (Gemeinnützige, Article 52, Tax Code); "charitable or benevolent" activities (mildtätige Zwecke), Article 53 Tax Code); or "church-related" activities (kirchliche Zwecke, Article 54, Tax Code).

A CSO is deemed to pursue general public benefit purposes if it seeks to support the general public: "materially, intellectually, or morally". The list of activities deemed for general public benefit, which is exclusive (numerus clausus) since 2007, includes the following categories: science and research, education, arts and culture, religion, international understanding, development aid, preservation of the environment and cultural heritage, support of youth or the aged, public health, amateur sports (including chess), support of democracy, care of soldiers and reservists, and the support of civic engagement. Additional purposes deemed for public benefit can be added to the list only by a specific administrative procedure. The beneficiaries of the foregoing activities must not be limited to a closed circle of people, such as members of one family or employees of one corporation.

A CSO is deemed to pursue "charitable or benevolent" purposes if it seeks to support and help people in need either because of their economic situation or because of their physical, psychological, or mental situation. "Church-related purposes" include the support to public law religious communities, construction of houses of worship, spiritual development, and religious education.

The Tax Code requires that PBOs must carry out their tax-privileged (public benefit, charitable, or church-related) purposes exclusively ("ausschliesslich", Article 56), directly ("unmittelbar", Article 57), and unselfishly or altruistic ("selbstlos" with "disinterest", Article 55). The organization is deemed to pursue its tax-exempt activities exclusively and directly not only through its employees, but also through free-lance consultants or other legal persons which may be contracted out for specific project-related assignments.

The public benefit status and the ensuing tax benefits are granted to a CSO if its by-laws specifies the organization’s purposes and states that they will be carried out according to the rules set out in the Tax Code. The tax benefit status is reviewed by tax authorities every three years. PBOs are not legally obliged to make their financial and activity reports available to public, but rather to tax authorities only.

Use of Donations. As a general rule, PBOs must use their income (including the one generated from donations) immediately (zeitnah) i.e. before the end of the year following the year of the accrual. If the organization fails to spend its income within this time frame, it carries the risk of taxes being levied on the unspent income. However, for (public benefit) foundations, there are several notable exemptions from the expenditure
requirements. Among others, foundations are allowed to build reserves up to one-third of the annual income from capital investment, and new foundations may build up their endowments during their first three years of operations. In addition, foundations can also build the so called "earmarked reserve" to finance specific projects which will need to be accomplished in a period between 3 to 5 years.

The law does not prescribe any monetary or percentage threshold with regard to the overheads of public benefit organizations. In assessing the ratio between overheads and direct project costs tax authorities apply the principle of proportionality.\(^6\)

3. Poland

**Corporate Income Tax.** Organizations which are granted public benefit status according to the Law on Public Benefit Activities and Voluntarism (infra) are exempt from paying corporate tax on their income as long as it is used to further their qualifying public benefit goals (Article 17.1c, Corporate Income Tax Law).\(^7\) As of September 2016, approximately 8,700 organizations have PBO status. Associations and foundations which do not apply or qualify for a PBO status are nevertheless exempt from paying income which they use to further their activities, provided they fall in certain categories, including science, education, culture, sports, environmental protection, support for technical infrastructure in rural areas, health care, social care, and charity (17.1.4, Corporate Income Tax Law). CSOs falling outside those categories—such as associations and foundations that neither qualify as PBOs nor pursue the foregoing statutory objectives—are generally subject to corporate tax on their income, including grants.

In 2002, Poland’s Supreme Court reversed a ruling of the Supreme Administrative Court which required that money invested by foundations in securities be subject to corporate income tax. As a result, a foundation’s investment of tax-free income in a range of securities, equities and other financial instruments, if managed by a professional investment corporation, is not subject to tax. Profits accumulated are not subject to tax either, provided that they are used exclusively to pursue public benefit activities (Article 17(1)(e), Corporate Income Tax Law).

Corporations may deduct up to 10% of their taxable (gross) income for giving to organizations conducting public benefit activities as defined in the Law on Public Benefit Activities and Volunteerism (infra), irrespective of weather the organization is granted a

\(^6\) Council on Foundations, Note on Germany, current as of December 2016, available at [http://www.cof.org/content/germany](http://www.cof.org/content/germany)

\(^7\) CSOs in Poland primarily operate in the form of associations and foundations.
public benefit status (Article 18 (1)(1), Corporate Income Tax Law). Donations may be in **money, shares, securities, real estate** and **other in-kind** contributions.

**Personal Income Tax.** Individuals may deduct up to 6 percent of their **taxable income** for giving to organizations conducting public benefit activities, under the same conditions which are prescribed for corporations (Article 26(1)(9a), Personal Income Tax Law). In addition, it can designate 1% of it tax base to public benefit purposes (Article 27, Law on Public Activities and Volunteerism).

**Gifts Tax.** CSOs are generally **not subject** to gifts tax.

**Public Benefit Status.** The status of "public benefit organizations" is governed by the Law on Public Benefit Activity and Volunteerism of 2003, which was subsequently amended in 2010, 2011, 2012, 2013, 2014 and 2015. In order to qualify for PBO status, a CSO must satisfy a number of requirements. First, it must be active in one of 24 areas which the Law deems for **public benefit.** This list differs in some respect from the one provided in the Law on Foundations. To minimize the risk of this discrepancy, new foundations commonly list activities from both laws to protect their PBO applications. The Council of Ministers may also designate additional public benefit activities by decree (Article 4(2), Public Benefit Law).

An organization applying for PBO status also must meet the following requirements:

- Organization must be involved in public benefit activity working for the benefit of the **entire society** ("public at large") or of **specific target group,** provided that this group is selected due to its particularly difficult situation, such as life or financial conditions, as compared to the rest of the society.
- Organization must be continuously involved in the public benefit activity for a minimum of **two years,** before applying for a PBO status; (Article 22, Public Benefit Law).
- If the organization engages in **economic activity,** that activity must be **ancillary** to the main activity, which must be for the public benefit.

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8 Social assistance, including aid offered to disadvantaged families and individuals, and ensuring equal opportunities to such families and individuals; professional and social integration and reintegration of persons threatened with social exclusion; charity work; preserving national traditions, sustaining Polish identity and developing national, civic, and cultural awareness; work to support national and ethnic minorities and regional languages; protection and promotion of health; work to support the disabled; promoting employment and professional activation of the unemployed and individuals threatened with job loss; promoting equal rights of women and men; work to support the elderly; promotion of economic growth and entrepreneurship; promotion of the development of new technologies, inventions and innovation transfer and implementation of new technologies, science, art, culture, etc.
• Surplus revenue remaining after costs are covered must be used for public benefit purposes.
• Apart from the managing board, the organization must have a separate authority dedicated to inspection and supervision.
• By-laws or other internal regulations of the organization must include provisions that prohibit engaging in certain acts specified by the law that would lead to a conflict of interest or fraud; and,
• Organizations that are legally formed as associations are prohibited from conducting public benefit activities only for the benefit of their members (Article 20, Public Benefit Law).

Joint-stock corporations, limited liability corporations, and sports clubs that have the legal form of corporations are eligible for PBO status if, in addition to satisfying the foregoing requirements, they are not-for-profit organizations, they invest their entire revenue in activities which further public benefit goals specified in their bylaws, and they refrain from offering a share in their income to their members, shareholders, and employees (Article 21, Public Benefit Law).

To apply for PBO status, an organization must submit the application form, the financial report, and its bylaws to the State Court Register (Article 22, Public Benefit Law). An organization obtains PBO status on the day it is notified by the State Court Register that it has fulfilled the criteria for such status.

Use of Donations. The law does not prescribe any time limit in which the income of the organization must be spent, and therefore it seems that the organization has some degree of discretion in this respect. Along with the annual tax return, a foundation must submit a list of all corporate and institutional donors who in the fiscal year donated a single gift of PLN 15 000 (approx. €3,750) or more, or donations and gifts of a total value of PLN 35 000 (€8,750) or more. This list including donors’ addresses is made to the public by a foundation. There is not general statutory requirement imposing cap on the overheads of the organization, but the Law on Public Benefit Activities imposes cap on remunerations to members of the supervisory board of the (public benefit) organization (Article 20(6)c).9

4. Slovenia

Corporate Income Tax. CSOs are generally exempt from corporate income tax, as long as they use their income to further their mutual or public benefit purposes. Corporations can deduct up to 0.3% of their taxable income for giving to humanitarian, social, scientific, sport, cultural, health, educational or religious purposes. Corporations are also exempt from giving to cultural purposes or to an organization established for protection from natural and other disasters, up to 0.2% of their taxable income. Donations can be in money or other property which has an economic value.

Personal Income Tax. Individuals can designate up to 0.5% of their taxable income for the above listed public benefit purposes, in money or other property.

Gifts Tax. CSOs that pursue religious, humanitarian, charity, health, social, educational, research, cultural, protection or rescue activities are exempt from gifts tax.

Public Benefit Status. There is no coherent regulation on the public benefit status. Rather, those provisions are scattered in the tax law and CSO framework regulation. An association that engages in public benefit activities may apply to the competent ministry for the status of an “association in the public interest” (Article 38, Law on Associations), which presumably gives the organization an easier access to state funds. Criteria for obtaining this status can vary depending on the ministry, though. Foundations and public institutes must pursue public benefit objectives as their primary activities. Foundations must pursue either charitable or “generally beneficial purposes,” defined as activities in the fields of science, culture, sport, education, health care, child and disabled care, social welfare, environmental protection, conservation of natural and cultural heritage, or religion (Article 2, Law on Foundations). Public institutes must provide “public services” in the spheres of education, science, culture, sports, health, social welfare, children’s care, care of the disabled, social security, or other not-for-profit activities (Articles 1 and 3, Institutes Law). Private institutes provide public services following the government’s approval. Some public benefit activities are regulated by special legislation, such as the Law on Humanitarian Organizations and the Law on Organizations for the Disabled, which set forth special procedures for obtaining public benefit status and define some of the rights and obligations that accompany such a status.

CSOs in Slovenia mostly operate in the form of associations, foundations and private institutes.
**Use of Donations**: There does not seem to be any specific statutory limitation as to the **time-frame** in which CSOs must spend their income. Nor does the law seem to set **specific threshold** for the overhead costs of the organization.  

**APPENDIX I: SUMMARY OF THE SURVEY OF EU COUNTRIES**

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<thead>
<tr>
<th></th>
<th>GERMANY</th>
<th>POLAND</th>
<th>SLOVENIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate donations:</td>
<td>Tax exempt in money, real-estate and other goods.</td>
<td>Tax exempt in money, in-kind and real estate.</td>
<td>Tax exempt, in money and other property.</td>
</tr>
<tr>
<td>Individual donations:</td>
<td>Tax exempt, in money, real-estate and other goods.</td>
<td>Tax exempt, in money, in kind and real estate.</td>
<td>Tax exempt, in money and other property.</td>
</tr>
<tr>
<td>Tax on gifts:</td>
<td>CSOs exempt.</td>
<td>CSOs exempt.</td>
<td>CSOs exempt.</td>
</tr>
<tr>
<td>Public benefit</td>
<td>Tax law.</td>
<td>Separate law (but</td>
<td>Various laws.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>status (PB):</strong></th>
<th><strong>PB status not a condition to enjoy tax benefits.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Statutory carry over rule for donations.</td>
<td>Yes.</td>
</tr>
</tbody>
</table>

**IV. TAX REGIME AFFECTING PHILANTHROPY IN THE SOUTHERN EUROPE**

1. **Bosnia and Herzegovina (BiH)**

The constitutional framework of BiH provides that issues related to direct taxation fall within the jurisdiction of the respective entities (Federation of BiH and Republik of Srpska). The central government does not have jurisdiction over those issues (income, gifts/inheritance taxes).

1.1. **Federation of BiH (FBiH)**

*Corporate Income Tax*. Civil society organizations\(^\text{12}\) are generally exempt from income tax as long as they use income to pursue *mutual* or *public* benefit activities as defined in their by-laws, rather than to generate profit (Article 4(1), c), Profit Tax Law).\(^\text{13}\)

In-country giving to humanitarian, cultural, educational, scientific and sport purposes are recognized as tax deductible expenses up to 3% of the *gross annual income* (Article 12 (3), Profit Tax Law). While the notion of *sport purposes* is used in general terms, the

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\(^{12}\) CSOs in the Federation of BiH operate in the form of associations and foundations.

\(^{13}\) "Official Gazette of Federation of BiH", No. 15/16.
reading of Article 1 of the Law suggests that donations to professional sport are not exempt from taxes. Nevertheless, there is a case for this issue to be clarified either by addressing it specifically in the Law, such was the case with the previous Profit Tax Law, or by issuing an opinion of the Ministry of Finance to that effect. Donations may be in money or in-kind contributions (Article 4(1), c), Profit Tax Law. Any not-for-profit entity (CSOs or public institution) is deemed eligible recipient of donations.

**Personal Income Tax.** The Income Tax Law\(^\text{14}\) provides that donations by individuals in "objects, goods and money" to cultural, educational, scientific, medical, humanitarian, sport and religious activities which are carried out by domestic "associations and other entities which operate pursuant to special regulations" are exempt from taxes up to 0.5% of the gross annual income. In addition, "donations exceeding the foregoing threshold may be tax deductible in full, following a decision of the line ministry on the implementation and financing of special programs and action furthering public benefit purposes, which fall out of the scope of regular activities of the recipient of a donation" (Article 15(6), 4, in connection with Article 27(3), 4).

**Gifts Tax.** The Federation of BiH does not have jurisdiction over gift and inheritance taxes, rather, this issue falls under the jurisdiction of the respective cantons.

**Public Benefit Status.** The concept of public benefit is not developed either in tax law or in the CSO framework regulation. As a result, CSOs which—by nature of their activities—qualify for tax-deductible donations do not appear to be subject to any additional statutory requirements (infra, issues to consider). Article 2 of the Law on Associations and Foundations only provides in this respect that an association or a foundation may be established to pursue mutual or public benefit goals.\(^\text{15}\)

**Use of Donations.** Tax law does not provide for a carry-over rule, which seems to suggest that a donation—in order to be tax deductible—must be utilized before the end of the fiscal year, and that a donation exceeding the percentage threshold prescribed in the Profit Tax Law and Personal Income Tax Law is not tax exempt if it is carried over to subsequent fiscal years, such is the case, for example, in Germany (supra, III. 1.). In addition, the law does not set any specific threshold or underlying principle with respect to the organization’s tax deductible overhead expenses (i.e. a portion of donation it is allowed to use to cover its legitimate expenses, supra, III. 1.). In addition, the law is silent on the issue of the so called institutional grants (i.e. donations which an organization pursuing activities deemed for public benefit may utilized for legitimate expenses as it sees fit, rather than for pre-defined

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\(^{14}\) “Official Gazette of the Federation of BiH”, No. 10/08, 9/10, 14/11.

\(^{15}\) “Official Gazette of the Federation of BiH”, No. 45/02.
designated purposes; this may include, for example, purchase of the office furniture or literature, paying for educational programs for the staff or staff retreat, etc.). These issues therefore should be addressed in a donation agreement. Nevertheless, the absence of statutory rules may give rise to the tax authorities’ unwarranted discretionary power to decide on those issues, even if they are duly addressed in the donation agreement.

Volunteering. A corporation may be a host of volunteer activities which do not fall under the category of long-term volunteering (Article 6, Law on Volunteering). The Law does not spell any additional conditions for a corporation as a host of volunteer activities, including whether it may host volunteer activities on its business premises.

Issues to consider:

- The list of public benefit activities set out in Article 12 (3) of the Profit Tax Law is exhaustive (numerus clauses), rather than illustrative, and overly narrowly construed. As a result, the Law does not deem activities aimed at, for example, strengthening democracy and the rule of law, protecting human and minority rights, fight against corruption, sustainable development, animal protection, environmental protection, promoting EU integrations, etc. as public benefit activities, and therefore corporate giving for those purposes are not recognized as tax deductible. The narrowly construed definition of public benefit activities in the Law needs to be viewed against the fact that some of the activities which are missed out represent constitutional values (such as democracy, human and minority rights and the rule of law), or are widely perceived as public benefit activities—and indeed addressed as such in various laws and strategic documents (combating corruption, environmental protection, animal protection, sustainable development, etc.).
- The Personal Income Tax Law also suffers from the narrowly defined and exhaustive list of activities deemed for public benefit. In addition, the concept of public benefit in the two laws differ to some extent. As a matter of sound regulatory policy, there should be harmonized list of activities deemed for public benefit which are eligible for tax-exempt donations, regardless of their sources (corporate or individual contributions).
- Tax law does not set out any specific conditions which a CSO must fulfill in order to qualify as the recipient of tax-exempt donations. This includes the lack of the

16 "Official Gazette of the Federation of BiH", No. 110/12.
18 The Law on Environmental Protection ("Official Gazette of the Federation of BiH", No 33/03, 39/09).
19 The Law on the Protection and Well-Being of the Animals ("Official Gazette of the Federation of BiH" No. 25/09).
requirement for a CSO—in order to qualify for tax-exempt donations—to serve "public at large" or certain social group as defined by its by-laws – as well as to carry its activities directly (see supra, III.1. Germany). These issues are not addressed in the CSO framework regulation either.

- Tax law is silent on the issue of carry-over donations, overhead expenses and institutional grants, thus giving the tax authority a great deal of unwarranted discretionary power to decide on those issues, even if those they are duly addressed in the donation agreement.

1.2. Republik of Srpska (RS)

*Corporate Income Tax.* Article 4(1), 4) of the Profit Tax Law provides *inter alia* that profit taxes are not levied on CSOs insofar as they use their income—including money and in-kind donations—to pursue their not-for-profit purposes as defined by the by-law. Article 16 of the Law provides that donations to humanitarian, social, cultural, and sport purposes are exempt from taxes up to 3% of the annual gross income. The reading of Article 3(1), 1) of the Law suggests that the notion of sport purposes in Article 4(1), point 4) does not entail professional sport. Nevertheless, there is a case that this issue be explicitly addressed either in the Law or the Ministry of Finance’s opinion to that effect.

*Personal Income Tax.* Article 17(2), point 3) of the Income Tax Law provides that sponsorship and in-country donations by entrepreneurs and those registered to pursue economic activities in the area of agriculture, forestry, fishery and independent professions are exempt up to 2% of the tax payer's gross annual income. Donations by other individuals which are subject to personal income tax are not exempt from taxes.

*Gifts.* CSOs seem exempt from taxes on gifts.

*Concept of Public Benefit.* The concept of public benefit is not developed in tax law, but rather in the CSO framework regulation. Article 8a of the Law on Associations and Foundations provides that an association may apply for the public benefit status if its activities are aimed at public at large or recognized segment thereof, in the areas of medicine, science, social and environmental protection, civil society, support to war veterans.

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21 A survey conducted by the foundation Mozaik and Catalyst Balkan in 2016 found that the lack of implementing regulation as well as the competent interpretation by tax authorities as to the exact type of expenditures which are deemed deductible, coupled with the lack of precise procedure for reporting on such expenditures, in particular hampers the development of corporate philanthropy in the Federation of BiH, in the eyes of the legal entities—tax payers. See Mozaik, Catalyst Balkans, *Enhancing the Corporate Philanthropy in Bosnia and Herzegovina: Improvements to the Legal Framework* (2016), p. 5.

22 "Official Gazette of the Republik of Srpska", No. 94/15.

23 "Official Gazette of the Republik of Srpska", No. 60/15.

24 "Official Gazette or the Republik of Srpska", No. 52/01, 42/05.
veterans, human and minority rights, assistance to the needy, promoting tolerance, culture, amateur sport, religious freedom and other areas deemed for public interest. Public benefit status is granted by the Government, following a proposal by the Ministry of State Administration and Local Self-Government. The procedure for granting the public benefit status, which makes an organization eligible to receive public funds too, is detailed in the Government’s Regulation on Granting Public Benefit Status.

**Use of Donations.** Tax law does not provide for a carry-over rule, which seems to suggest that a donation—in order to be tax deductible—must be utilized before the end of the fiscal year, and that a donation exceeding the prescribed percentage threshold may not be carried to the subsequent fiscal years. The prior Profit Tax Law specifically provided that donations exceeding the prescribed percentage threshold may be carried out in the next three fiscal years, in which case the tax-exempt percentage threshold is reduced accordingly for the amount of carry-over donations. Similar to the Federation of BiH, tax law in RS does not set any specific threshold with respect to the organization’s tax deductible overhead expenses and is silent on the issue of institutional grants.

**Volunteering.** The Law on Volunteering does not allow a corporation to be a host of volunteer activities, whatsoever (Article 7).

**Issues to consider:**

- The list of public benefit activities in Article 4(1) of the Profit Tax Law is exhaustive and narrowly construed, thus giving rise to the same kind of issues which are discussed with regard to the Federation of BiH Profit Tax Law (supra, IV.1.1.). Indeed, as compared to the Federation of BiH, the list of public benefit activities in the Profit Tax Law is even more narrowly construed and is not consistent with the list of public benefit activities in the Law on Associations and Foundations, which espouses a much broader concept of public benefit (supra). The implication of this is that an association which is granted public benefit status and which engage in public benefit activities out of the scope of Article 4(1) of the Profit Tax Law is not eligible recipients of tax-exempt donations, nor are donations to such an association tax deductible. In addition, the Law does not provide a clear-cut answer as to what in-kind donation entail: only donations in tangible objects, or also donation in services. Furthermore, the comparison between the

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25 “Official Gazette or the Republik of Srpska”, No. 89/13.
26 A survey carried by Mozaik and Catalyst Balkans reveals that the legal framework for corporate philanthropy in the Republic Srpska is plagued with similar issues as the one in the Federation of BiH (supra, note 2). See Mozaik, Catalyst Balkans, *Enhancing the Corporate Philanthropy in Bosnia and Herzegovina*, p. 6.
prior Profit Tax Law and the current one reveals that donations to educational purposes are no longer tax exempt. In this respect, the notion of social purposes referenced in Article 16 of the Profit Tax Law is typically narrowly construed so as to include some kind of material assistance to the needy and thus does not cover educational purposes.

- The 2015 Personal Income Tax Law, unlike its predecessor, is silent on the issue of public benefit activities to which donations are tax exempt. This suggests that donation to any CSO, irrespective of its purposes as defined in the by-laws (public or mutual benefit), is considered legitimate expense i.e. is tax deductible. As a result, there are overall three different concepts of public benefit, depending on the law in question: Profit Tax Law, Personal Income Tax Law, and the Law on Associations and Foundations, respectively. In addition, the Law does not provide a clear-cut answer as to whether in-kind donations are also deductible.

- Tax law does not set out any specific conditions which a CSO must fulfill in order to qualify as the recipient of tax-exempt donations. This includes the lack of the requirement for a CSO—in order to qualify for tax-exempt donations—to serve "public at large" or certain social group as defined by its by-laws – as well as to carry its activities directly (see supra, III.1. Germany).

- Tax law is also silent on the issue of carry-over donations, overhead expenses and institutional grants, thus giving the tax authority a great deal of unwarranted discretionary power to decide on those issues, even if they are duly addressed in the donation agreement.

APPENDIX II: SUMMARY OF OUTSTANDING ISSUES IN FBiH

<table>
<thead>
<tr>
<th>PROFIT TAX LAW:</th>
<th>INCOME TAX LAW:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Exhaustive and narrowly construed list of public benefit activities.</td>
<td></td>
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<tr>
<td>- No clear-cut answer as to what in kind donation entails.</td>
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<tr>
<td>- Discrepancy in the notion of public benefit as compared to the Income Tax Law.</td>
<td></td>
</tr>
<tr>
<td>- Lack of specific conditions for CSOs as recipient of tax exempt donations.</td>
<td>- Exhaustive and narrowly construed list of public benefit activities.</td>
</tr>
<tr>
<td></td>
<td>- No clear-cut answer as to whether the notion of donation entails in-kind donation.</td>
</tr>
<tr>
<td></td>
<td>- Discrepancy in the notion of public benefit as compared to the Profit Tax Law.</td>
</tr>
<tr>
<td></td>
<td>- Lack of specific conditions</td>
</tr>
</tbody>
</table>

27 Article 8(2), Profit Tax Law, "Official Gazette of the Republik of Srpska", No. 91/06, 57/12.
- *Issues* of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.

for CSOs as recipient of tax exempt donations.

- *Issues* of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.

### APPENDIX III: SUMMARY OF OUTSTANDING ISSUES IN RS

<table>
<thead>
<tr>
<th>PROFIT TAX LAW:</th>
<th>INCOME TAX LAW:</th>
</tr>
</thead>
</table>
| - *Exhaustive* and narrowly defined list of public benefit activities – giving to educational purposes no longer tax exempt.  
  - List of public benefit activities inconsistent with the Law on Associations and Foundations (*more narrowly construed*);  
  - *Lack* of specific conditions for CSOs as recipient of tax exempt donations.  
  - *Issues* of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues. | - CSOs irrespective of their goals (mutual or public benefit) seem to be eligible recipients of tax exempt donations.  
  - *Lack* of specific conditions for CSOs as recipient of tax exempt donations.  
  - *Issues* of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues. |

2. **Croatia**

*Corporate Income Tax.* Civil society organizations\(^{28}\) are **exempt** from profit tax as long as they pursue **public** or **mutual** benefit goals which are set out in the by-law (Article 2(6),

\(^{28}\) CSOs in Croatia operate in the form of associations, endowments, funds and private institutes.
Profit Tax Law). In-country donations ("gifts") to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are tax exempt up to 2% of the gross annual income in the preceding fiscal year. The tax exempt percentage may be higher, pursuant to a decision of the line ministry on financing particular programs and actions. Donations may be in money or in-kind (Article 7(7), Profit Tax Law).

Personal Income Tax. The new Income Tax Law, which came into effect on January 1, 2017, does not seem to recognize donations for public benefit purposes as deductible expenditures (Art. 32).

Gifts Tax. “Humanitarian associations” are exempt from gifts taxes. Other associations may also be exempt under certain conditions.

Public Benefit Status. The concept of public benefit is scattered in various pieces of legislation i.e. Profit Tax Law and framework regulation, and is not harmonized. The Law on Endowments and Funds provides that endowments and fund must engage in "public benefit" or "charitable" activities (Article 2(1)(2)). The Law contains a non-exhaustive list of permissible activities deemed for public benefit, which roughly mirrors the one in Profit Tax Law: cultural, educational, scientific, spiritual, sport, medical, ecological and other activities which are deemed for public benefit or which generally contribute to the well-being of the society (Article 2(3). Activities are deemed "charitable" if they are aimed at supporting the needy (Article 2(4), Law on Endowments and Funds). Activities which are deemed charitable or for public benefit must serve public at large or a defined segment thereof: professional, national, cultural, scientific, religious groups, etc (Article 2(5), Law on Endowments and Funds). On the other hand, Article 32(4) of the Law on Associations provides significantly broader non-exhaustive list of activities deemed for public benefit, as compared to the one in the Profit Tax Law and the Law on Endowments and Funds, but unlike the latter, it does not envisage additional conditions an association must meet in order to be recognized as an organization engaging in public benefit activities. Finally, the Law on Institutes provides that a private institute may be established in order to

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29 "Official Gazette", No. 177/04, with the latest amendments published in the Official Gazette No. 115/16.
30 "Official Gazette", No. 115/16.
31 Ministarstvo financija/Porezna uprava: Porezni priručnik za udruge, 2015, str. 61. Available at https://www.porezna-uprava.hr/HR_publikacije/Prirucnici_brosure/PP%20Udruge%20KB%202012%20WEB.pdf
32 See a study on the enabling tax environment for CSOs and public benefit organizations, which was prepared by the Institute for Public Finances and commissioned by the National Foundation for Civil Society Development (December, 2009) http://civilnodrustvo.hr/upload/File/hr/vijesti_i_priopcenja/priopcenja/2010/priopcenje_25_ozujak_2010.pdf
33 "Official Gazette", No. 36/95, 64/01.
34 "Official Gazette", No. 74/14.
35 "Official Gazette", No. 76/93, 29/97, 47/99, 35/08.
permanently pursue: "educational, scientific, cultural, information, sport and physical culture, technical culture, child care, medical, social protection, care of persons in need and other not-for-profit activities". (Article 1).

**Use of Donations.** Tax law does not address the issue of carry-over donations, institutional grants and legitimate institutional expenses of CSOs.

**Volunteering.** The Law on Volunteering does not allow a corporation to be a host of volunteer activities, whatsoever (Article 7).36

**Issues to consider:**

- Profit Tax Law recognizes only in-country donations to qualifying public benefit activities as legitimate expenses, which runs afoul the European Court of Justice decisions in the "Stauffer case"37 and the "Persche case"38

- There is a discrepancy in the notion of public benefit in the Profit Tax Law and the Law on Associations, which makes the case for the notion of public benefit to be expended in the tax law. Although the list public benefit activities in the Profit Tax Law is illustrative, rather than exhaustive, it does not solve the problem of CSOs which are engaged in activities not specifically recognized by the Law as public benefit activities, but are otherwise deemed for public benefit, because they are enshrined as such in the Law on Associations. It appears that those CSO may be eligible for tax-exempt donations only if the line ministry approves financing of their particular program or activity. As a matter of sound regulatory policy, the concept of public benefit should be harmonized, given that it basically serves the same underlying purpose (providing necessary resources for those engaged in activities deemed for public benefit).

- There is a lack of coherent policy among various laws not only with respect to the notion of public benefit, but also with respect to other conditions an organization must meet in order for its activities to be deemed for public benefit (supra, III. 1.). Additional conditions are only set in the Law on Endowment and Funds (supra), but not for associations, and not in the Profit Tax Law.

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37 C-386/04, ECJ judgment of September 14, 2006.
38 C-318/07, ECJ judgment of January 27, 2009.
39 TGE, EFC, TAXATION OF CROSS-BORDER PHILANTHROPY IN EUROPE AFTER PERSCHE AND STAUFFER: From landlock to free movement?, Chapter 5.1. Chart 4. p. 27.
• Profit Tax Law is silent on the issue of carry-over donations, overhead expenses and institutional grants, which gives the tax authority a great deal of unwarranted discretionary power to decide on those issues, even if those issues are duly addressed in the donation agreement.

• The new Income Tax Law does not seem to recognize donations for public benefit purposes as deductible expenditures.

APPENDIX IV: SUMMARY OF OUTSTANDING ISSUES IN CROATIA

<table>
<thead>
<tr>
<th>PROFIT TAX LAW:</th>
<th>INCOME TAX LAW:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Only in-country donations to qualifying public benefit activities recognized as legitimate expenses (<em>in contravention of the European Court of Justice rulings</em>).</td>
<td>- Donations to public benefit purposes do not seem to be recognized as deductible expenditures.</td>
</tr>
<tr>
<td>- Discrepancy in the notion of public benefit activities with the Law on Associations.</td>
<td></td>
</tr>
<tr>
<td>- Lack of specific conditions for CSOs as recipient of tax exempt donations.</td>
<td></td>
</tr>
<tr>
<td>- Issues of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.</td>
<td></td>
</tr>
</tbody>
</table>

3. Kosovo

*Corporate Income Tax.* "Non-governmental organizations" which are granted public benefit status pursuant to the Law on Freedom of Association in Non-Governmental Organizations (which conspicuously pertains not only to association as membership organizations, but also to foundations)\(^{40}\) are exempt from corporate income tax, as long as they use their income exclusively to further their public benefit purposes (Article 7(1) Corporate Income Tax Law).\(^{41}\)

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\(^{40}\) Law No. 03/L-134. NGOs in Kosovo operate in the form of associations and foundations.

\(^{41}\) Law No. 05/L-029.
Corporations can deduct up to 10% of their taxable income for in-country donations to humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes (Article 10(1), Corporate Income Tax Law). The eligible recipients of donations include NGOs which are granted public benefit status under the framework regulation and public institutions in the above stipulated areas (Article 10(2), Corporate Income Tax Law). An allowable deduction shall not include a contribution that directly or indirectly benefits the donor or related persons of the donor (Article 10(3), Corporate Income Tax Law). Taxpayers who make donations in particular fields may receive an additional allowance of up to 10% of their taxable income for deduction purposes, if so prescribed by separate laws (Article 10(5), Corporate Income Tax Law).

**Personal Income Tax.** Individuals can deduct for qualifying public benefit purposes under the same conditions which are set out for corporations (Article 28, Personal Income Tax Law).42

**Gifts tax.** Gifts are generally not subject to tax.

**Public Benefit Status.** The rules governing public benefit status are set out in the Law on Freedom of Association. An NGO which is granted the legal entity status may apply with the competent body for “public beneficiary status,” which entitles the organization to tax benefits (supra) and fiscal benefits, and subjects it to certain reporting requirements (Article 17, Law on Freedom of Association). An NGO organized and operated to undertake one or more of the following as its principal activity may apply for public benefit status: humanitarian assistance and relief, support for persons with disabilities, charity, education, health, culture, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, the promotion of gender equality, or any other activity that serves the public beneficiary (Article 17(1), Law on Freedom of Association).

NGO activities are deemed for public benefit only if significant benefits are provided free of charge or at less than fair market value to disadvantaged individuals or groups (Article 17(2), Law on Freedom of Association). An NGO with public benefit status must file annual financial and activity reports in order to retain that status (Article 18(1), Law on Freedom of Association). Special auditing requirements are prescribed for all NGOs whose annual income exceed roughly €100,000 (Article 18(9), Law on Freedom of Association). Public benefit status may be suspended should an NGO fail to file a complete annual report or the

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42 Law No. 05/L-028.
NGO no longer meets the requirements for public benefit status (Article 19 (1)(3) Law on Freedom of Association). If the status is suspended or revoked, an NGO must wait three years to apply again.43

*Use of Donations.* Tax law does not address the issue of carry-over donations, institutional grants and legitimate institutional expenses of CSOs.

*Issues to consider:*

- There is disconnect between the concept of public benefit activities in the tax law and the Law on Freedom of Association in that the former contains an exhaustive and narrow list of activities deemed for public benefit, as compared to the (non-exhaustive) list provided in the Law on Freedom of Association. As a result, an NGO which is granted public benefit status and which, for example, pursues any of the following activities: the promotion of human rights, the promotion of democratic practices and civil society, the promotion of gender equality, etc may be eligible to apply for public funds (“fiscal benefits”). However, donations to such an NGO would not qualify as tax-exempt, because tax law does not recognize any of those activities for public benefit.

- Tax law seems to be silent on the issue as to whether donations in-kind are also tax exempt.

- Tax law does not address the issue of carry-over donations, institutional grants and legitimate institutional expenses of CSOs. This may give the tax authority a great deal of unwarranted discretionary power to decide on those issues, even if they are duly addressed in the donation agreement. There is a case, therefore, that these issues be addressed in the implementing regulation, which the Corporate Income Tax Law envisages with respect to the implementation of Article 10 of the Law (Art 10(6), Corporate Income Tax Law).

43 Council on Foundations, Note on Kosovo, current as of June 2016, available at [http://www.cof.org/content/kosovo](http://www.cof.org/content/kosovo)
APPENDIX V: SUMMARY OF OUTSTANDING ISSUES IN KOSOVO

<table>
<thead>
<tr>
<th>CORPORATE INCOME TAX LAW:</th>
<th>PERSONAL INCOME TAX LAW:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Narrowly defined and exhaustive list of public benefit activities.</td>
<td>Narrowly defined and exhaustive list of public benefit activities.</td>
</tr>
<tr>
<td>- List of public benefit activities not consistent with the one provided in the framework regulation;</td>
<td>- List of public benefit activities not consistent with the one provided in the framework regulation;</td>
</tr>
<tr>
<td>- Not clear if donations in-kind are also tax-deductible;</td>
<td>- Not clear if donations in-kind are also tax-deductible;</td>
</tr>
<tr>
<td>- Issues of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.</td>
<td>- Issues of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.</td>
</tr>
</tbody>
</table>

4. Macedonia

*Law on Donations and Sponsorship.* The Law on Donations and Sponsorship of Public Benefit Activities (Law on Donations and Sponsorship) sets out a comprehensive framework for donations and sponsorship, including tax benefits provided for corporate and individual giving ([infra](#)). The Law has the status of general/subsidiary law (*lax generalis*) in respect to any other law (*lex specialis*) which may govern some aspects of donations and sponsorship (Article 5). Civil society organizations ("associations of citizens" and foundations)\(^{45}\) are eligible to receive donations if they engage in activities which support and promote public benefit purposes ([infra](#)). In addition to CSOs, other domestic legal entities, including public institutions, state bodies, and local municipalities may also be the recipients of donations (Article 3(1)7, 7(1), Law on Donations and Sponsorship). Exceptionally, foreign legal entities may also be the recipient of donations (Article 7(2), Law on Donations and Sponsorship).

The Law requires a donor and a recipient of donations to enter into an agreement in writing (*ad solemintatem*). The subject matter of the agreement may be donations in money, in-kind and services (Article 3(1)1). Any legal or natural person, domestic or

\(^{44}\) "Official Gazette of the Republic of Macedonia", No. 47/06, 86/08, 51/11.

\(^{45}\) CSOs in Macedonia operate mostly in the form of associations and foundations.
foreign alike, may be a donor insofar as his activities do not violate the Constitution, law and the international agreements of which Macedonia is the signatory (Article 6, Law on Donations and Sponsorship). At a donor's request, the Ministry of Justice, with the approval of the competent line ministry, will issue a decision which will confirm that a donation in question will serve public benefit purpose as defined by the Law. Originally, the Law provided that the Ministry must issue a decision within 15 days following the request; otherwise it was presumed that a positive decision was issued. However, the 2011 revisions to the Law introduced a more elaborate and time-consuming procedure in this respect (Article 21, as amended in 2011, Law on Donations and Sponsorship).

**Corporate Income Tax.** Corporations can deduct **up to 5%** of their **taxable income** for qualifying public benefit purposes (Article 14 (1), Law on Donations and Sponsorship).

**Personal Income Tax.** Individuals may deduct **up to 20%** of their **taxable income** for giving to qualifying public benefit purposes, but in any event may not deduct more than 24,000 denars, which is around **400 Euro** (Article 13 (1), Law on Donations and Sponsorship). However, with the 2009 amendments to the Personal Income Tax Law, which holds the employers responsible for paying personal income taxes of their employees, the foregoing tax exemptions practically apply only to giving by individuals who are not employed, but rather provide some free-lance, short term consultancy service, usually under international development projects. This has limited tax incentives for individual giving.

**Gifts Tax.** CSOs which engage in qualifying public benefit activities are exempt from gifts and inheritance taxes on goods and objects they receive, insofar they use them to further their **main** (not-for-profit) **objectives** (Article 16(1), Law on Donations and Sponsorship). Income generated from gifts is **not taxed** in the course of five years following the transfer of gift to the recipient (Article 16(2), Law on Donations and Sponsorship).

**Reporting requirements.** Both the donor and the recipient of donations are subject to specific **reporting requirements** with respect to given/received donations, the details of which are set out in the Law, which they have to file with the tax authority within 30 days following the execution of the agreement (Article 19(3), Law on Donations and Sponsorship). In addition, following the execution of the agreement, a recipient is obliged to issue to a donor a **receipt** in writing, the form of which is to be detailed by regulation issued by the Minister of Justice (Article 4, Law on Donations and Sponsorship).

**Public Benefit Status.** The Law on Donations and Sponsorship introduces somewhat confusing distinction between public benefit **activities** and public benefit **goals**. Public benefit activities are deemed activities in the following areas: human rights protection,
education, science, information-based society, culture, sport, medicine, social protection and protection of people with special needs, blood donation, child protection, animal protection, environmental protection, as well as other activities defined by law to benefit the public (Article 3(1)3). The notion of public benefit goals entails support to and encouragement of activities in the following areas: protection of human rights, promotion of culture, morality, education, science, development of information and knowledge-based society, sport, environmental protection, socio-humanitarian activities, civil society development, promotion of blood donation, promotion of international cooperation, as well as other activities defined by law to benefit the public (Article 2, 3(1)4, Law on Donations and Sponsorship).

On the other hand, the Law on Associations and Foundations provides for a comprehensive framework for granting the status of public benefit organization. A CSO may obtain the public benefit status if it "performs public benefit activities, implement programs and projects on central and/or local level, independently or in cooperation with state administration bodies and municipal bodies, the bodies of the municipalities in the City of Skopje and the City of Skopje, as well as if it uses financial resources for realization of its activities". (Article 73). The Law provides the list of public benefit activities, which is significantly broader than the one set out in the Law on Donations and Sponsorship (Article 74, Law on Associations and Foundations). A CSO shall obtain the status of public benefit organization if: it is registered in accordance with the provisions of this Law on Associations and Foundations; public benefit activity is the main income code in its operations; its activities and actions are directed at the general public and the interests of the community; it has the necessary organizational structure in accordance with this Law; it has human resources capacities required for the activity in accordance with law; it has appropriate financial resources, i.e. total assets or annual income amounting to least 1,500 Euro in denar equivalent according to the exchange rate of the National Bank of Macedonia; it has prescribed rules on conflict of interests and on providing transparency and publicity in its work; it is not in bankruptcy or liquidation and does not have blocked bank account (Article 75, Law on Associations and Foundations). A designated body, the Commission of Public Benefit Organizations, decides on granting the status of public benefit (Article 76,

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47 This include: development of democracy, civil society, and human rights; help and protection of the persons with physical or mental handicap, persons with developmental disabilities and persons with special needs; protection of children and youth; protection of marginalized persons and their social inclusion; protection from drug abuse, sexually transmitted diseases, juvenile delinquency, alcoholism, prostitution and human trafficking; health, health promotion and medical care; art, culture, and protection of cultural heritage; amateur sport; protection of the environment and sustainable development; local and infrastructure development; science, education, and training in the educational process; development of ethics and moral; humanitarian and social aid, reduction of poverty; disaster management; protection and care of animals; consumers’ protection; promotion of philanthropy and volunteering; and other public benefit activity determined by this or other law.
Law on Associations and Foundations). The Law envisages that public benefit organizations shall enjoy additional tax benefits, unlike CSOs which operate without the PB status, without further references in this respect (Article 88).

Use of Donations. The Law on Donations and Sponsorship does not address the issue of carry-over donations, institutional grants and legitimate institutional expenses of CSOs.

Volunteering. The Law on Volunteering does not allow for a corporation to be a host of volunteer activities, whatsoever (Article 6).48

Issues to consider:

- The approach to comprehensively address tax-exempt donations in one piece of legislation, the Law on Donations and Sponsorship, gives rise to a number of issues, some of them have been duly noted by key stakeholders in Macedonia.49 First, the Law prescribes excessive administrative requirements for the donor and the recipient of donation, including: entering into the agreement in writing; filling a report on the execution on donations; and filling a request with the Ministry of Justice to issue a decision on public benefit purpose on each and every donation. In addition, the implementation and supervision of the Law seems to incur significant costs on the supervising authority. While the underlying goal of those provisions is to ensure transparency and conformity, they do not meet the test of proportionality.50 Furthermore, as discussed above, there is somewhat confusing distinction between public benefit activities and public benefit goals in the Law. While the implications of this distinction do not seem clear, they should be viewed against the background of the Ministry of Justice’s discretionary power to decide on the public benefit nature of a particular donation. The Law is also silent on the issue as to whether in kind donations are tax deductible. Based on the information received from the local CSOs, tax authorities do recognize in kind donations as deductible. However, as a matter of sound regulatory policy, this issue needs to be clarified either by inserting specific revisions in the Law, or by virtue of implementing regulation or opinion in writing issued by the tax authority. Finally, there is the perceived lack of consistency within the line ministries when

49 See “Conclusions of the Committee of Culture of the Parliament of Macedonia” following the public hearing on implementation of the Law on Donation and Sponsorship of Public Benefit Activities, which was held from June 1 to 4, 2010, available at http://www.konekt.org.mk/web/en/philanthropy/legal-frame.html. A comprehensive analyses of the implementation of the Law is provided in Конект: “Анализа на спроведуването на Законот за донации и спонзорства во јавните делатности 2007-2011”. Скопје, март 2012.
50 See recommendation No. 7, 8 of the Committee of Culture Conclusions.
rendering a decision on the public benefit nature of a particular donation. A guidance on how to determine a public benefit nature of a donation would help the line ministries being more consistent in this respect.

- There is a discrepancy in the concept of public benefit in the Law on Donations and Sponsorship and the Law on Associations and Foundations in that the latter provides for a broader definition of public benefit. The implications of this appear as follows: 1) given that the Law on Donations and Sponsorship predates the Law on Associations and Foundations, in order for a CSO to be eligible for tax-exempt donations, suffice it that it is established to pursue any of the activities deemed for public benefit as set out in the Law on Donations and Sponsorship, regardless of whether the organization has obtained the public benefit status under the framework regulation. 2) If a CSO engages in goals which are listed as public benefit in the Law on Associations and Foundations, but not in the Donations and Sponsorship Law, the reading of pertinent provisions (Article 4(1), 3-4, Law on Donations and Sponsorship, Article 7(2), 86, Law on Associations and Foundations), suggests that it should nevertheless qualify for tax-exempt donations, even if it has not been granted the status of a public benefit organization. At least for tax purposes, given that the Law on Associations and Foundations envisages unspecified "additional tax benefits" for public benefit organizations which are yet to be realized, a CSO does not seem to have any initiative, whatsoever, to apply for the public benefit status and thereby be exposed to additional administrative and reporting burdens, without any perceived benefits arising from such a status.

- Tax incentives for individual giving are limited to non-employed (free-lancers, short-term consultants on international projects). This limits the potential for individual philanthropy. There should be a mechanism in place which would enable employees to deduct a portion of their gross income to qualifying public benefit activities, without necessarily replacing tax deductions with the tax credit system. For example, New Zealand has introduced the so called payroll giving, which enables an employee to approve donation from his income to a designated public benefit organization, which is then executed by an employer. Only employers who electronically file their employer monthly schedule and deduction form can choose to offer payroll giving to their employees.

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51 See recommendation No. 6 of the Conclusions.
52 See recommendation No. 9 of the Conclusions.
53 The working group commissioned by the Ministry of Justice several years ago was tasked with preparing amendments to the Law on Donations and Sponsorship, which would have filled in this gap in that it would have exempted donors to public benefit organizations registered under the Law on Associations and Foundations from a duty to file a request with the Ministry of Justice for each and every donation. However, that proposal never came to fruition.
- The Law on Donations and Sponsorship **does not** address the issue of **carry-over** donations, **institutional** grants and legitimate **institutional** expenses of CSOs. This may give the tax authority a great deal of unwarranted discretionary power to decide on those issues, even if they are duly addressed in the donation agreement.

### APPENDIX VI: SUMMARY OF OUTSTANDING ISSUES IN MACEDONIA

<table>
<thead>
<tr>
<th>LAW DONATIONS AND SPONSORSHIP:</th>
<th>LAW ON ASSOCIATIONS AND FOUNDATIONS:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- <em>Excessive</em> administrative requirements imposed on the donor and the done.</td>
<td>- <em>No clear tax benefits arising from the status of public benefit organization.</em></td>
</tr>
<tr>
<td>- <em>Overall</em> high and disproportional transactional costs for executing and supervising the use donations incurred on all parties involved (the donor, the recipient and the supervising authority).</td>
<td></td>
</tr>
<tr>
<td>- <em>Not</em> clear if in-kind donations are also tax deductible.</td>
<td></td>
</tr>
<tr>
<td>- <em>Concept</em> of public benefit somewhat confusing and not consistent with the CSO framework regulation;</td>
<td></td>
</tr>
<tr>
<td>- <em>Concept</em> of public benefit not consistently applied within the line ministries.</td>
<td></td>
</tr>
<tr>
<td>- <em>Issues</em> of carry-over donations, overhead expenses and institutional grants not addressed – unwarranted discretion of tax authority over those issues.</td>
<td></td>
</tr>
<tr>
<td>- <em>Tax</em> incentives for individual giving limited to non-employed.</td>
<td></td>
</tr>
</tbody>
</table>
5. Montenegro

*Corporate Income Tax.* Article 6(1) of the *Legal Entity Profit Tax Law* provides *inter alia* that "non-governmental organizations" are exempt from profit taxes. This includes both public benefit and mutual benefit organizations, insofar as they do not engage in direct economic activities (Article 6(2) and 32, Legal Entity Profit Tax Law). Article 14(1) of the Law, which was amended in 2016, provides that in-country donations ("expenses") to: "medical, social, educational, scientific, religious, cultural, sport and humanitarian purposes, for poverty reduction, environmental protection, protection of disabled persons, child and youth care, assistance to the elderly, protection and promotion of human and minority rights, rule of law, civil society and volunteer development, Euro-Atlantic and European integrations, art, technical culture, support to agriculture and rural development, sustainable development, consumers protection, gender equality, tackling corruption and organized crime as well as tackling addition, which do not exceed 3.5% of the gross annual income are exempt from taxes". The revised Article 14(1) is now *largely harmonized* with the concept of public benefit in the *Law on Non-Government Organizations (NGO Law, infra)* with one notable exception: the list of public benefit activities in the Legal Entity Profit Tax Law is an exhaustive, whereas the list in the NGO Law is illustrative one. Given the broad concept of public benefit now embraced in the Legal Entity Profit Tax Law, however, these conceptual differences are unlikely to pose an obstacle in nurturing corporate philanthropy in Montenegro. In addition, Article 14(2) of the Law now specifically provides that donations are recognized in money, goods, intellectual property and services.

*Personal Income Tax.* Article 24 of the *Personal Income Tax Law* provides that in-country donations ("expenses") to: "medical, educational, scientific, religious, sport, humanitarian and environmental protection purposes which do not exceed 3% of the gross annual income are exempt from taxes".

*Gifts.* NGOs are exempt from taxes on gifts.

*Public Benefit Status.* The concept of public benefit (or rather some elements thereof) is addressed in both the *Legal Entity Profit Tax Law (supra)* and the *NGO Law.* Article 32 of the NGO Law provides that funds shall be allocated in the state budget to support NGOs projects and programs in the following activities: social and medical care, poverty

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54 "Official Gazette of the Republic of Montenegro", No. 65/01, with latest amendments published in the Official Gazette No. 78/06
55 NGOs/CSOs in Montenegro operate in the form of associations and foundations.
56 "Official Gazette of Montenegro", No. 39/11.
57 "Official Gazette of the Republic of Montenegro", No. 65/01, with the latest amendments published in the Official Gazette No. 83/16.
reduction, protection of persons with special needs, children, youth and elderly care, promotion and protection of human and minority rights, rule of law, support to civil society and volunteer activities, support to Euro-Atlantic and European integration, institutional and informal education, science, art, culture and technical culture, environmental protection, agricultural and rural development, sustainable development, consumer protection, gender equality, addressing corruption and organized crime, prevention of drug addiction, as well as other goals and activities deemed for public benefit, as provided by separate law.

Use of Donations. Tax law does not address the issue of carry-over donations, institutional grants and legitimate overhead expenses.

Volunteering. The Law on Volunteer Work does not allow a corporation to be a host of volunteer activities, whatsoever (Article 5).58

Issues to consider:

- Tax law does not address the issue of carry-over donations, institutional grants and legitimate overhead expenses. As a result, tax authorities have a great deal of unwarranted discretionary power to decide on those issues, even if they are duly addressed in the donation agreement.
- There is a need to harmonize the Personal Income Tax Law with the Legal Entity Profit Tax Law with respect to the concept of public benefit activities, as there are no sound policy reasons for disparate public benefit concepts in the two laws.
- Tax law does not set out any specific conditions which a CSO (NGO) must fulfill in order to qualify as the recipient of tax-exempt donations. This includes the lack of requirement for a CSO—in order to qualify for tax-exempt donations—to serve "public at large" or certain social group as defined by its by-laws – as well as to carry its activities directly (see supra, III.1. Germany). These issues are not addressed in the NGO Law either.

58 “Official Gazette of Montenegro”, No. 26/10, 31/10, 14/12, 48/15.
APPENDIX VII: SUMMARY OF OUTSTANDING ISSUES IN MONTENEGRO

<table>
<thead>
<tr>
<th>LEGAL ENTITY PROFIT TAX LAW:</th>
<th>PERSONAL INCOME TAX LAW:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- <em>Issues</em> of carry-over donations, institutional grants and overhead expenses not addressed in the law – unwarranted discretionary power of tax authorities to decide on those issues.</td>
<td>- <em>Issues</em> of carry-over donations, institutional grants and overhead expenses not addressed in the law – unwarranted discretionary power of tax authorities to decide on those issues.</td>
</tr>
<tr>
<td>- <em>Lack</em> of specific conditions for NGOs as recipient of tax exempt donations.</td>
<td>- <em>List</em> of public benefit activities narrowly defined and not consistent with the Legal Entity Profit Tax Law and the NGO Law. <em>Lack</em> of specific conditions for NGOs as recipient of tax exempt donations.</td>
</tr>
</tbody>
</table>

6. Serbia

*Corporate Income Tax.* Article 1(1-4) of the *Legal Entity Profit Tax Law*\(^{59}\) exempts CSOs\(^{60}\) from income tax, as long as they pursue *public* or *mutual* benefit activities, as defined in the by-laws. Article 15(1), points 1-2 of the Law provides that legal entities may deduct in-country up to 5% of their *gross income* for giving to medical, educational, scientific, humanitarian, religious and sport *purposes* and humanitarian *assistance* in emergency situations, as well as for giving to (public) institutions of social protection and social service providers pursuant to the law governing social protection. The amendments to Article 15 of the Law—which occurred in 2015 and put on *equal footing* public institutions and CSOs which are social service providers—represent a healthy departure from the previous solution which discriminated CSOs against public institutions-social service providers; only donations to public institutions were deemed deductible expenditures. The reading of Article 1(3) of the Law seems to suggest that the notion of *sport* purposes in the Law does not pertain to *professional sport*, despite the fact that a number of prominent professional soccer clubs still operate as associations; that is because they are engaged in

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\(^{59}\) "Official Gazette of the Republic of Serbia", No. 25/01, 80/02, 43/03, 84/04, 18/10; 101/11; 119/12, 108/13, 68/14, 142/14, 91/15, 112/15.

\(^{60}\) CSOs in Serbia operate in the form of associations, endowments and foundations.
regular sell of their product and services on the market. Both CSOs and public institutions registered for the purposes enumerated in Article 15(1), 1-2) of the Law are eligible recipients of tax exempt donations insofar as they use donations to pursue their public benefit purposes (Art. 15(1), 3), Legal Entity Profit Tax Law). Expenses resulting from the “investment” in the area of culture and cinematography are also deductible up to 5% of the legal entity's gross annual income (Art. 15(3), Legal Entity Profit Tax Law). What is deemed investment in the field of culture is further detailed in the Regulation on the Investment in the Field of Culture Which are Deemed Deductible Expenses (Regulation).61 A CSO whose by-law envisages any of the cultural activities detailed in Article 3 of the Regulation is eligible to receive tax exempt donations. It is noteworthy that the Regulation predates the current Legal Entity Profit Tax Law, hence disparity between the two. Specifically, Article 1 of the Regulation refers to 1,5% tax deduction of the legal entity's gross income, rather than 5% as prescribed by the Law. However, given that a regulation cannot supersede law, provisions of Article 1 of the Regulation should be regarded as obsolete.

The Law is silent as to whether in-kind contributions may also qualify as tax-exempt donations.

Personal Income. The Personal Income Tax Law does not envisage any tax benefits for giving to public benefit purposes, whatsoever. 62

Gifts tax. Article 14(6), 3) of the Property Income Tax Law, provides that gifts not exceeding 100,000 RSD by a single donor are generally exempt from income taxes.63 Gifts to associations, foundations and endowments pursuing public benefit activities as defined in the respective framework regulation which exceeds the prescribed threshold are exempt from income taxes, insofar as they are used to pursue the organization’s (public benefit) purposes (Article 21(1), 5-5a), Property Income Tax Law). However, it has been reported that some tax authorities require CSOs to apply for tax exemptions on any given gift they receive exceeding the prescribed threshold, in order to be exempt from income taxes.

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61 "Official Gazette of the Republic of Serbia", No. 9/02.
62 "Official Gazette of the Republic of Serbia", No. 24/01; 80/02; 135/04; 62/06; 65/06 - correction., 31/09; 44/09; 18/10; 50/11; 91/11; 7/12; 93/12; 114/12; 47/13; 48/13; 108/13; 7/14; 57/14; 68/14; 5/15; 11/15; 5/16.
63 "Official Gazette of the Republic of Serbia", No. 26/01; 45/02; 80/02; 135/04; 61/07; 5/09; 101/10; 24/11; 78/11; 57/12 – decision of the Constitutional Court, "Official Gazette of the Federal Republic of Yugoslavia", No. 42/02, 47/13; 68/2014.
Public benefit status. The concept of public benefit status is not developed in tax law. Some elements of the concept are addressed in the CSO framework regulation with respect to CSOs that are eligible to receive state funds (infra).

Use of Donations. Tax law is silent on the issue of carry-over donations, legitimate overhead expenses, and institutional grants. In addition, some tax authorities unduly interpret the law as to prohibit the use of any portion of donations for overheads and consequently levy income tax on any portion of donation used to cover the organization's overheads.

Volunteering. The Law on Volunteering allows a corporation to be a host of volunteer activities, provided they are carried outside its business premises and approved by the Ministry of Labor and Social Affairs (Article 14).

Issues to consider:

- The Legal Entity Profit Tax Law gives rise to a number of issues: 1) The notion of public benefit activities in the Law is exhaustive, rather than illustrative, and is narrowly construed, which gives rise to the same kind of issues which are discussed in the prior country-specific sections (i.e. it does not correspond with constitutional values, statutory regulation and public perception of public benefit, see supra, IV. 1. 2.). 2) There is a discrepancy between the Legal Entity Profit Tax Law (Law), on one hand, and the Law on Associations and the Law on Endowments and Foundations, on the other hand, in that the latter provide for a much broader notion of public benefit (infra). 3) The Law does not specifically recognize in-kind donations as tax deductable. 4) The Law is silent on the carry-over of donations, institutional grants and legitimate overhead expenses. This may give rise to the unwarranted discretionary power of the tax authority to decide on those issues, even if they are duly addressed in the donation agreement. Absent specific statutory provisions, there is a case for the Ministry of Finance to issue a binding instruction to the Tax Authority with respect to these issues. 5) There is

65 According to the survey carried by the foundation Trag and Catalyst Balkans in 2016, 22% of surveyed corporations and 16.7% of small and medium sized businesses record giving to qualifying public purposes as other expenses, rather than deductible charitable expenses. One of the reasons for this practice is that the tax authorities require from a donor to submit not only a proof that it designated donation to a qualifying legal entity, but also a proof that the recipient of donation has utilized it in accordance to law. Trag, Catalyst Balkans, Enhancing the Corporate Philanthropy in Serbia: Improvements to the Legal Framework (2016), pp. 21-22.
66 The Law on Tax Procedure and Tax Administration ("Official Gazette of the Republic of Serbia", No. 80/02, 84/02, 23/03., 70/03, 55/04, 61/05, 85/05, 62/06, 63/06, 61/07, 20/09, 53/10, 101/11, 2/12. 93/12, 47/13) envisages that the
disparity between the Law and the Regulation governing investment in the field of culture in that the latter refers to 1.5% tax deduction from gross income, rather than 5% as provided by the Law.\footnote{67}

- The **Personal Income Tax Law** does **not** provide for any tax benefits for giving to public benefit purposes. While this approach departs from the regional and international best practices, given the current economic predicaments of Serbia, it is unlikely that providing tax benefits for giving by individual tax payers would markedly contribute to the strengthening of philanthropy. Nevertheless, a proposal to extend tax exemptions to giving by **entrepreneurs** is worth considering as a first step in the right direction.

- There are problems with the interpretation of the **Property Income Tax Law** in that the tax authorities occasionally require CSO to **file application** for tax exemption for each and every donation they receive. This practice does not have the basis in the Law and imposes significant burden on CSOs. In addition, the Law does not provide a **clear-cut** answer as to whether and under what conditions a gift may be used as **institutional grant** or to cover the organization’s **overhead** expenses.

- As already noted, the notion of public benefit in tax law is **more narrowly** construed than the one in the **CSO framework regulation**. Article 38 of the **Law on Associations** defines activities deemed for public benefit for which an association is eligible to apply for state, provincial and local governmental funds as follows: social security; care for disabled war veterans; care for persons with disabilities; social child care; care for internally displaced persons from Kosovo and Metohija and refugees; promotion of the birthrate; assistance to senior citizens; health care; protection and promotion of human and minority rights; education; science; culture; information dissemination; environmental protection; sustainable development; animal protection; consumer protection; combating corruption; as well as humanitarian aid programs and other programs whereby the association pursues public benefit purposes **directly** and **exclusively**. The wording of the Law suggests that the list of public benefit activities is illustrative, rather than exhaustive. While the Law does not elaborate on a notion **directly**, in practice it is interpreted in a similar fashion as is in Germany: a CSO is deemed to directly engage in qualifying public benefit purposes not only through its employees, but also through consultants and other legal entities contracted out for specific project related

\footnote{67 A surveyed carried by the foundation Trag and Catalyst Balkans revealed that the lack of implementing regulation as well as competent and often time conflicting interpretation of law by the tax authorities, coupled with the lack of a clear-cut procedure for claiming donation deductible expense in particular hampers the development of the corporate philanthropy in the eyes of legal entities-donors. Trag, Catalyst Balkans, Enhancing the Corporate Philanthropy in Serbia, pp. 4-5.}
services. Associations which receive public funds are obliged to make their activity report and the financial report available to public at least once a year (Article 38(7), Law on Associations). The definition of public benefit in the Law on Endowments and Foundations largely mirrors the one in the Law on Associations and is also illustrative, rather than exhaustive (Article 3). Foundations and endowments pursuing public benefit activities are eligible to apply for state, provincial and local governmental support, under the conditions set out in the Law on Associations. In addition, the Law on Endowments and Foundations provides that a foundation and endowment is deemed for public benefit if it serves public at large or selected professional, national, cultural religious or gender group, or if it supports people leaving in a defined geographic area (Article 3(2)).

APPENDIX VIII: SUMMARY OF OUTSTANDING ISSUES IN SERBIA

<table>
<thead>
<tr>
<th>LEGAL ENTITY PROFIT TAX LAW/PROPERTY INCOME TAX LAW:</th>
<th>PERSONAL INCOME TAX LAW:</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Narrowly defined and exhaustive list of public benefit activities <em>(not consistent with CSO laws).</em></td>
<td></td>
</tr>
<tr>
<td>- <em>In-kind</em> donations not specifically tax deductible.</td>
<td></td>
</tr>
<tr>
<td>- <em>Lack</em> of specific conditions for CSOs as recipient of donations.</td>
<td></td>
</tr>
<tr>
<td>- <em>CSOs</em> occasionally required to apply for tax exemptions for gifts they receive.</td>
<td></td>
</tr>
<tr>
<td>- <em>Issues</em> of carry over donations, institutional grants and overhead expenses not addressed – gives unwarranted discretionary power of tax authority to decide on those issues.</td>
<td></td>
</tr>
<tr>
<td>- <em>Portion</em> of donations used for overheads occasionally taxed.</td>
<td></td>
</tr>
<tr>
<td>- <em>Disparity</em> between the</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- <em>No</em> tax benefits for giving to qualifying public benefit activities.</td>
</tr>
</tbody>
</table>

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V. SUMMARY OF MAJOR FINDINGS AND RECOMMENDATIONS

The analyses reveal a number of positive features in the tax framework affecting philanthropy in the surveyed countries, notably:

- All countries generally exempt CSOs from income taxes, insofar as they are established and organized to pursue not-for-profit goals as defined by law.
- Most countries provide tax benefits, in the form of tax exemptions for giving by both corporations and individuals. Serbia (and apparently Croatia) stand out as countries which do not provide tax benefits for giving by individuals in any form or shape.
- All countries envisage gross annual income, rather than profits, as basis for calculating tax-exempt donations by corporations and individuals. This creates significant potential for corporate giving as source of income for CSOs, which is yet to be fully utilized.
- All countries put an emphasis on the nature of qualifying public benefit activities for which donations are given, rather than institutional tools of choice to engage in those activities. This puts on equal footing CSOs and public institutions as recipients of donations, which is consistent with the basic premise of the liberal political philosophy that no one should have monopoly over public good: neither public institutions, nor private actors.
- Some countries (BiH, Croatia), in addition to donations in money, specifically recognize in kind donations as tax deductible, while Macedonia also recognizes donations in services.
- All countries exempt gifts as source of income for CSOs, insofar as they are used for their not-for-profit goals.

The analyses also reveal a number of critical issues in the surveyed countries which call for further legislative and capacity building action, namely:

- The notion of public benefit goals/activities in tax laws in most countries surveyed, save for Montenegro, is typically narrowly construed and does not include hosts of areas and activities which are either enshrined in the respective constitutions, laws
or strategic documents as public benefit areas/activities, or are widely recognized by public as such. In addition, in some countries (e.g. BiH, Kosovo, Serbia) public benefit list is exhaustive, rather than illustrative.

- In all countries surveyed, save for Montenegro, there is a discrepancy between the notion of public benefit in tax law and in the CSO framework regulation. As a result, donations to CSOs which are granted the status of public benefit will not necessarily qualify as tax exempt, if they are given for purposes which are not specifically recognized by tax law as public benefit purposes. This calls for a debate as to what kind of regulatory framework for public benefit activities would suit best the countries concerned.

- Tax laws in the surveyed countries do not specifically prescribe rules governing carry-over donations, institutional grants and CSOs legitimate overhead expenses which are covered from donations. This gives the tax authority a great deal of unwarranted discretionary power to decide on those issues.

- Some countries, notably Macedonia, prescribe overly regressive administrative requirements with regard to donations, which renders the execution and supervision of donations prohibitively expensive.

- In some countries, notably Serbia, tax authorities interpret tax law in a fashion which require an organization to file the exemption request for each and every donation. In addition, they do not recognize overhead expenses covered from donations as tax deductable income, even if so is provided in the donation agreement. Such a practice is not substantiated by the letter of law.

- Given inconsistent implementation of tax laws reported in most of the countries surveyed, there is a need for ongoing education of tax authorities on the regulatory framework pertinent to philanthropy, as well as a need for the development of manuals, guidance and other capacity building and information tools (call centers, online tutorials, etc.) which would facilitate impartial implementation of tax laws as well as provide step-by-step instructions as to how to execute donation. The capacity building needs have been duly recognized in a number of strategic documents dealing with civil society (e.g. Montenegro, Serbia), as well as in the recent surveys carried in Bosnia and Herzegovina and Serbia.

- Finally, the issue of a corporation as a host of volunteer activities also merits consideration. Save for Serbia and to some extent Bosnia and Herzegovina (Federation of BiH), as well as Kosovo which does not have a volunteer law, the other countries concerned do not allow corporations to engage in volunteer activities.

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69 Mozaik, Catalyst Balkans, Enhancing the Corporate Philanthropy in Bosnia and Herzegovina: Improvements to the Legal Framework, 2016.

activities as defined by law. This issue needs to be put in the context of generally regressive framework for volunteer activities in all the countries concerned, which regards volunteering as a subset of labor relationship, rather than a private initiative, and renders the costs of volunteer activities prohibitively expensive for the host organization. Given the increasing role of the corporate volunteer activities in the overall scheme of corporate philanthropy, there is a case for **legislative changes** which will accommodate this trend, and which would allow corporations to host volunteer activities outside its business premises, provided other necessary conditions are also met.