

Slovenia

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I. Summary

A. Types of Organizations

The Republic of Slovenia is a civil law country with three primary forms of not-for-profit organizations (NPOs):

- Associations;
- Institutes, which can be private or public; and
- Foundations.

Two other special forms are humanitarian organizations and organizations for the disabled. Other not-for-profit legal forms, which are outside the focus of this Note due to their limited interactions with foreign grantmakers, include religious organizations, political parties, political movements, interest associations, trade unions, and professional chambers.

B. Tax Laws

Associations, institutes, and foundations do not pay corporate income tax on their not-for-profit activities, if they are established for not-for-profit purposes in accordance with the law. Each of these organizations, however, must pay corporate income tax on income derived from for-profit activities, even activities related to the organization's statutory purposes and activities. The VAT general rate is 20%. Certain goods and services are taxed at a lower rate of 8.5% and others, supplied by NPOs, are VAT-exempt.

Generally, donors can deduct contributions to NPOs that: 1) pursue humanitarian, social, scientific, sport, cultural, health, educational, or religious purposes; and 2) are registered to do so. The maximum deduction is 0.3% of all taxable income. Individuals can designate up to 0.5% of their income tax for financing public interest purposes. Gifts to NPOs are subject to inheritance and gift tax.

C. Import Duties

The European Union sets customs duties and exemptions for member states, including Slovenia, which has adopted an Act on the Implementation of the European Union Customs Provisions. Charitable and philanthropic organizations are allowed to import goods without paying customs duties. In addition, foundations and organizations are exempt from customs duties on articles imported for needy persons' education, employment, or social advancement.

II. Applicable Laws

- Constitution of the Republic of Slovenia, December 23, 1991
- Associations Law, no. 61/2006, 58/2009
- Institutes Law, nos. 12/91, 45/94, 8/96
- Law on Humanitarian Organizations, no. 98/2003
- Foundations Law, no. 70/2005
- VAT Law, no. 117/2006
- Act on Implementation of the European Customs Provisions, no. 25/2004
- Decree on Enforcement of the Right to Customs Duties Exemption, nos. 33/2004 and 125/2004
- Corporate Income Tax Law, no. 117/ 2006

- Personal Income Tax Law, no. 117/2006
- Real Estate Transaction Act, no. 117/2006
- Decree on Designation of a Part of the Income Tax, no. 30/2007
- Inheritance and Gift Tax Act, no. 117/2006

III. Relevant Legal Forms

A. General Legal Forms

Associations are by far the predominant non-governmental organization (NGO) form in Slovenia. Institutes and foundations are also common.

Associations

Associations are independent, not-for-profit, membership-based organizations established by founders to pursue common interests (Article 1, Associations Law). In general, associations are regulated by the Associations Law, although specialized associations such as political parties, political movements, churches, and religious organizations are regulated under separate legislation. Associations cannot be established for the purpose of generating a profit, although they may engage in economic activities that are related to their objectives and to the extent necessary to pursue their objectives (Article 25, Associations Law).

Institutes

Institutes are non-membership organizations that can conduct activities in the areas of education, science, culture, sports, health, social welfare, children's care, care of the disabled, social security, or other not-for-profit activities (Article 1, Institutes Law). Institutes fall into two categories: private institutes and public institutes.

Private institutes may be established by domestic or foreign legal entities (Article 2, Institutes Law). They may engage in economic activities intended to further their objectives (Article 18, Institutes Law).

Public institutes are required to engage in "public services," a term not defined in the law but construed to mean services available to the general public. Public institutes must be established by a public entity, such as a local municipality; other legal or natural persons may serve as co-founders (Article 3, Institutes Law). Public institutes are legal entities unless otherwise provided by law or by a municipal or city decision (Article 4, Institutes Law). [1]

Foundations

Foundations are grant-making, asset-based organizations established by foreign or domestic legal or natural persons (Article 4, Foundations Law) for generally beneficial or charitable purposes (Article 2, Foundations Law). "Generally beneficial" activities are those 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, Foundations Law). A foundation may engage in all activities necessary to advance its objectives or to promote itself, including economic activities (Article 2, Foundations Law).

B. Public Benefit Status

An association may receive the “status of an association in the public interest” from the relevant ministry that oversees its activities, if the association meets the ministry’s requirements.

Public institutes must provide "public services," or services available to the general public.

Ordinarily, private institutes are not subject to this requirement. A private institute may, however, seek permission from the relevant government authorities to provide public services. If permission is granted, the private institute becomes an "institute with public rights," and possesses the rights, obligations, and responsibilities of a public institute (Article 23, Institutes Law).

Foundations are required to engage in public benefit activities (Article 2, Foundations Law). Similar to private institutes, foundations can seek authorization to provide public services. If authorization is granted, a foundation possess the rights, obligations, and responsibilities of a public institute (Article 24, Institutes Law).

IV. Specific Questions Regarding Local Law

A. Inurement

An association may expend surplus funds from its statutory activities, or income derived from economic activities, only to advance its statutory activities (Article 24, Associations Law). No explicit restrictions aimed at preventing improper use of the organization’s assets exist for institutes (whether public or private). In addition, no legal limitations apply to associations or institutes regarding compensation rates or other indirect forms of inurement.

The income of a foundation must be spent exclusively on the realization of the foundation’s purposes (Article 27, Foundations Law). A foundation's board member is forbidden from participating in matters in which that person or his/her spouse or close relatives have an interest (Article 25, Foundations Law). Foundations are limited in how much they may remunerate board members for their work as well as for reimbursement of travel and related expenditures, as stipulated in the foundation’s governing documents. The ministry overseeing the foundation determines the limit of these expenditures. Other expenditures related to the foundation’s operations must not exceed the limits determined for public bodies (Article 26, Foundations Law).

B. Proprietary Interest

Distribution of any part of an association’s assets among its members is prohibited (Article 24, Associations Law). The Institutes Law and Foundations Law are generally interpreted to preclude the existence of proprietary interests, but this is not explicitly prohibited by the laws.

C. Dissolution

The resolution of an association commencing dissolution must name another similar-purpose association, institute, foundation, or other not-for-profit legal person to which the remaining assets will be transferred (Article 38, Associations Law). If a successor is not determined, the remaining assets are to be transferred to the local government. Assets may not be distributed among the association’s members (Article 24, Associations Law).

The Institutes Law does not address the distribution of assets upon liquidation. The founders may indicate in the governing documents how assets should be distributed. In the absence of any directions in the governing documents, remaining assets of an institute revert to the founder. The same dissolution practices apply to both private institutes and public institutes.

The remaining assets of a foundation are distributed to another foundation dedicated to the same purpose. In the absence of such a foundation, the assets should be distributed to one with a similar purpose (Article 32, Foundations Law). There is ambiguity, however, concerning the distribution of assets in the unlikely event that no foundation has similar objectives. Therefore, practitioners argue that it is possible that assets could be distributed to a private interest organization.

D. Activities

1. General Activities

Associations may engage in both mutual benefit and public benefit activities. Institutes may engage in any lawful not-for-profit activities that advance the goals listed in the law: education, science, culture, sports, health, social welfare, children's care, care of the disabled, social security, or other not-for-profit goals (Article 1, Institutes Law). Public institutes are required to provide services to the general public; private institutes ordinarily are not. Foundations are required to pursue public benefit objectives.

2. Public Benefit Activities

An association that engages in public benefit activities may apply to the appropriate ministry for the status of "an association in the public interest" (Article 31, Associations Law). Criteria for obtaining this status can vary depending on the ministry, though basic criteria are defined in the law. [2] Foundations and public institutes must pursue public benefit objectives as their primary activities. Specifically, 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, Foundations Law). 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 are obliged to provide public services only if they receive special authorization.

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 attaining public benefit status and define some of the rights and obligations that accompany such status.

3. Economic Activities

Associations may not be founded for the purpose of gaining profit (Article 1, Associations Law). They may only engage in economic activities to the extent necessary to achieve their primary purposes, and the economic activities must be specifically indicated in the association's governing documents and be related to the primary purposes of the organization (Article 25, Associations Law). Any earnings from economic activities must be used to promote the

association's statutory activities (Article 24, Associations Law). An institute, public or private, may engage in economic activities provided that they are intended to further the objectives for which it was formed (Article 18, Institutes Law). A foundation may engage in any activities necessary to promote or realize the purposes for which it was founded, including economic activities (Article 2, Foundations Law).

E. Political Activities

The Association Law forbids to establish an association whose purpose, aims or activities encourage violent constitution revision (Article 3, Association Act). This is the only restriction in connection to political activities of NGOs. In December 2010 new Integrity and Prevention of Corruption Act took effect. In Article 56 it regulates that lobbying activities may be performed solely by registered lobbyists, who can be only natural person. Lobbying activities for legal persons may be performed only by natural persons entered in the register of lobbyists in the Republic of Slovenia (Article 58). This means that NGOs can no more engage in lobbying activities by themselves, but are obliged to hire a lobbyist.

F. Discrimination

Article 14 of the Constitution guarantees individuals equal rights regardless of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, or social status. The Associations Law forbids to establish an association, whose purpose, aims or activities encourage national, racial, religious or other forms of inequality (Article 3, Associations Law).

G. Control of Organization

Natural and legal persons may be founders or members of an association (Article 8, Associations Law). Foreign natural and legal persons are explicitly allowed to establish foundations (Article 4, Foundations Law) and private institutes (Article 2, Institutes Law), and to co-found public institutes with a public entity. Slovenian legislation does not in any way restrict for-profit entities from establishing or controlling institutes or foundations. Therefore, it is possible that a Slovenian NPO may be controlled by a for-profit entity or an American grantor charity.

V. Tax Laws

The following section discusses relevant tax legislation, recognizing that taxes may affect the amount of the grant actually flowing to the grantee.

A. Tax Exemptions

Institutes, associations, and foundations do not pay corporate income tax on their not-for-profit activities, if they were established for not-for-profit purposes in accordance with the applicable law, and if their activities are carried out in accordance with their purposes (Article 9, Corporate Income Tax Law). Each of these organizations, however – including public institutes – must pay corporate income tax on income derived from for-profit activities, even if the activities are related to the organization's statutory purposes and activities.

Income from profit and not-for profit activities is defined by special rules adopted by the Ministry of Finance. Under these rules, an activity is considered for-profit, if at least one of the following conditions is fulfilled: 1) the activity is performed on the market with the goal of generating a profit; or 2) by engaging in the activity, the organization competes on the market with other taxpayers.

Income from not-for profit activities include, *inter alia*, income from donations, membership fees, and the performance of public services.

Income earned from the following sources is considered for-profit: dividends, the sale of goods and services (including the sale of food and drink to members and non-members of an organization), rent, the sale of underlying assets, participation fees for events organized by NGOs, and income from lotteries and other gaming activities organized by NGOs.

B. Deductibility of Charitable Contributions

Entities can deduct donations to organizations that: 1) pursue humanitarian, disability, social, charity, scientific, sport, cultural, health, educational, ecological or religious purposes; and 2) are registered to pursue said activity as not-for-profit activity. Donations can be given in money or other property. The maximum deductible amount is 0.3% of the donor's taxable income for the fiscal year in question with the max limit of the total tax base. An additional deduction of up to 0.2% of taxable income can be taken if the donation is made for cultural purposes or to an organization established for protection from natural and other disasters. Donations that exceed this percentage are not treated as tax deductible. Individuals liable for personal income tax can designate 0.5% of their tax owed for financing activities in the public interest or for financing political parties or representative trade unions. [3]

Beneficiaries exempt from inheritance and gift tax include "legal private person established for religious, humanitarian, charity, health, social, educational, research, cultural, protection or rescue activities if gift or inheritance is given to perform such activities." Other taxes, including value added tax and motor vehicle tax, may be owed even when a gift is exempt from inheritance or gift tax.

C. Customs Duties

As a member of the EU, Slovenia has adopted an Act on the Implementation of the European Union Customs Provisions. Charitable and philanthropic organizations are allowed to import goods without paying customs duties. The organization must submit a statement that the goods will be used only for the purposes for which they were imported and a confirmation from the Ministry of Interior that the organization is registered to conduct charitable or philanthropic activities. In addition, foundations and organizations are exempt from customs duties on articles imported for needy persons' education, employment, or social advancement. Such organizations must submit a confirmation of their status from the Ministry of Labour, Family and Social Affairs.

D. Value Added Tax

1. Exemptions

Foreign donations are exempt from VAT. In addition, five categories of goods and services are exempt from VAT:

a) Activities of public interest, including but not limited to, the following:

- hospital and medical care and directly related activities carried out by the public health service or its concessionaires;
- social services and directly related goods provided by public social institutions, their concessionaires, or not-for-profit organizations such as charities and organizations for self-help for handicapped people;
- goods and services closely related to child and youth care provided by public institutions, their concessionaires, or charitable organizations;
- vocational training and nursery, school, and university education, including closely related goods and services, provided by public institutions or others;
- goods and services provided by not-for-profit organizations with political, trade union, religious, patriotic, philosophical, humanitarian, or civil aims, in return for a membership fee, unless such exemption would distort competition;
- sport or physical education activities provided by not-for-profit organizations;
- cultural activities and related goods provided by public institutions and other cultural establishments recognized by public authorities; and
- goods and services provided in connection with occasional fundraising events on behalf of organizations that perform exempt (above-mentioned) activities, unless such exemption would distort competition.

The supply of indicated goods or services is not exempt if:

- it is not essential to the transaction exempted, or if the exempted activities can be provided without the goods or services; or
- the basic purpose is to obtain additional income in direct competition with taxable entities liable for VAT.

The supply of all above-mentioned goods and services (except occasional fundraising events) by organizations, that are not public bodies, is exempt from VAT under the following conditions:

- the purpose is not to obtain profit, and any profit that results will be allocated to providing the goods and services, or improving their provision, and will not be distributed;
- the organization is managed mostly on a voluntary basis by persons with no direct or indirect interest in the results of these activities;
- the organization charges prices accredited by the public authorities, or, if approval is not needed, charges prices no higher than this and no lower than prices charged by taxable persons; and
- it is not likely that the exemption would distort competition, such as by giving taxable persons a less favorable position in the market (Article 26, VAT Law).

b) Other activities: insurance and reinsurance, immovable properties except newly constructed immovable property, letting of residential houses and apartments, financial services, tax stamps and similar stamps, betting, gambling, and lotteries.

c) Import of certain type of goods, including the following:

- certain goods, donated free of charge and without any commercial intention to public authorities or to charitable or philanthropic organizations, for free distribution to the needy;
- certain goods, imported by public authorities or by charitable or philanthropic organizations, for free distribution to victims of disasters or wars or to be made available to such victims while remaining the property of the importing organizations; and
- certain goods for educating, training, or employing the handicapped, if they were donated free of charge and with no commercial intention, and if they were imported directly by an organization that will use them.

d) Export of goods and international transport.

e) Special exemptions linked to the traffic of international goods.

Taxpayers' donations for humanitarian, cultural, scientific, health, educational, sport, and religious purposes, paid to organizations established for performing these activities, are not subject to VAT except when the amounts represent payment for goods or services. [4]

2. Rate

The general rate is 20%. Some goods and services are taxed at a lower rate of 8.5%.

3. Exclusion

Legal persons are not liable to VAT taxation if the value of their taxed transactions during the previous 12 months does not exceed, or is unlikely to exceed, EUR 25.000.

E. Property Tax

NPOs are not exempt from paying real property transaction taxes. The standard rate is 2% of the value of the real estate.

F. Double Tax Treaties

There is a double tax treaty between the United States and Republic of Slovenia.

VI. Knowledgeable Contacts

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Footnotes

[1] Public institutes also can be created under state administration regulations or by municipal/city decision; this Note, however, is limited to public institutes established and governed pursuant to the Institutes Law.

[2] Associations and any other legal forms can also apply for public status under Article 28 of the Institutes Law if the applying organization engages in the same services as a public institute. A license is required from the appropriate ministry to receive status under the Institutes Law, the length and terms of which depend on the authorizing ministry. This status does not grant any tax benefits.

[3] The Personal Income Tax Law defines public interest purposes as humanitarian purposes (including human rights protection), protection from natural and other disasters, disability, charitable, ecological, cultural, sporting, religious, and other purposes. Eligible beneficiaries under the government Regulation on Designation of a Part of the Income Tax are: associations that acquire the status of an association in the public interest; associations that acquire the status of a disability organization; associations and other organizations that acquire the status of a humanitarian organization; institutes in the public interest in the fields of tourism, environmental protection and culture; foundations; religious communities; political parties and representative trade unions. As of April 2007 there were approximately 3,500 beneficiaries on the list (managed by the Ministry of Finance).

[4] A taxpayer must pay an entry tax on goods and services, even if those goods and services will later be used in transactions that are exempt from VAT. NGOs operating in areas in which the payment of VAT is exempted thus pay an entry VAT. Although they cannot avoid this, they may not add it to the price when charging for their goods or services. In addition to this they must, like any other taxpayer, keep complete records as provided by law, because an NPO itself is not exempt, although its activity is.