TAX LAWS AFFECTING PHILANTHROPY IN THE COUNTRIES OF SOUTH-EASTERN EUROPE

Budapest, august, 2013.

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I. INTRODUCTION

This report presents the analyses of tax laws affecting philanthropy in the countries of South-East Europe that is, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia.[1] It 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 addition, the report addresses the **framework regulation** for civil society organizations (CSOs) in those countries, insofar as they may impact on the tax regime governing philanthropy. Those laws are analyzed against the background of legal regimes in a selected number of EU countries (*infra*, Chapter 3). Finally, the report briefly outlines the legal regime for corporate **volunteer activities**, given their increasing role in the overall framework for corporate philanthropy. 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** affecting philanthropy in the **EU countries** in general and in Germany, Poland and Slovenia in particular. Germany is chosen because of its traditionally strong influence on the legal systems of the South European countries. Poland and Slovenia are chosen as primers of successful transformation from the state-run to market economy. In addition, Slovenia is chosen because of its strong historical, cultural, political and economic bonds with the countries of South-Eastern Europe—which is also exemplified in the fact that the tax 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, these 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 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 the analyses of **tax laws** and **CSO framework** regulation as they affect philanthropy in the countries concerned, exposing strengths and weaknesses of the current tax and overall legal regime in place. **Chapter V** provides a summary of **major findings** of the analyses.

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 two parties in which one party (the donor) unilaterally commits to giving money or in-kind contribution to the other party (the donee), to further the activities of the latter deemed for public benefit. The terms "**charitable**", "**benevolent**", and "**public benefit**" purposes and activities are also used inter-changeably—and

[1] The report is prepared by **Dr. Dragan Golubović**, permanent member of the Expert Council on NGO Law of the Conference of International NGOs, which operates under the auspices of the Council of Europe.

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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 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/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 tax law. Finally, the term: "**CSO framework regulation**" refers to laws which govern the establishment, operations, internal governance, transformation and dissolution of CSOs (laws 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 **direct taxation**, but rather they fall 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 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, 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, 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 exempt from taxes 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 the **tax law** deem for public benefit (Germany, i*nfra*); 2) it engages in activities deemed for public benefit

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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 **exempted** 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" respectively,[4] 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 country of the European Economic Area (Norway, Iceland, and Liechtenstein), and (2) which are tax-exempted 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 cross-border rule is now a **norm in the EU** and pertains to other member-states as well.

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 **exempted** from taxes; this exemption also applies to donations made to **foreign organizations** in cases of tax reciprocity.

Inheritance tax. A **public benefit foundation** is **exempted** 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).

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[2] The most common forms in which CSOs operate in Germany include associations, foundations, and limited liability corporations established to pursue public benefit purposes.

[3] C-386/04, ECJ judgment of 14 September, 2006.

[4] C-318/07, ECJ judgment of January 27, 2009.

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Public Benefit Status. Public benefit status is governed by the **General Tax Code** (*Abgabenordnung* or AO), while tax benefits which pertain to public benefit status are addressed in the Corporate Income Tax Law, the Personal Income Tax Law and the Inheritance and Gifts Tax Law respectively (*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 "**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** 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. 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 accompanying tax benefits are granted to a CSO if its by-laws specify 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

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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**.[5]

3. Poland

Corporate Income Tax. Organizations which are granted public benefit status according to the Law on Public Benefit Activities and Voluntarism (*infra*) are **exempted** 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).[6] Associations and foundations which **do not apply** or qualify for a PBO status are nevertheless **exempted** 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 whether the organization is granted a 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.

[5] USIG note on Germany, current as July 2010, available at http://usig.org/countryinfo/germany.asp#exemptions European Foundation Center (EFC) Country Profile: Germany, current as of January 2011, available at http://www.efc.be/programmes_services/resources/Documents/germany.pdf

[6] CSOs in Poland primarily operate in the form of associations and foundations.

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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, and 2012. 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**.[7] 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:

- the 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;
- the 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;
- the surplus revenue remaining after costs are covered must be used for **public benefit** purposes;

[7] 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.

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- apart from the managing board or authority, the organization must have a **separate authority** dedicated to inspection and supervision;
- the 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 by-laws 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 addressing this issue. 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 PLN15 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. [8] 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).

4. Slovenia

Corporate Income Tax. CSOs are generally **exempted** from corporate **income tax**, as long as they use their income to further their mutual or public benefit purposes.[9] 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 exempted from giving to cultural

[8] USIG note on Poland, current as of July 2012, available at http://usig.org/countryinfo/poland.asp EFC Country Report: Poland, current as of January 2011, available at http://www.efc.be/programmes_services/resources/Documents/poland.pdf

[9] CSOs in Slovenia mostly operate in the form of associations, foundations and private institutes.

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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 **exempted** from gifts taxes.

Public Benefit Status. There is no **coherent regulation** on the public benefit status. Rather, those provisions are scattered in tax law and CSO framework regulation. 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 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.

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. [10]

[10] USIG note on Slovenia, current as of September 2012, available at http://usig.org/countryinfo/PDF/Slovenia.pdf

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APPENDIX I

SUMMARY OF THE SURVEY OF EU COUNTRIES

	GERMANY	POLAND	SLOVENIA
Corporate donations:	Tax exempt in money, real-estate and other goods.	Tax exempt in money, in-kind and real estate.	Tax exempt, in money and other property.
Exempt income:	Gross income.	Gross income.	Gross income.
Individual donations:	Tax exempt, in money, real-estate and other goods.	Tax exempt, in money, in kind and real estate.	Tax exempt, in money and other property.
Exempt income:	Gross income.	Gross income.	Gross income.
Tax on gifts:	CSOs exempt.	CSOs exempt.	CSOs exempt.
Public benefit status (PB):	Tax law.	Separate law (but PB status not a condition to enjoy tax benefits).	Various laws.
Minimum activity threshold:	Yes.	Yes.	No.
Statutory carry over rule for donations:	Yes.	No.	No.
Statutory overhead rules:	No.	No.	No.

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IV. TAX REGIME AFFECTING PHILANTHROPY IN THE SOUTH 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 Republic of Srpska). The central government does not have jurisdiction over those issues (income, gifts/inheritance taxes).

1.1. Federation of BiH

Corporate Income Tax. Civil society organizations[11] are generally exempted from income tax, as long as they pursue **mutual** or **public** benefit activities as defined in their by-laws (Article 2, 3 of the Legal Entity Profit Tax Law). [12]

In-country giving to "humanitarian, cultural, educational, scientific and sport purposes (save for professional sport)" are recognized as tax deductible up **to 3%** of the **gross annual income** (Article 11 (2), Legal Entity Profit Tax Law). Donations may be in **money** or **in-kind** contributions (Article 3(3), Legal Entity Profit Tax Law. The Law does not address the issue of **institutional grants** to OCD which engage in the foregoing purposes.

Personal Income Tax. The Income Tax Law[13] 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 in-country "associations and other entities which operate pursuit 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 deductable 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). Donations may be in **money** or **in-kind** contributions (Article 27(3), 4). The issue of **institutional grants** to associations and other CSOs is not addressed in the Law.

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. The Property Law of the canton of Sarajevo (which is the largest canton in the Federation of BiH), **does not** envisage taxes levied on **gifts** (Article 3).

Public Benefit Status. The concept of public benefit is **not developed** neither in tax law nor in the CSO framework regulation, including the issue of the legitimate beneficiaries of CSO public benefit

[11] CSOs in the Federation of BiH operate in the form of associations and foundations.
[12] "Official Gazette of Federation of BiH", No. 97/07, 14/08, 39/09.

[13] "Official Gazette of the Federation of BiH", No. 10/08, 9/10, 14/11.

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services. As a result, CSOs which by nature of their activities qualify for tax-deductable 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. [14]

Use of Donations. Tax law **does not** provide for **a carry-over** rule, nor does it set out a specific threshold with respect to the organization's overhead expenses.

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).[15]

Issues to consider:

- The list of public benefit activities set out in Article 11 (2) of the **Legal Entity Profit Tax Law** (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, fight against corruption, sustainable development, animal protection, environmental protection, etc as public benefit activities, and therefore corporate giving to those purposes are not recognized as tax deductible. This 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 rule of law, democracy, etc), or are widely perceived as public benefit activities (combating corruption, environmental protection, animal protection, etc).

- In addition, the Profit Tax Law **does not** set out any **specific conditions** which a CSO must fulfill in order to qualify as recipient of **tax-exempt** donations. This includes the lack of the requirement that CSOs, in order to qualify for tax-exempt donations, must serve public at large or certain social group as defined by its by-laws—and that they must carry their activities directly (see *supra*, III.1. Germany). These issues are not addressed in the CSO framework regulation either.

- The Law does not address the issues of **institutional grants** to CSOs and **carry-over** donations, as well as permissible **overhead** expenses. These issues may be addressed in a donation agreement. However, in the absence of statutory rules, the tax status of institutional grants and carried over donations, as well as portion of donations used to cover overheads, remains unclear, nevertheless.

[14] "Official Gazette of the Federation of BiH, No. 45/02".
[15] "Official Gazette of the Federation of BiH, No. 110/2012.

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- The **Personal Income Tax Law** gives rise to the similar set of issues as does the Profit Tax Law: a narrowly defined and exhaustive list of activities deemed for public benefit; the lack of specific requirements for CSOs in order to be eligible for tax-exempt donations; and, the lack of specific rules with respect to institutional grants, carry over donations and overhead expenses. In addition, the list of public benefit activities in the Profit Tax Law and Personal Income Tax Law **are not** entirely **harmonized.** As a matter of sound regulatory policy, there should be a single list of activities deemed for public benefit which are eligible for tax-exempt donations, regardless of their sources (corporate or individual contributions).

- As already stated, the Law on Volunteering allows a corporation to host volunteer activities, other than those which are defined as long term volunteer activities. However, the Law does not specify any particular conditions in this respect, and therefore it seems that a corporation may host volunteer activities on its business premises, too.

APPENDIX II

SUMMARY OF OUTSTANDING ISSUES IN THE FEDERATION OF BIH

PROFIT TAX LAW/VOLUNTEER LAW:	INCOME TAX LAW:
- Exhaustive and narrowly defined list of public benefit activities; - Discrepancy in the notion of public benefit as compared with the Income Tax Law; - No specific conditions for CSOs as recipient of donations; - The issues of institutional grants to CSOs, carry-over donations and overhead not specifically addressed in the law; - Corporations seem allowed to host volunteer activities on their business premises.	- Exhaustive and narrowly defined list of public benefit activities; - Discrepancy in the notion of public benefit as compared with the Profit Tax Law; - No specific conditions for CSOs as recipient of donations; - The issues of institutional grants to CSOs, carry-over donations and overhead not specifically addressed in the law.

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1.2. Republic of Srpska.

Corporate Income Tax. Article 4 (2) of the Profit Tax Law[16] provides *inter alia* that profit taxes are not levied on income generated by "public institutions and **humanitarian organizations**[17] wit respect to **monetary** and **in-kind** donations. On the other hand, Article 8(2) of the Law provides that: "donations to public institutions, **humanitarian**, **cultural** and **educational** organizations up to 3% of the annual gross income are exempted from taxes". Donations **exceeding** the prescribed threshold may be **carried out** in the next three fiscal years, in which case the prescribed tax-exempt percentage threshold is reduced accordingly for the amount of carry-over donations. The Law does not address the issue of **institutional grants** to humanitarian, cultural and educational CSOs.

Personal Income Tax. Article 15(2), lj) of the Income Tax Law[18] provides that: "sponsorship and in-country donations for humanitarian, cultural, educational and sport purposes are exempt up to 2% of the gross annual income". The Law does not provide a clear-cut answer as to whether **in-kind donations** are also recognized, nor does it address the issue of **institutional grants** to OCD which engage in the foregoing purposes.

Gifts. CSOs seem to be **exempted** from taxes on gifts, insofar as they use gifts to pursue their not-for-profit goals.

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[19] 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, 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.[20]

Use of Donations. The law **does not** set out a specific threshold with respect to the organization's overhead expenses.

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[16] "Official Gazette of the Republic of Srpska", No. 91/06, 57/12.
[17] CSOs in the Republic of Srpska operate in the form of associations and foundations.
[18] "Official Gazette of the Republic of Srpska", No. 91/06, 128/06120/08, 71/10, 1/11.
[19] "Official Gazette or the Republic of Srpska", No. 52/01, 42/05.
[20] "Official Gazette or the Republic of Srpska", No. 47/11.

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Volunteering. The Law on Volunteering[21], which is currently in the process of revisions, does not allow a corporation to be a host of volunteer activities, even outside its business premises (Article 7).

***Issues to consider*:**

- There is an important discrepancy between Article 4(2) Law and Article 8(2) of the **Profit Tax Law** in that the former unduly singles out "**humanitarian organizations**" as income tax-exempt organizations. The implication of this is that taxes are levied on income of "cultural and educational organizations", including donations, which is inconsistent with tax deductions provided for donors to those very same organizations.
- The list of pubic benefit activities in Article 8(2) of the **Profit Tax Law** is e**xhaustive** 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*, III.1.1.). Indeed, as compared to the Federation of BiH Corporate Profit Tax Law, the list of public benefit activities is even more narrowly construed in that it entails: "humanitarian, cultural and educational organizations" only, and is not consistent with a similar list set fourth in the Personal Income Tax Law, which is more broadly construed. In addition, it is **not consistent** with the public benefit list in the **Law** on **Associations** and **Foundations**, which provides for a much broader concept of public benefit (*supra*). The implication of this is that associations which are granted the public benefit status and which engage in public benefit activities out of the scope of Article 8(2) of the Profit Tax Law are **not eligible** recipients of tax-exempt donations, nor are donations to those associations **tax deductable**.
- Articles 4(2) and 8(2) of the **Profit Tax Law** is poorly drafted in that it refers to humanitarian, cultural and education "**organizations**", rather than **activities.** This gives rise to additional uncertainty as to who are the legitimate beneficiaries of tax deductions set out in Article 8(2), given that law does not recognize "organization" as distinct institutional forms of choice *per se*, but rather, recognizes CSOs, associations and foundations, and public institutions engaged in humanitarian, cultural and educational activities. On the other hand, the Personal Income Tax Law rightly puts emphasis on the nature of **activities** deemed for public benefit, rather than i**nstitutional** forms of choice to engage in those activities.
- Tax law does not address the issue of **institutional** grants to CSOs and their recognized **overhead** expenses. In the absence of specific statutory provisions, these issues should be addressed in a donation agreement, however, this will not necessarily insulate the parties involved from discretionary interpretation of those issues by tax authorities.

[21] "Official Gazette or the Republic of Srpska", No. 73/08.

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- Finally, the Law on Volunteers does **not** allow **corporations** to be a host of volunteer activities. Given the increasing role of corporate voluntarism, a corporation should be allowed to host volunteer activities outside its business premises.

APPENDIX III
SUMMARY OF OUTSTANDING ISSUES IN THE REPUBLIC OF SRPSKA

PROFIT TAX LAW/VOLUNTEER LAW:	INCOME TAX LAW:
- Humanitarian organizations unduly singled out as tax exempt organizations; - Exhaustive and narrowly defined list of public benefit activities; - List of public benefit activities inconsistent with the Personal Income Tax Law and the NGO Law(*more narrowly construed*); - References to humanitarian, cultural and education "organizations", rather than activities. - The issues of institutional grants to and overhead of CSOs not specifically addressed in the law. - Corporations may not host volunteer activities.	- Exhaustive and narrowly defined list of public benefit activities; - List of public benefit activities inconsistent with the NGO Law (*more narrowly construed*); - The issues of institutional grants to and overhead of CSOs not specifically addressed in the law.

2. Croatia

Corporate Income Tax. Civil society organizations[22] are **exempted** from corporate income tax, as long as they pursue **public** or **mutua**l benefit goals as set out in their bylaws (Article 2(6), Profit Tax Law).[23] Income generated from CSOs economic activities is taxed only if those activities give rise to the issue of "unjustified privileged position on the market" - a determination which tax authority makes on a case-by-case basis (Article 2(7), Profit Tax Law).

[22] CSOs in Croatia operate in the form of associations, endowments, funds and private institutes.
[23] "Official Gazette", No. 177/04, 90/05, 146/08, 80/10, 22/12.

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In-country donations ("gifts") by corporations to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to **2%** of their **gross annual income** in the preceding year. The tax exempt percentage may be higher, pursuant to a decision of the line ministry on financing particular programs and actions. Donations can be in **money** and **in-kind** (Article 7(7), Profit Tax Law). [24]

Personal Income Tax. Individuals can donate under the same foregoing conditions set out for corporations in the Profit Tax Law (Article 36 (12) Income Tax Law).[25]

Gifts Tax. CSOs are **exempt** from gifts tax.

Public Benefit Status. The concept of public benefit status is **not developed** in tax law, and is **not** entirely **consistent** with the notion of public benefit in the CSO framework regulation.[26] The **Law on Endowments and Funds** provides that endowments and fund must engage in "public benefit" or "charitable" activities (Article 2(1)(2)).[27] The Law contains the non-exhaustive list of permissible activities deemed for "public benefit", which roughly mirrors the one in 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). Activities which are deemed charitable or for public benefit must serve **public at large** or **defined segment** thereof: professional, national, cultural, scientific, religious groups, etc (Article 2(5)).

On the other hand, the **Law on Associations**[28] provides somewhat different—and **broader**—list of activities deemed for public benefit, as compared to the ones in tax law and the Law on Endowments and Foundations. This list include human rights, ecological, humanitarian, support to knowledge-based society, cultural, national, pro-birth, educational social, sport, technical culture, medical, scientific and other activities deemed for public benefit (Article 2(1)).

Finally, the **Law on Institutes**[29] provides that a private institute may be established in order to 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(2)).

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[24] Despite economic difficulties, corporate philanthropy is said to be on the rise in Croatia, although precise numbers seem difficult to gouge. http://www.business.hr/business-class/korporativna-filantropija-rastuci-je-trend-i-u-hrvatskoj-122310

[25] "Official Gazette", No. 177/04, 73/08, 80/10, 114/11, 22/12, 144/12, 36/12.

[26] 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

[27] "Official Gazette", No. 36/95, 64/01.

[28] "Official Gazette", No. 88/01, 11/02.

[29] "Official Gazette", No. 76/93, 29/97, 47/99, 35/08.

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Use of Donations. Tax law **does not** provide for a specific time-line in which a donation must be utilized - nor does it set out a specific threshold with respect to the organization's overhead expenses.

Volunteering. The Law on Volunteering does not allow a corporation to be a host of volunteer activities (Article 7).[30]

Issues to consider:

- While Croatia generally provides for favorable tax environment for philanthropy, there is **discrepancy** in the notion of public benefit in tax law and CSO framework regulation, which makes the case for the notion of **public benefit** in tax law to be **expended**. Although the list public benefit activities in the (profit and income) tax laws is illustrative, rather than exhaustive, it **does not** solve the problem of CSOs which are engaged in activities not specifically recognized by tax law as public benefit activities, but are otherwise deemed for public benefit, because they represent values which are either enshrined in the Constitution or the CSO framework regulation (e.g. human rights). 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, or following a decision of tax authority to that effect. It is also noteworthy that a **new draft** Law on Associations provides for a comprehensive list of association activities deemed for public benefit for which public funds are available (Article 27(4)).[31] If enacted in the present form, this will give rise to the issue of **two legal regimes** affecting public benefit organizations, depending on their source of income (donations versus state funds), which is not a sustainable policy.
- In addition, tax deductions are provided only for **in-country** giving to qualified public benefit activities. However, this **runs afoul** of the European Court of Justice's decisions in *Centro di Musicologia Walter Stauffer v. FA Munchen fur Korperschaften* (Walter Stauffer)[32] and *Hein Persche v. Finanzamt Ludenscheid* (Persche),[33] in which the Court ruled that the practice of recognizing tax benefits only for giving to domestic CSO engaged in public benefit activities was in breach of freedom of establishment and the free movement of capital. As a result of those decisions, many EU member states (Bulgaria, Finland, Germany, Slovenia, Poland, Denmark, Great Britain, etc) were forced to revise their respective tax legislation so that allow tax deductions to giving to OCD operating in other member states and the other members of the European Economic Zone.

[30] "Official Gazette", No. 58/07, 22/13.
[31] http://www.uzuvrh.hr/userfiles/file/Prijedlog%20Zakona%20o%20udrugama.pdf
[32] Case C-386/04, judgment of 14 September 2006.
[33] Case C-318/07, judgment of 27 January 2009.

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- There is **not 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. Those additional conditions are set fourth only for endowments and funds (*supra*), but not for associations.
- The law **does not** provide for a specific **time-line** in which a donation must be utilized - nor does it set a specific **threshold** with respect to the organization's **overhead** expenses. These issues may be addressed in a donation agreement. However, with respect to the time-line in which donations must be utilized, in the absence of statutory carry-over rules (*supra*), tax status of donations which the agreement allows to be carried over to subsequent fiscal years remains unclear, nevertheless.
- As already noted, the Law on Volunteering **does not** allow a corporation to be a **host** of volunteer activities.

APPENDIX IV

SUMMARY OF OUTSTANDING ISSUES IN CROATIA

PROFIT TAX LAW/LAW ON VOLUNTEERING:	INCOME TAX LAW:
- Narrowly defined list of public benefit activities; - List of public benefit activities in tax law not consistent with CSO framework regulation; - Benefits only for in-country giving to qualified public benefit purposes; - No specific carry-over rules for donations; - No specific rules with respect to institutional grants to CSOs; - No specific rules with respect to recognized overhead of CSO; - - Corporations not allowed to host volunteer activities.	- Narrowly defined list of public benefit activities; - List of public benefit activities not consistent with CSO framework regulation; - Benefits only for in-country giving to qualified public benefit purposes; - No specific carry-over rules for donations; - No specific rules with respect to institutional grants to CSOs; - No specific rules with respect to recognized overhead of CSO.

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3. Kosovo

Corporate Income Tax. "Non-governmental organizations" which are granted public benefit status pursuant to the **Law on Freedom of Association** (which conspicuously also pertains to foundations)[34] are **exempted** from corporate income tax, so long as they use their income exclusively to further their **public benefit** purposes (Article 7(1) Corporate Income Tax Law).[35]

Corporations can deduct up to **5%** 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 mentioned areas (Article 10(2), Corporate Income Tax Law). An allowable deduction shall not include a contribution that directly or indirectly benefits the donor or persons affiliated with the donor (Article 10(3), Corporate Income Tax Law). The Law does not address the issue of tax status of **institutional grants** (donations) to NGOs which are granted public benefit status.

Personal Income Tax. Giving by individuals to qualifying public benefit purposes are deductable under the **same conditions** which are set out for corporations (Article 28(1), Personal Income Tax Law).[36]

Gifts tax. Gifts are generally **not subject** to taxes. The Ministry of Culture, Youth and Sports is currently working on a draft law on sponsorship, which might also address this issue in some fashion.

Public Benefit Status. 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).

[34] Law No. 03/L-134, entered into force in October 2011. NGOs in Kosovo operate in the form of associations and foundations.

[35] Law No. 04/L-103, on amending and supplementing the Law No. 03/L-162 on Corporate Income Tax; promulgated by Decree No. DL-019-2012 of May 17, 2012.

[36] Law No. 03/L-161 on Personal Income Tax; promulgated by Decree No. DL-020-2012 of May 17, 2012.

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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). NGO with public beneficiary 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 exceeds roughly €100,000 (Article 18(9), Law on Freedom of Association). Public benefit status may be **suspended** should the NGO fail to file a complete annual report or the 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, the NGO must wait three years to apply again.[37]

Use of Donations. The law **does not** provide for a specific time-line in which a donation must be utilized - nor does it set out a specific **threshold** with respect to the organization's **overhead** expenses. These issues may be addressed in a donation agreement. However, with respect to the time-line in which donations must be utilized, in the absence of statutory carry-over rules (*infra*), tax status of donations which the agreement allows to be carried over to subsequent fiscal years remains unclear, nevertheless.

Issues to consider:

- There is a **disconnect** between the concept of **public benefit** activities in 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, NGOs which are granted public benefit status and which, for example, pursue 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 those organizations **would not** qualify as tax-exempt, because tax law does not recognize any of those activities for public benefit.
- Tax law seems **silent** on the issue as to whether donations **in-kind** are also tax exempt.
- It is unclear as to under what circumstances **institutional grants** to NGOs which have public benefit status may be tax deductable.
- Tax law does not specifically allow for **carry-over** of tax-exempt donations.
- Tax law does not specifically address the issue of NGOs' recognized **overhead** expenses.

[37] USIG Note on Kosovo, current as of September 2012, available at http://usig.org/countryinfo/kosovo.asp

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APPENDIX V
SUMMARY OF OUTSTANDING ISSUES IN KOSOVO

CORPORATE INCOME TAX LAW:	PERSONAL INCOME TAX LAW:
- Narrowly defined list of public benefit activities; - The list exhaustive, rather than illustrative; - The list not consistent with the one provided in the framework regulation; - Not clear if donations in-kind are also tax-deductable; - No specific rules with regard to institutional grants to NGOs; - No specific carry-over rules for donations; - No specific rules for the overhead of the organization.	- Narrowly defined list of public benefit activities; - The list exhaustive, rather than illustrative; - The list not consistent with the one provided in the framework regulation; - Not clear if donations in-kind are also tax-deductable; - No specific rules with regard to institutional grants to NGOs; - No specific carry-over rules for donations; - No specific rules for the overhead of the organization.

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 on issues pertinent to donations and sponsorship, including **tax benefits** provided for corporate and individual donors (*infra*).[38] 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)[39] 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

[38] "Official Gazette of the Republic of Macedonia", No. 47/06, 86/08, 51/11.
[39] CSOs in Macedonia operate mostly in the form of associations and foundations.

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3(1)7, 7(1). Exceptionally, **foreign legal entities** may also be the recipient of donations (Article 7(2).

The Law mandates a donor and a grantee 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 foreign alike, may be a donor insofar as their activities do not violate the Constitution, law and the international agreements of which Macedonia is a signatory (Article 6).

At 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 amendments to the Law introduced a more elaborate and time-consuming procedure in this respect (Article 21, as amended in 2011).

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). While the Law appears silent on the issue of **carry-over donations** i.e., weather the unspent donation can be carried to subsequent fiscal years, based on information from local CSOs, tax authorities allow for such a practice. The Law does not specifically address the issue of tax status of **institutional grants** to CSOs which engage in public benefit activities.

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 diners, 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 which are not employed, but rather provide some free-lance, short term consultancy service, usually under international development projects. This legislative development has significantly limited tax incentives for individual giving.

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

Value Added Tax. VAT is not levied on goods and services purchased with donated money, but is rather recovered from the state budget. Although the procedure for VAT exemptions works in practice, not all companies are aware of the current exemption mechanisms and often times refuse to engage in donation transactions without VAT being paid by a customer. Even though the law provides that SMS/telephone call donations are also exempted from VAT, providers of telecommunication services have not been able to utilize this exemption to date. VAT is also not levied on tickets for humanitarian events.

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

Public Benefit Status. The Law 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 (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).

On the other hand, the **Law on Associations** and **Foundations**[40] provides for a comprehensive framework for granting the status of public benefit organizations. CSOs may obtain the **public benefit status** if they "perform 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 they use the financial resources for realization of 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).[41] An association or a foundation shall obtain the status of public benefit organization if: it is registered in accordance with the provisions of this Law; 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 at least 1.500 Euro in Denar equivalent according to the exchange rate of the National Bank of Macedonia; it has rules in place

[40] "Official Gazette of the Republic of Macedonia", No. 52/10.

[41] 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.

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governing conflict of interests and transparency of its work; it is not in bankruptcy or liquidation and does not have bank account frozen (Article 75). A separate body, the Commission of Public Benefit Organizations, decides on granting the status of public benefit (Article 76). The Law envisages that public **benefit organizations** shall enjoy **additional tax benefits**, as compared to CSO which operate without public benefit status, without further references in this respect (Article 88).

Use of Donations. The **Law does not** provide for a specific **time-line** in which a donation must be utilized—nor does it set a specific **threshold** with respect to the organization's **overhead** expenses.

Volunteering. The Law on Volunteering does not allow for a corporation to be a host of volunteer activities, even outside of its business premises (Article 6).[42]

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 already been duly noted by key stakeholders in Macedonia.[43] First, the Law prescribes **excessive** administrative requirements for the donor and the donee, 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, regardless the amount thereof. Among others, this unduly hampers the organization's fundraising activities, which often times include significant number of small donors and by an extension entering into a written donor agreement with each and every of them. 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**.[44] 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

[42] Official Gazette of Republic of Macedonia No. 85/2007.
[43] 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 спроведувањето на Законот за донации и спонзорства во јавните делатности 2007-2011". Скопје, март 2012. See also Закон за донации и спонзорства во јавните дејности – имплементација и главнипредизвици", Никица Кусиникова во соработка со Европскиот центар за непрофитно право (ECNL), мај/јуни 2010. TACSO Report from the seminar – Taxes and CSOs, effects and how to find better solutions, held in Skopje on 6 June 2012 at http://www.tacso.org/doc/mk20120814_report_en.pdf
[44] See recommendation No. 7, 8 of the Committee of Culture Conclusions.

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nature of a particular donation. Finally, there is the perceived **lack** of **consistency** within the line ministries when rendering a public benefit decision with respect to a particular donation. A **written guidance** on how to determine a public benefit cause would help the line ministries being more consistent in this respect.

- There is **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.[45] 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 which are set out in the Law on Donations and Sponsorship, **regardless** of whether the organization has obtained the public benefit status under the CSO framework regulation. 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 public benefit status and thus be exposed to additional administrative and **reporting** requirements. The **working group** commissioned by the Ministry of Justice is currently preparing **amendments** to the **Law** which will fill in this gap in that it will exempt 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.
- 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 employees to approve donations from their income to a designated public benefit organization, which is carried by the **employer.** Only employers who electronically file their employer monthly schedule and deduction form can choose to offer payroll giving to their employees.
- The Law **does not** provide for a specific **time-line** in which a donation must be utilized—nor does it set a specific **threshold** with respect to the organization's **overhead** expenses. These issues may be addressed in a donation agreement. While tax authorities allow for such a practice, in the absence of **statutory carry-over rules**, tax status of donations which the agreement allows to be carried over to subsequent fiscal years remains dependent on the interpretation of tax authorities, nevertheless.

[45] See recommendation No. 6 of the Conclusions.

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- As noted, the Law on Volunteers does not allow for a corporation to be a host of volunteer activities, even outside of its business premises. While this restriction serves legitimate goal (preventing the possibility of hidden employment), it is not necessarily *proportional* to the goal it purports to serve. It is noteworthy that corporations are playing an increasingly important role in the overall scheme of volunteer activities: they are ready to invest their resources, skills and know-how in order to contribute to local community and thus promote themselves as socially responsible. The increasing role of corporate voluntarism therefore might call for a more balanced regulatory approach. For example, in Serbia, a corporation may be the host of volunteer activities as defined by law, provided they are conducted outside its business promises and provided the ministry responsible for labor and social affairs has approved in advance a plan of corporation's volunteer activities.[46]

APPENDIX VI

SUMMARY OF OUTSTANDING ISSUES IN MACEDONIA

DONATION AND SPONSORSHIP LAW:	CSO FRAMEWORK REGULATION:
- Excessive administrative requirements imposed on the donor and the grantee; - Overall high and disproportional transactional costs for executing and supervising the use donations incurred on all parties involved (the donor, the grantee and the supervising authority); - No specific rules with respect to institutional grants to CSOs; - The concept of public benefit somewhat confusing and not consistent with the CSO framework regulation; - The concept of public benefit not consistently applied within the line ministries; - Tax incentives for individual giving limited to non-employed; - No specific carry-over rules for donations.	- No clear tax benefits arising from the status of public benefit organization; - Initiative to exempt donors to public benefit organizations registered under the Law on Associations and Foundations from the duty to file a request with the Ministry of Justice under way.

[46] Article 14 of the Law on Volunteers, Official Gazette of the Republic of Serbia, no. 36/2010.

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5. Montenegro

Legal Entity Profit Tax Law. Article 6(1) of the **Legal Entity Tax Law** provides *inter alia* that "non-governmental organizations"[47] are **exempted** from profit taxes.[48] This includes both public benefit and mutual benefit organizations, insofar as they **do not** engage in direct economic activities (Article 6(2) and 32, Corporate Profit Tax Law). Article 14 of the Law provides that in-country donations ("expenses") to: "medical, educational, scientific, religious, sport, humanitarian and environmental protection purposes which do not exceed 3,5% of the gross annual income are exempt from taxes". The Law does not specifically provide that donations are recognized as tax deductible expenses only if designated to **legal entities** which are established to pursue the foregoing goals. In addition, it does not specifically address the issue as to whether **in-kind** and **service** contributions can also qualify as tax-exempt donations.

Personal Income Tax. Article 24 of the **Personal Income Tax Law**[49] 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 exempted from taxes". The Law **gives rise** to the same kind of issues as the Corporate Income Tax Law with respect to the eligible **recipients** of donations and the tax status of **in-kind** and **service contributions.**[50]

Public Benefit Status. The concept of public benefit is **not** specifically developed in tax law; however, some elements thereof are addressed in the **NGO Law**.[51] Article 32 of the NGO Law provides that funds shall be allocated in the state budget to support projects and programs of NGOs engaged in the following activities: social and medical care, poverty 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.

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[47] NGOs/CSOs in Montenegro operate in the form of associations and foundations.
[48] "Official Gazette of the Republic of Montenegro", No. 65/01; 80/04; 40/08; 86/09; 14/12.

[49] "Official Gazette of the Republic of Montenegro", No. 65/01; 37/04; 78/06.
[50] A research carried by the DE FACTO Consultancy in 2012, which was commissioned by the FAKT, reveals that a lack of tax incentives features high on the list of perceived factors impeding the development of individual philanthropy (3,5% of the respondents). However, it pales in comparison with aggravated economic situation, which tops the list (61,9% of the respondents). See: Individualna Filantropija: Rezultati Istraživanja, 12/5/12, p. 44., http://faktcg.org/files/INDIVIDUALNA_FILANTROPIJA.pdf
[51] "Official Gazette of Montenegro", No. 39/11.

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Use of Donations. The law **does not** provide for a **carryover rules** i.e. specific **time-line** in which a donation must be utilize - nor does it set out any specific rules with respect to **institutional grants** and the organization's **overhead** expenses.

Volunteering. The Law on Volunteer Work does not allow a corporation to be a host of volunteer activities, as defined by the law (Article 5).[52]

Issues to consider:

- The **Legal Entity Tax Law** and **Personal Income** Tax Law provide for a rather **narrowly construed** and exhaustive list of activities deemed for **public benefit**. Not only does this list miss out activities which are either deemed values enshrined in the Constitution (such as democracy, rule of law, etc), or widely recognized in the society as public benefit activities (combating corruption, sustainable development, etc), but it also does not correspond with the list of public benefit activities set out in the NGO Law (*supra*). The discrepancy between the NGO Law and tax law gives rise to a tenuous situation in which there are **two different sets of policy** supporting activities deemed for public benefit: the one providing tax benefits for corporations giving to qualifying public benefit activities, and the other one providing budgetary support to project and programs in the fields deemed for public benefit. As a result, if a corporation, for example, were to give a donation to an NGO engaged in human rights, it will **not** be able to claim tax deductions; however, such an NGO is eligible to apply for state funds.

- Tax law does not specifically provide that donations are recognized as tax deductible expenses only if designated to **legal entities** which are established to pursue the foregoing goals. As a result, if a corporation, for example, organize itself a humanitarian activity (rather than through a NGO or a public institution) it is not clear whether it can still claim tax deductions on expenses it has incurred for such an activity.

- Tax law is also **silent** on the issue as to whether **in-kind contributions** and **services** can also qualify as tax-deductable donations, which seems to give a great discretion to tax authorities to decide on this issue.

- The law **does not** specifically allow for **carry-over** donations either, which gives the tax authority a great deal of discretionary power to decide on this issue.

- In addition, the law does not specifically regulate the issue of **institutional grants**, which also gives the tax authority a great deal of discretionary power to decide on this issue.

[52] "Official Gazette of Montenegro", No. 26/10.

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- Furthermore, the law does not set a specific **threshold** with respect to the organization's **overhead** expenses, which gives a great deal of discretionary power to tax authorities in this respect. Given the lack of specific statutory provisions, the issues of carry over donations; institutional grants and overhead expenses should all be addressed in a donation agreement. However, it will not necessarily spare an NGO from tax authority exercising its discretionary power over those issues.

- Finally, the Law on Volunteer Work does not allow a **corporation** to host **volunteer activities**, as defined by the law. While the rationale of this approach is legitimate (to prevent the possibility of hidden employment), this sweeping prohibition is nevertheless *disproportional* to the legitimate goal it purports to serve and therefore a corporation should be allow to host volunteer activities outside of its business premises.

APPENDIX VII
SUMMARY OF OUTSTANDING ISSUES IN MONTENEGRO

LEGAL ENTITY PROFIT TAX LAW/VOLUNTEER LAW:	PERSONAL INCOME TAX LAW:
-. Exhaustive and narrowly defined list of public benefit activities *(not consistent with NGO Law)*; - Not clear if only donations to eligible legal entities (NGOs, public institutions) are deductable; - Not clear if in-kind contributions and services are also deductable; - No carry-over rules for donations; - No institutional grants rules; - No overhead rules; - Corporations not allowed to host volunteer activities.	- Exhaustive and narrowly defined list of public benefit activities (*not consistent with NGO Law)*; - Not clear if only donations to eligible legal entities (NGOs, public institutions) are deductable; - Not clear if in-kind contributions are tax eligible; - No carry-over rules for donations; - No institutional grants rules; - No overhead rules.

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6. Serbia

Corporate Income Tax. Article 1 of the **Legal Entity Income Tax Law**[53] exempts CSOs[54] from income tax insofar as they pursue **public** or **mutual** benefit activities, as defined in their bylaws.

Article 15(1) of the Law as amended in 2013 provides that legal entities-tax payers may deduct in-country up to 5% of their gross income for: "medical, educational, scientific, humanitarian, religious, environmental protection and sport purposes, *as well as for giving to institutions of social protection established by the law governing social protection*" (emphasis ours). Deductions are recognized as tax deductable only if given to legal entities which pursue the foregoing goals and purposes pursuant to law, and only if used to further those goals and purposes (Art 15(2)). In addition, legal entities may deduct **up to 5 percent** of their **gross income** for "investments" in cultural purposes and cinematography (Art 15(3)). The Minister of Culture has the jurisdiction to prescribe what "investments" are deemed to be for cultural purposes, after obtaining an opinion from the Minister of Finance to that effect (Article 15 (9)).[55]

Personal Income. The **Personal Income Tax Law does not** envisage any tax benefits for giving to public benefit purposes, whatsoever. [56]

Gifts tax. Article 14(6) of the Property Income Tax Law as amended in 23013 provides that gifts not exceeding 100,000 RSD by a single donor in a calendar year are **generally exempted** from income taxes.[57] Gifts to associations, foundations and endowments pursuing public benefit activities as defined in their respective framework regulation which exceed the prescribed threshold are **exempted** from income taxes, insofar as they are used to pursue the organization's **public benefit** purposes (Article 21(5)(5a), Property Income Tax Law). T**ax authorities** apply the foregoing provisions so as to require CSOs to apply for tax exemptions on any given gift received exceeding the prescribed threshold, in order to be exempt from property income taxes. [58]

[53] "Official Gazette of the Republic of Serbia", No. 25/01, 80/02, 43/03, 84/04, 18/10; 101/11; 119/12; 47/13.
[54] CSOs in Serbia operate in the form of associations, endowments and foundations.
[55] . A research carried by Ipsos Strategic Marketing in 2012, which was commissioned by the BCIF, reveals that a lack of tax incentives features high on the list of perceived factors impeding the development of corporate philanthropy, at least as far as corporations which do not have the practice of giving are concerned (40% of the respondents). http://www.bcif.org/site/media/PDF/BCIF%20-%20Istrazivanje%20o%20filantropiji.pdf
[56] "Official Gazette of the Republic of Serbia", No. 24/01; 80/02; 135/04; 62/06; 65/06 - correction; 47/13; 48/13-correction. The BCIF research also reveals that a lack of tax incentives features high on the list of perceived factors impeding the development of individual philanthropy (27% of the respondents). However, similar to Montenegro, it pales in comparison with aggravated economic situation, which tops the list (92% of the respondents).
[57] "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.
[58] Ministry of Finance opinion no. 430-43-00058/2011-04, dated 9 February, 2011. See also the opinion of the Ministry no. 430-03-00038/2004-04 , dated 10 February, 2004..

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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. The law **does not** provide for a specific **time-line** in which **donations** must be utilized, nor does it set specific rules with respect to **institutional grants** to CSOs and **overhead** expenses. According to information received from CSOs, some **tax authorities** unduly interpret the law so 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 are approved by the Ministry of Labor and Social Affairs (Article 14).[59]

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 and public perception of public benefit). There is **discrepancy** between the Legal Entity Profit Tax Law (Law), and the Law on Associations and the Law on Endowments and Foundations, respectively, in that the latter provide for a much **broader notion** of public benefit. (*infra*). Indeed, there is also discrepancy between the Law and the Law on Donations and Humanitarian Assistance[60], which provides for custom and other benefits for donations used in "humanitarian, scientific, educational, cultural, sports, religious, artistic and environmental purposes, improvement of the quality of citizens' life and health protection and other purposes".[61] **2)** The amendments to the Legal Entity Tax Law in 2012 marked a partial **departure** from the sound regulatory policy which puts an emphasis on the **nature** of qualifying public benefit activities, rather than the **institutional forms** of choice to engage in those activities. Accordingly, tax exemptions are also provided for giving to *public institutions* engaged in social welfare - but **not to CSOs** engaged in the same type of activities. As a result, the Law unduly **discriminates** CSO as social service providers. This approach cannot sustain the scrutiny from the point of sound tax policy and runs afoul the Law on Social Service Protection, which specifically permits associations and other private

[59] "Official Gazette of the Republic of Serbia", No. 36/2010.
[60] "Official Gazette of the Federal Republic of Yugoslavia", no. 53/2001, 61/2001 - corrections. i 36/2002; "Official Gazette of the Republic of Serbia, no. 101/2005)

[61] Article 6 3(2), Law.

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actors to engage in hosts of social service provision (Article 17, Law on Social Service Protection).[62] As a result, while the Law on Social Service Protection seeks to "deregulate" social service provision, the Legal Entity Profit Tax Law hampers those efforts by unduly providing preferential tax treatment for public institutions as social service providers. **3)** The Law does not specifically recognize **in-kind** donations as tax deductable. According to information received from CSOs, tax authorities occasionally interpret the Law so as to recognize only donations in money as tax deductable.

- The **Personal Income Tax Law** does **not** provide for any tax benefits for philanthropic giving.

- The **Property Income Tax Law** also give rise to a number of issues, in particular: **1)** Tax authorities require OCD to file for a tax exemption for any gift given by an individual donor which exceeds the 100,000 RSD threshold in a given calendar year. As a result, OCD pursuing qualifying public benefit purposes are not exempt p*er se* from gifts and inheritance taxes, but rather are entitled to such exemptions, provided they file an application with the competent tax authority to that effect; **2)** The Law does not specifically provide for a **carry-over** rule or for a specific **time line**, which will allow unspent donations to be carried to subsequent fiscal years. This gives the tax authority a great deal of discretionary power to decide on those issues. **3**) The Law does not provide for specific rules with respect to **institutional** grants to CSOs and **overhead** expenses of the organizations. As already noted, tax authorities occasionally levy taxes on any portion of a donation used for overheads. Because the Law is silent on this issue, the controlling instrument in this respect is a donation agreement and therefore such practice is not substantiated by law - unless there is *prima facie* evidence of fraud involved in the transactions.

- The notion of public benefit in the Legal Entity Profit Tax Law is **more narrowly** construed than the one in the **CSO framework regulation**. In this respect, Article 38 of the **Law on Associations** provides the list of activities deemed for public benefit for which an association is eligible to apply for state, provincial and local governmental funds, which includes: 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

[62] "Official Gazette of the Republic of Serbia", No. 24/11.

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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 does 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 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**[63] 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

LEGAL ENTITY PROFIT TAX LAW/PROPERTY INCOME TAX LAW:	PERSONAL INCOME TAX LAW:
- Profit Tax Law: Narrowly defined and exhaustive list of public benefit activities *(not consistent with CSO laws)*; - Partial departure from focusing on the nature of public benefit activities, rather than institutional forms to engage in those activities; - Tax authority occasionally recognizes only donations in	- No tax benefits for giving to qualifying public benefit activities.

[63] "Official Gazette of the Republic of Serbia", No. 88/10.

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money; - **Property Income Tax Law**: - CSOs are not exempted from gifts and inheritance taxes *per se*, but have to apply for exemption for any gift exceeding 100,000 RSD; - No specific carry-over rules for donations; - No specific institutional grants rules; - No specific overheads rules.	

V. SUMMARY OF MAJOR FINDINGS

The research reveals a number of **positive features** in the tax framework affecting philanthropy in the surveyed countries.

- All countries generally **exempt** CSOs from income taxes, insofar as they are established and organized to pursue not-for-profit goals.
- All countries provide **tax benefits**, in the form of tax exemptions, for giving by **corporation**s and **individuals** to qualifying **public benefit** activities. Serbia stands out as the only country which does not provide tax benefits for giving by individuals.
- 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.
- Bosnia and Herzegovina (Federation of BiH and Republic of Srpska)[64] and Croatia specifically recognize **donations** in **money** and **in-kind**, while Macedonia recognizes donations in **services** as well.
- In most countries tax laws 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. However, there are some notably departures from this principle in the case of Serbia and the Republic of Srpska (*infra*).
- In all countries gifts are **exempted** as source of income for CSOs.

[64] As already discussed, the Republic of Srpska Income Tax Law seems silent on this point, though.

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The research also reveals a number of **critical issues** in the surveyed countries which call for further legislative action:

- In all the countries surveyed the notion of **public** benefit goals/activities in **tax law** is typically **narrowly construed** and does not include hosts of activities which are either enshrined in respective constitutions as constitutional values or are widely recognized by public as activities deemed for public benefit.
- In all the countries surveyed there is a **discrepancy** between the notion of public benefit in **tax** law and the **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**.**
- The foregoing suggest suggests the need to **open debate** as to what kind of **regulatory framework** for **public benefit** activities would suit best the countries concerned. As a short term measure, in order to ensure the fair and consistent implementation of **current public benefit provisions**, all countries concerned would benefit from preparing a **guidance** on the implementation of public benefit criteria and procedures, similar to the one developed by the Charity Commission for England and Wales,.[65]

- Serbia and Bosnia and Herzegovina (Republic of Srpska) **depart** to some extent from the good practice with regard to the recipients of tax exempt donations. In Serbia, only donations to **public institutions** engaged in social protection are tax exempt, while donations to CSOs engaged in the same type of activity **do not** qualify as tax exempt In the Republic Srpska, donations to "**public institutions and humanitarian organizations**" are exempt from corporate tax—but not donations to CSOs engaged in other qualifying public benefit activities as provided by tax law..

- With the exception of Bosnia and Herzegovina (Republic of Srpska), tax laws in the surveyed countries do not specifically prescribe the **carry-over** rules for donations.
- There is a lack of specific rules with respect to the tax status of institutional grants to CSOs and recognized **overhead** expenses. As for the former, insofar as an CSO is engaged in activities the tax law deem for public benefit, institutional grants to such CSOs should be exempted from taxes.
- Some countries, notably Macedonia, prescribe **overly regressive** administrative requirements with regard to donations, which renders the execution and supervision of donations prohibitively expensive.

[65] http://www.charity-commission.gov.uk/Charity_requirements_guidance/Your_charitys_activities/default.aspx

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- Serbia does not provide tax incentives for **individual giving**, while in Macedonia tax incentives for individual giving are limited to non-employed persons. However, given the current economic crisis, any attempt to introduce or extend tax benefits for individual giving by must sustain rigorous **cost-and-benefit analyses**.
- 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 overheads spent from donations as tax deductable income, even if so is provided in the donation agreement. Such practice is not substantiated by the letter of law.
- The issue **of corporate 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 as defined by law. However, 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.

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