

Legal Basis for the Financial Sustainability of CSOs in Central Asian Countries

Legislative Overview

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This Legislative Overview has been prepared for educational purposes for representatives of non-commercial organizations (NCOs), government agencies, and expert organizations interested in strengthening the financial sustainability of NCOs in Central Asia and improving relevant legislation.

DISCLAIMER OF LIABILITY

The information used in the Legislative Overview corresponds to the legislation as of May 1, 2023 (the information in Uzbekistan section is updated as of July 2024) and has been obtained from public sources. Please note that legislation and practices in Central Asian countries are constantly changing; therefore, it is recommended to check the information provided in the Legislative Overview and consult with relevant local institutions and experts in each specific case when using the information provided in the Legislative Overview.

In the preparation of this Legislative Overview, the regulatory legal acts were used in their unofficial translation into Russian, and in the version available from public sources. In this regard, there might be inaccuracies in the text due to inexactitudes of translation into Russian, and some legislative provisions referenced in the text may be outdated.

The authors would be grateful if local experts could email us at nbourj@icnl.org if they notice any errors or inaccuracies when reading this Overview.

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INTRODUCTION

This Legislative Overview focuses on the legislative regulation¹ of the main sources of income for NCOs² and on the main factors affecting their financial sustainability³ in four Central Asian countries: the Republic of Kazakhstan (hereinafter Kazakhstan or RK), the Kyrgyz Republic (hereinafter Kyrgyzstan or KR), the Republic of Tajikistan (hereinafter Tajikistan or RT) and the Republic of Uzbekistan (hereinafter Uzbekistan or RUz).

The main sources of the NCOs' financial sustainability include public funding, assistance from private sources (local and foreign), and income from the NCOs' internal resources (such as membership and admission fees, and business income). In addition, favorable regulation of the taxation of NCOs and their donors, and volunteer activities should also be deemed important factors in legislation contributing to the financial sustainability of NCOs.

NCOs' access to various sources of income should be viewed as the basis for their financial sustainability. In turn, said access depends on the favorability of the legislation providing this access, and on the NCOs' understanding of their rights and obligations and ability to take advantage of this access.

This Overview will familiarize readers with the opportunities and constraints in legislation that affect the financial sustainability of NCOs in Central Asian countries in terms of different sources of funding.

The Overview provides an opportunity to compare the legislation of the reader's country with the legislation of other Central Asian countries, learn from the experience of other countries, and use this experience in their own practice. To facilitate comparative analysis, the review of the legislation of each of the four aforementioned countries follows the same structure.

¹ Regulatory legal material is presented as of May 1, 2023. The information in Uzbekistan section is updated as of June 2024.

² Different states in Central Asia use different terminology to define non-profit organizations. In this publication, in each chapter presenting an overview of the legislation of a particular country, the authors use the term that is incorporated in the legislation of the country in question. Where general practice, comparisons with other countries, or international experience are involved, the generic term "non-commercial organization" (NCO) is used. It is assumed that it implies the main organizational and legal forms of non-governmental non-commercial legal entities in accordance with the civil codes of the Central Asian states, except for political parties, trade unions, religious organizations and other entities, the peculiarities of legislative regulation of which are provided for by special legislation. The review considers issues that are relevant for most types of NCOs in Central Asian states. This Overview does not cover any specific features of the legal regulation of these special types of NCOs.

³ Financial sustainability can be perceived as the ability of an organization to maintain its existence and smooth operation through the availability of certain available funds and balanced financial flows (See, for example, "Анализ финансовой устойчивости организации (Organization's Financial Sustainability – Analysis)," Контур.Эксперт — СКБ Контур, at <https://kontur.ru/expert/glossary/334-stability>).

Financial sustainability tends to be an acute issue for many NCOs in Central Asia. Before turning to the country profiles, the authors offer a brief history of important issues related to NCO financial sustainability in Central Asia.

After the Central Asian countries gained independence in the early 1990s, foreign donor assistance constituted the main source of funding for NCOs in the region. International organizations provided grants to NCOs for various projects and paid significant attention to the training of NCO representatives in necessary skills of activity management and fundraising. At that time, the legislation of Central Asian countries generally encouraged and facilitated the growth of foreign funding through favorable regulation and an absence of administrative barriers for local organizations to obtain foreign aid.

In addition to foreign funding, a number of large national-level organizations received direct funding from the state budget in the 1990s. In the early 2000s, a number of countries, realizing the importance of involving NCOs in addressing social issues, introduced mechanisms of public funding of NCOs on a competitive basis. For example, Kazakhstan, Kyrgyzstan, and Tajikistan adopted laws on state social procurement (SSP). In Uzbekistan, the government authorized a special body, the Public Fund for Support of NCOs and other Civil Society Institutions under the Oliy Majlis of Uzbekistan, to distribute grants and award contracts to NCOs providing social services. These public funding mechanisms for financing NCOs involve a competitive selection of social service providers and entities that implement social projects among NCOs. Government funding has become an increasingly important source of financial sustainability for many NCOs in the region. However, both in the past and at present, public funding in all Central Asian countries is limited and cannot, by itself, ensure financial sustainability of NCOs. There is still a lack of diversification of funding sources for most NCOs: in fact, NCOs typically rely on no more than one or two sources of revenue.

At the same time, traditional sources of NCO income, such as revenues from entrepreneurial activities and donations from local benefactors, which are essential in other countries, have not played a significant role in the financial sustainability for the majority of NCOs in Central Asia. This is partly due to insufficient tax incentives for NCOs and donor organizations, as well as the complete absence of such incentives for individual donors (physical persons). In addition, there is a lack of awareness among local companies and individual citizens on the activities of NCOs. The low prevalence of using revenue generated as income from entrepreneurial activities is most likely due to unfavorable tax legislation, insufficient incentives for NCOs to carry out business activities, a lack of start-up capital, inability to obtain loans, an NCO's lack of skills to plan and implement the production and sale of goods and services under competitive market conditions, among other reasons. Furthermore, there is an

absence of a tradition of providing charity via NCOs as donations are usually made directly to those in need of help, without the involvement of NCOs.

Since the early 2000s, efforts have been made by governments in a number of Central Asian countries to limit NCOs' access to foreign funding.

Currently, Kazakhstan, Kyrgyzstan, and Uzbekistan require NCOs to submit to the state authorities detailed reports on income received, including from foreign sources, expenditures, implemented projects, etc. Kazakhstan and Tajikistan stipulate the obligation of NCOs to notify government agencies on the receipt of funds from foreign sources, while information on such NCOs and their projects is entered into a special register of recipients of foreign aid, which is publicly available. In Tajikistan, all non-profits are mandated to notify the agencies of the Ministry of Justice of any voluntary and charitable contributions, grants, and property acquired from foreign sources. This information is to be entered in the Register of humanitarian aid provided to NCOs prior to the utilization of such funding. In Kazakhstan, the liability for violation of norms on notification and reporting of foreign funding is extremely high (the fine for NCOs can reach 250 monthly calculation indices (MCI) (about \$2,000) alongside forced suspension or termination of the NCO's activities).

Unfortunately, the trend of legislative restriction of NCOs' access to foreign funding continues. Thus, Uzbekistan retains a permissive procedure for Uzbek NCOs to receive foreign aid in the form of grants worth more than 100 basic calculation units (BCU) or USD 2,700 received from one external source in one calendar year. And for grants below USD 2,700, the recipient-NCO is obliged to notify the Ministry of Justice and other justice bodies that carry out state registration of NCOs in accordance with the law (hereinafter - the registering body) of such funds or property at least three working days before receiving the funds. The Ministry of Justice assigns a "state organization" to each NCO-recipient of a grant exceeding 1,000 BCU or 27,000 USD for the purpose of participating and supporting the NCO in activities to achieve the foreign grant.

Legislation regulating foreign aid tends to be complex. As such, it is important for NCOs to understand their rights and obligations in relation to this legislation, as well as to be active in promoting reforms that would streamline access to foreign aid and prevent new restrictions and prohibitions.

Legislation governing public funding is also rapidly changing and evolving. Several times in the past five years, Kazakhstan updated and finalized mechanisms for grants, government procurement of social services, and allocation of awards. Kyrgyzstan also updated its legislation on SSP, eliminating numerous gaps in the previous law. It is important for NCOs to actively participate in the reforms to amend such legislation, and also to track such changes in order to take full advantage of new opportunities to acquire government funding.

It is also worth noting that the lack of resources available to NCOs in the countries under review forces NCOs to seek additional sources of funding. New information technologies and the Internet have opened new fundraising opportunities for NCOs to attract resources from a wide range of donors through various electronic means. The Central Asian countries have witnessed the rise of new and promising approaches to fundraising, such as fundraising through NCOs' own websites, SMS via mobile operators, crowdfunding platforms, and the use of electronic wallets and payment terminals. The legislation of the countries under review, which regulates fundraising by NCOs, does not provide for the specifics of fundraising through the use of electronic means. At the same time, the legislation allows NCOs to receive funding from any source not prohibited by law. NCOs are free to engage in these fundraising activities. In practice, funds received by electronic means may be recognized by the tax authorities as charitable aid or other gratuitous receipts, depending on how the acquired funds were documented. More details on the legal regulation of NCO fundraising using electronic payment systems in Kazakhstan, Kyrgyzstan, and Tajikistan can be found at www.icnl.org.

The authors of the Legislative Overview hope that this Overview will help readers to identify needs for further improvement of the legal environment that would contribute to the financial sustainability of NCOs in Central Asia, and that it will be useful for specialists, representatives of NCOs, government agencies, and parliamentarians seeking for ways to improve legislation regulating NCOs in their countries.

The Overview is a joint effort of ICNL legal advisors from Kazakhstan, Kyrgyzstan, and Tajikistan and our partners in Uzbekistan.

KAZAKHSTAN

GENERAL OVERVIEW

The main sources of funding for Kazakhstani NCOs are SSP, grants from foreign and local donors, corporate charity and sponsorship, membership fees, donations from individuals, income from entrepreneurial activities realized through the provision of paid services, and government grants and awards. Unfortunately, the authors do not have statistical information on the percentage of NCO income for each of the above sources.

SSP has been an important source of funding for NCOs since the adoption of a special law regulating SSP in 2005. In practice, SSP has been in operation since 2003. In its almost 20-year history, the volume of SSP funding to NCOs has grown steadily. For example, in 2005, the volume of financing within the framework of SSP stood at 112.9 million tenge (\$849.6 thousand⁴), and in 2022, SSP financing amounted to 17.4 billion tenge (\$37.8 million⁵). Since 2005, on average about 2,000 projects in socially important fields have been implemented annually.⁶ In total, more than 17,000 NCOs are currently actively working in the country.⁷

Starting in 2016, Kazakhstan has been awarding government grants through a specially-created “Operator,” a non-profit joint stock company called Civil Initiatives Support Center (CISC). According to the results of a grant proposal competition which ended in September 2016, 11 NCOs received grants totaling more than 200 million tenge (\$590 thousand⁸).⁹ According to Madiyar Kozhakhmet, the Chairman of the Committee on Civil Society Affairs under the Ministry of Information and Social Development (MISD),

“in general, during the period of implementation of grants since 2016, the volume of grant funding increased 10 times while the number of projects increased 6 times.”¹⁰

⁴ In 2005, 1 US dollar = 132.88 tenge at the exchange rate of the National Bank of Kazakhstan

⁵ In 2022, 1 US dollar = 460.48 tenge at the exchange rate of the National Bank of Kazakhstan

⁶ Мейрамбек Байгарин, “Объем финансирования НПО через госсоцзаказ увеличился на 20% за пять лет,” KazInform, December 19, 2022, at https://www.inform.kz/ru/ob-em-finansirovaniya-npo-cherez-gossoczakaz-uvelichilsya-na-20-za-pyat-let_a4014406.

⁷ Мейрамбек Байгарин, “Новые правила финансирования НПО утверждены в Казахстане,” December 19, 2022, at https://www.inform.kz/ru/novye-pravila-finansirovaniya-npo-utverzhdeny-v-kazahstane_a4014387.

⁸ In September of 2016, 1 US dollar = 338.62 tenge at the exchange rate of the National Bank of Kazakhstan

⁹ “Более 200 млн тенге получают НПО в 2016 году от государства,” August 5, 2016, at <https://kazpravda.kz/n/bole-200-mln-tenge-poluchat-npo-v-2016-godu-ot-gosudarstva/>. See also “Гранты Для Нпо: Кому И На Какие Цели?” CSO Central Asia, September 29, 2016, at <https://cso-central.asia/11213-2/>.

¹⁰ “В Казахстане разработали новые принципы грантового финансирования НПО,” Kazakhstan Today, December 19, 2022, at https://www.kt.kz/rus/business/_1377944534.html.

The total amount of grant funds awarded by the CISC in 2022 for the implementation of 60 social projects amounted to 1.9 billion tenge (\$4.1 million). In total, since 2016, the CISC has funded 394 projects with a total budget of 7.9 billion tenge (\$17.2 million).¹¹

In addition, smaller grants are also awarded by some local foundations with state participation. For example, the Samruk-Kazyna Fund for Development of Social Projects (hereinafter the Fund), established in 2016, is the exclusive operator of charity work for the Samruk-Kazyna group of companies. It implements projects in all regions of the country. The Fund establishes cooperation with NCOs and supports projects that address social issues in society. Since 2018, the Fund has assisted with the implementation of social projects in the Atyrau region totaling more than 712 million tenge. With these resources, the Fund has, among other things:

- equipped three special schools for children with hearing, vision, and intellectual disabilities in Atyrau;
- built eight multipurpose playgrounds in Atyrau region. Each site encompasses a space of over 1,200 square meters and includes a soccer field, a children's playground, and a sports zone with workout equipment; and
- allocated 18 grants, in the amount from 500 thousand to 3 million tenge, to local NCOs for the implementation of their own social initiatives.¹² In the first three months of 2023, the Fund supported 7 projects totaling 1.2 billion tenge.¹³

Since 2008, the First President Foundation has organized its annual Fair of social ideas and projects, where any NCO can submit their project for competitive bidding. The main objective of the contest is to improve the effectiveness of socially oriented NCOs in addressing social issues in the country and to energize social initiatives of the population in several regions. Since 2008, more than 2,300 representatives of NCOs have participated in the competition; 311 of them have been awarded grants in the amount of up to 3 million tenge.¹⁴

Income from foreign sources, acquired in the form of grants and donations, continues to account for a significant share of NCOs' revenue. 100 international and foreign

¹¹ "Final report on the activities of the Center for Support of Civic Initiatives; reporting period 2022," Center for Support of Civic Initiatives, 2022, at <https://cisc.kz/wp-content/uploads/2022/12/pdf-zaklyuch.pdf>.

¹² НИГМАТУЛИН РЭМИР, "Как получить финансовую помощь на проекты — Samruk-Kazyna Trust," SK NEWS, April 18, 2022, at <https://sknews.kz/news/view/kak-poluchity-finansovuyu-pomoschy-na-proekty--samruk-kazyna-trust>.

¹³ "64 ЗАЯВКИ ОТ НПО ПОЛУЧИЛ «SAMRUK-KAZYNA TRUST» В ПЕРВОМ КВАРТАЛЕ ТЕКУЩЕГО ГОДА," Samruk Kazyna Trust, April 14, 2022, at <https://sk-trust.kz/64-zayavki-ot-npo-poluchil-samruk-kazyna-trust-v-pervom-kvartale-tekushhego-goda/>.

¹⁴ "10 ПРОЕКТОВ КАЗАХСТАНСКИХ НКО СТАЛИ ПОБЕДИТЕЛЯМИ ЯРМАРКИ СОЦИАЛЬНЫХ ИДЕЙ," Нұрсұлтан Назарбаев, April 29, 2022, at <https://fnn.kz/ru/news/925>.

organizations are eligible to provide grants to NCOs in Kazakhstan.¹⁵ Organizations that do not have the right to award grants may provide assistance to Kazakhstani NCOs through donations or other forms of financing, further described below. Kazakhstani NCOs are not required to obtain any prior authorization in order to receive funds from foreign sources but certain legal provisions mandate NCOs to notify government agencies of the receipt of such funds and report on their use.

Local commercial organizations provide assistance to NCOs through grants and donations. However, the most common form of support, according to the authors, is provided in the form of services and goods. There are also smaller, private charitable foundations, such as the Halyk Charitable Foundation¹⁶ and the Charity Fund Bauyrzhan, granting assistance to NCOs and, in recent years, large corporations, such as Tengizchevroil¹⁷, NCOC¹⁸ (within the North Caspian Production Sharing Agreement), Chevron, BI Group Holding, and others, have intensified their activities to support NCOs in Kazakhstan. Other types of local funding include individual donations, membership fees, contributions, and income from business activities.

Kazakhstan also provides a number of tax benefits for NCOs and their donors.

Below the authors will consider the legal regulation of various NCO funding sources in the order of their priority for most NCOs in Kazakhstan, and also relevant legislation on the taxation of NCOs and their donors:

1. State funding;
2. Foreign funding;
3. Revenues from local non-governmental sources;
4. Income from entrepreneurial activity;
5. Legal regulation of volunteers; and
6. Taxation of NCOs and their donors.

¹⁵ Resolution of the Government of RK dated April 9, 2018 #177 on approval of the list of international and state organizations, foreign and Kazakhstani non-governmental organizations and foundations providing grants, and on invalidation of certain decrees of the Government of RK (hereinafter, The List of grantors approved by the Government of the RK).

¹⁶ See "About Us," Halyk Fund, at <https://www.halykfund.com/>.

¹⁷ "Инвестиции в сообщество," Tengizchevroil, at <https://www.tengizchevroil.com/community>.

¹⁸ "Проекты инфраструктуры и социального назначения," NCOC, at <https://www.ncoc.kz/ru/ncoc/economic-benefits-to-kazakhstan/social-infrastructure-projects>.

1. STATE FUNDING

In Kazakhstan, the state finances the activities of non-governmental organizations (NGOs)¹⁹ at the expense of local and national budgetary funds through the SSP mechanism, aimed at addressing issues in the social sphere²⁰, and through the provision of government grants and awards.

SSP

SSP is primarily regulated by the following normative legal acts (NLAs):

1) The Law of the RK on SSP and Government Procurement of Strategic Partnership Implementation, Grants and Awards for Non-Governmental Organizations in the Republic of Kazakhstan dated April 12, 2005 #36-III (hereinafter Law on SSP);

2) The Law on Public Procurement dated December 4, 2015 # 434-V (hereinafter the Law on Public Procurement);

3) The Decree of the Minister of Finance of RK dated December 11, 2015 #648 on Approval of the Rules of State Procurement (hereinafter the Rules on State Procurement); and

4) The Tax Code of the RK (hereinafter the Tax Code of the RK).

According to the Law on SSP,

“state social procurement is a form of implementation of social programs and projects, functions of central and (or) local executive bodies, transferred for implementation into a competitive environment and aimed at solving problems in the social sphere, performed by non-governmental organizations at the expense of budgetary funds.”

In essence, SSP is a government-run purchase of social services from NGOs. The mechanism of awarding projects is an open competitive tender through goszakup.gov.kz, the electronic portal for public procurement.

SSP procedures come into play when government agencies have already set the types and parameters of social services to be purchased. The equivalent of approximately \$40 million is allocated annually to the SSP budget.

¹⁹ In this Paragraph on public funding, the term “non-governmental organization” (NGO) will be used instead of NCO, as the RK legislation on public funding specifically provides for funding of NGOs. The term NGO in the RK is used in the legislation on SSP in order to exclude the possibility of state funding of certain types of NCOs: “NGO is a non-profit organization (except for political parties, trade unions and religious associations) established by citizens and (or) non-state legal entities on a voluntary basis to pursue their common goals in compliance with the legislation of the Republic of Kazakhstan” (See Article 1 of the Law on SSP).

²⁰ Article 1, Paragraph 2 of the Law on SSP.

The sources of SSP financing are the national and local budgets. At the national level, SSP is used mainly for the organization and implementation of events of national importance; at the local level, each regional government allocates funds for social projects implemented at the regional (oblast) level. Central government agencies are involved in SSP to a lesser extent compared to local authorities (in 2022, the share of SSP utilization at the republican level amounted to 1.4%, while at the local level it constituted 98.6%).

The MISD is the body authorized to coordinate the activities of government agencies involved in the formation of SSP, monitoring of implementation, and evaluation of the results of SSP, as well as other functions in the field of SSP.

Only NGOs that operate in accordance with their statutory objectives in the areas²¹ stipulated in the Law on SSP, except for political parties, trade unions and religious associations²², can act as SSP vendors. In general, there are no territorial restrictions for NGOs to participate in tenders (*except for public associations*²³).

The Rules on State Procurement contain the necessary instructions on the procedure for public procurement of goods, works, and services. The rules also stipulate special

²¹ Article 5 of the SSP Law: "1. Implementation of the state social procurement, provision of state grants and awards shall be carried out in the following areas:

- 1) pursue of goals in the field of education, science, information, physical culture and sports;
- 2) protection of citizens' health, promotion of a healthy lifestyle;
- 3) environmental protection;
- 4) support of youth policy and children's initiatives;
- 5) assistance in solving family, demographic and gender issues;
- 6) excluded in accordance with the Law of RK dated 13.06.18, #160-VI
- 7) support for socially vulnerable segments of the population;
- 8) assistance to orphans, children from single-parent and large families;
- 9) assistance in ensuring employment opportunities for the population;
- 10) protection of the rights and legitimate interests of citizens and organizations;
- 11) development of culture and art;
- 12) protection of historical and cultural heritage;
- 13) strengthening social harmony and national unity;
- 13-1) assisting probation services in providing social and legal assistance to persons under their supervision;
- 13-2) conducting community monitoring of the quality of public services; (...)
- 15) promoting the development of civil society; improving the efficiency of NGOs;
- 16) development and support of volunteer initiatives.

2. The implementation of the state social procurement is also carried out in the areas of:

- 1) rendering assistance to a person (family) in a difficult life situation;
- 2) development of responsible treatment of animals, including support of animal shelters;
- 3) in other socially significant spheres and in compliance with the legislation of the Republic of Kazakhstan."

²² See Paragraphs 5 and 7 of Article 1; Paragraph 3 of Article 6 of the Law on SSP.

²³ Article 7 of the Law on Public Associations of May 31, 1996, "The Status of Public Associations"

"Republican, regional and local public associations may be established and operate in the Republic of Kazakhstan. Republican public associations include associations that have their structural subdivisions (branches and representative offices) on the territory of more than half of the regions of the Republic of Kazakhstan. Regional public associations shall include associations having their structural subdivisions (branches and representative offices) on the territory of less than half of the regions of the Republic of Kazakhstan. Local public associations shall include associations operating within one oblast of the Republic of Kazakhstan."

conditions for the procurement of certain goods, establish qualification requirements, and regulate the procedures and timelines for public procurement.

Special conditions for procurement within the framework of SSP were introduced in order to mitigate some of the requirements of the public procurement legislation for NGOs.

- 1) In particular, NGOs are exempted from having to prove:
 - their solvency, or
 - the availability of material and labor resources sufficient to fulfill the obligations under the contract (except for long-term projects with a term of more than one fiscal year).^{24 25}
- 2) NGOs as vendors for SSP are exempted from having to provide any security deposit for participation in the tender (1%) or any security for contract execution (3% of the total contractual amount).²⁶
- 3) Projects are evaluated according to qualitative criteria while the criterion of “lowest notional price” remains the key criterion. The Tender Commission shall not apply the criteria affecting the competitive price offer of bidders provided for in Clause 243 of the Government Procurement Policies.²⁷
- 4) The procedure of preliminary qualification admission to participation in the tender is not applied.
- 5) NGOs are exempt from the payment of anti-dumping dues. An NGO will not be admitted to the tender if its price is lower by 10% of the amount allocated for the tender (Clause 76-1 of the Government Procurement Policies).

²⁴ Overview of Legislation Regulating the Implementation of the Right to Freedom of Association in Central Asian Countries, ICNL, Almaty, 2019.

²⁵ See also Paragraph 403 of the Rules on State Procurement.

²⁶ Paragraph 427 of the Rules on State Procurement.

²⁷ Clause “243. The following criteria affecting the competitive price bid shall be applied when conducting public procurement by way of competitive bidding:

- 1) the potential vendor’s experience in the market of works, services that are the subject of the conducted public procurement;
- 2) confirmation of taxes paid;
- 3) evidence of financial stability, calculated under the condition of parity of conditional prices of competitive price offers;
- 4) functional, technical, quality and operational characteristics of goods and (or) costs of operation, maintenance and repair of purchased goods;
- 5) location of the potential supplier in relation to the place of performance of works in the relevant administrative territorial unit within the boundaries of the region, cities of republican or in the capital; and
- 6) negative values.”

The main stages of a SSP tender include²⁸:

- 1) **Identification of the public procurement organizer** and preparation of the annual public procurement plan;
- 2) Uploading **the annual public procurement plan** to the web portal;
- 3) Selection and approval of **the composition of the tender commission**, composition of the expert commission or expert (if necessary), and appointment of the secretary of the tender commission;
- 4) **Approval of draft** tender documentation;
- 5) **Placement of an announcement** on the web portal on the implementation of public procurement by competitive bidding, and the text of the tender documentation;
- 6) **Submission of applications** for H participation in the tender by potential suppliers;
- 7) **Automatic opening** of bids and posting of the relevant opening protocol on the web portal;
- 8) **Examination** of tender bids for their compliance with the qualification requirements and standards contained in the tender documentation, and verification of the absence of restrictions provided for by Article 6 of the Law on Public Procurement;
- 9) **Identification of potential suppliers** and application of relative values of criteria to competitive price offers of the participants;
- 10) **Automatic comparison** by the web portal of the bidders' notional prices, determination of the winner of the tender on the basis of the lowest notional price, and also of the potential runner-up supplier, and posting of the protocol documenting the results; and
- II) **Conclusion of the contract** with the winner on the basis of the protocol on the outcomes of public procurement by competitive bidding.

EVALUATION CRITERIA

In public procurement of social services, the responsible government agency ('the Organizer') shall provide the following criteria in the tender documentation for the evaluation of tender applications submitted by NGOs:

- I) compliance of the project proposed by the potential vendor with the requirements of the Customer's technical specification;

²⁸ More details about the procedure of carrying out competitive bidding and specific features of SSP can be found in the Rules on State Procurement.

- 2) compliance of the potential vendor's statutory goals (in accordance with constituent documents) with the procured services of the Customer and the areas stipulated by Article 5 of the Law on SSP;
- 3) information in regard to the location of the potential vendor in the "Database of Non-Governmental Organizations";
- 4) confirmation of the relevant work experience of the potential vendor;
- 5) work record and qualification of specialists involved in the implementation of the social project and/or social program; and
- 6) in case of project implementation at the expense of the local budget, the NGO's work experience in the region.²⁹

In accordance with the Budget Code³⁰, SSP is financed by budget programs aimed at providing public services.³¹ The budget program "is developed for the planning period annually on a rolling basis by the administrator of budget programs and contains indicators of direct and final results, volumes of planned budgetary allocations for the planning period, indicators of economic effect from declared expenditures on investment projects financed by the public funds."³²

It is worth noting separately a new mechanism of SSP, which was introduced on January 1, 2023, aimed at the implementation of strategic partnerships. This type of procurement implies that funds are provided to NGOs by the central executive bodies in order to utilize the NGOs' potential for the implementation of national priorities.

Determining the direction of SSP for the implementation of the strategic partnership is done in three steps:

- 1) According to Article 6-5 of the Law on SSP, "central executive bodies shall submit proposals to the authorized body (MISD) on the areas of SSP for the implementation of strategic partnerships in accordance with the SSP Policies for the implementation of strategic partnerships".³³ (The Policies are approved by the Decree of the Government of the Republic of Kazakhstan for the period starting on December 31, 2022 № 1139 on Approval of the Rules regulating government procurement for the implementation of strategic partnerships) (hereinafter the Rules).
- 2) Introduction by the authorized body (MISD) to the Government of the RK of the directions of strategic partnership on the basis of proposals of various government agencies. The Government then confirms state procurement aimed at the implementation of strategic partnerships.

²⁹ Paragraph 411 of the State Procurement Rules.

³⁰ The Budget Code of RK dated December 4, 2008 #95-IV.

³¹ See Paragraph 3 Article 32 of the Budget Code

³² Article 32 of the Budget Code.

³³ Decree of the RK Government dated December 31, 2022 #1139 on Approval of the Policies of SSP aimed at the implementation of strategic partnerships.

- 3) Inclusion in the budget request following the procedure stipulated by the budget legislation.

For each area of SSP aimed at the implementation of a strategic partnership, only one strategic partner is included. This determination is carried out through competitive selection in accordance with the procedure detailed in the Policies.³⁴ This selection will take place outside the system of public procurement, and strategic partnership will be regarded as a separate type of expenditure in the national budget.

The procedure for competitive selection of a strategic partner is detailed in the Policies. Among other things, the Rules provide for the participation of civil society representatives in the tender commission and in the process of accepting the Statement of Completed Work under the strategic partnership agreement. The tender commission, consisting of at least seven (7) persons, shall include at least four (4) representatives of civil society, and the composition of the commission is approved by the head of the relevant government agency.

The Rules also contain requirements for categorizing potential strategic partners. The requirements include:

- compliance of the statutory objectives of a potential strategic partner with the objectives of the government procurement for the realization of strategic partnership;
- at least two years of experience in the implementation of projects in the relevant areas of activity;
- presence of relevant information in the NGO database;
- participation of representatives of potential strategic partners in the work of advisory and consultative bodies for at least three years (on the basis of a certificate from the state body under which the advisory and consultative body was established);
- at least three positive references pertaining to the work of potential strategic partners from the recipients of services or partners; and
- in the case of projects involving research and development, state authorities shall set requirements stipulating at least three years of experience in the relevant field of research and development (R&D).³⁵

Compared to the above requirements, which may well be met by many active NGOs wishing to become strategic partners, the requirement “on participation of representatives of potential strategic partners in the work of advisory and consultative bodies for at least three years” may prove to be an obstacle for many NGOs without active and long-term participation in advisory and consultative bodies. This

³⁴ Article 6-5 of the Law on SSP.

³⁵ Paragraph 3 of the Rules for SSP aimed at implementation of strategic partnership dated December 31, 2022 #1139.

requirement could also be perceived as a barrier for NGOs established within three years of the date of application for the competition.

Based on the results of the competitive selection, and within 10 working days after the conclusion of the competition, the relevant central executive body will draw up a contract with a strategic partner for the fulfillment of the state procurement aimed at the implementation of a strategic partnership for a period not exceeding three years. The contract will be drawn up on the basis of an approved model contract found in the Policies.

In the event of a failure to achieve target indicators established in the contract due to the fault of the strategic partner and/or the systematic non-fulfillment of the strategic partner's obligations, the contract shall be subject to unilateral termination on the initiative of the relevant central executive body. At the same time, the model contract provides for penalties for violation of the terms of the contract both on the part of the government agency (for violation of the terms of payment for services) and on the part of the strategic partner (for complete non-fulfillment, improper (partial) non-fulfillment, violation of the terms of service provision, or refusal to provide services).³⁶

According to the developers of the concept, the introduction of a strategic partnership will allow "to raise the interaction between government agencies and the non-governmental sector to a new level" while

*"the formation of a pool of strategic partners of government agencies represented by specialized NCOs with a broad representative base will allow to build civilizational work with the public, processing of public requests and their inclusion in the working agenda of government agencies."*³⁷

³⁶ 5.2 of the Model Contract: "Except in cases of sequestration and/or insufficient money in the control account of the respective budgets, in the event when the contracting authority fails to pay the vendor the funds due to it within the time limits specified in the Contract, the contracting authority shall pay to the vendor a penalty (fine) on delayed payments in the amount of 0.1% (zero point one percent) of the amount due for each day of delay. At that, the total amount of the penalty (fine) shall not exceed 10% (ten percent) of the total amount of the contract.

"5.3. In case of delay in rendering services, the Customer shall withhold (collect) from the vendor a penalty (fine, penalty) in the amount of 0.1% (zero point one percent) of the total amount of the contract for each day of delay in case of complete non-fulfillment of obligations by the Vendor or shall withhold (collect) a late charge (fine, penalty) in the amount of 0.1% (zero point one percent) of the amount of unfulfilled obligations for each day of delay in case of improper fulfillment (partial non-fulfillment) of obligations. At the same time the total amount of the late charge (fine, penalty) shall not exceed 10% (ten percent) of the total amount of the Contract.

"5.4 In case of the Vendor's refusal to render services or delay in rendering services for a period of more than one month from the date of expiration of the term for rendering services under the Contract, but not later than the expiration date of the Contract, the Customer shall have the right to unilaterally terminate this Contract with collection from the Vendor of the amount of late charge (fine, penalty) in the amount of 0.1% (zero point one percent) of the total amount of the Contract for each day of delay."

³⁷ "Concept of the Draft Law of the Republic of Kazakhstan on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Volunteer Activities, Charity, State Social Procurement and Grants for Non-Governmental Organizations," at <https://legalacts.egov.kz/npa/view?id=7547892>.

Neither the Law on SSP nor the Rules tend to disclose the essence of the activities of strategic partners. Accordingly, it is difficult to assess the role of strategic partners and the scale of their activities. The concept of the Draft Law on SSP³⁸ proposed the following types of activities for strategic partnerships, which were neither included in the Law on SSP nor in the Rules:

- consultation and development of recommendations for addressing sectoral problems;
- involvement of citizens and civil society institutions in lawmaking activities, and in expert and information support of legislative initiatives;
- coordinating the transfer of government functions to a competitive environment, including through the involvement of NGOs;
- establishing a constructive dialog between civil society and the state; and
- coordination of the activities of civic (resource) centers; among others.

When discussing the need to introduce a strategic partnership at various Kazakhstani dialogue platforms and meetings, civil society representatives voiced concerns that such an amendment could limit healthy competition among NGOs, as a strategic partnership constitutes an unjustified centralization and consolidation of the NGO sector initiated by the government rather than at the grassroots level. The civil society representatives felt that this could lead to red tape in the process of interactions between government agencies and NGOs, and also presents the risk of corrupting the NGO sector. However, given that this strategic partnership mechanism is quite new and was only introduced in 2023, it is difficult to draw any conclusions about the impact of strategic partnerships on the NGO sector in the absence of any meaningful practical implementation.

GRANTS (STATE GRANTS)

According to paragraph 7-1) of Article 1 of the Law on NGOs, “grants for NGOs” are “funds provided to NGOs by an operator in the field of grant financing of NGOs aimed at supporting civic initiatives and involvement of NGOs’ potential in solving urgent developmental issues in the social sphere.”

The “Operator” in the sphere of NGO grant financing is the CISC, a state-owned, non-profit joint stock company. At present, the CISC only provides NGOs with state grants.³⁹ The main NLAs regulating the procedure for providing state grants to NGOs

³⁸ See Paragraph 3, “Concept of the Draft Law of the Republic of Kazakhstan on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Volunteer Activities, Charity, State Social Procurement and Grants for Non-Governmental Organizations.”

³⁹ However, under the SSP Law, the CISC may also award non-state grants received from extra-budgetary funding sources, i.e., from individuals and legal entities, including international and foreign organizations that have decided to issue grants to Kazakhstani NGOs through the CISC. Requirements for the provision of non-state grants and reporting are determined by the terms of the contract concluded between the Operator and individuals or legal

are the following: the Law on SSP and the Rules for the formation, provision, monitoring and evaluation of the effectiveness of state grants, approved by the Decree of the Minister of Information and Social Development of the RK dated September 26, 2022 #406 (hereinafter Rules Regulating State Grants).

Amendments to the Law on SSP, introduced by the Law dated 04.07.22, #134-VII, and the new Rules Regulating State Grants have significantly revised the approach to the regulation of state grants in the RK (hereinafter “grants” will be understood as “state grants”). As Madiyar Kozhakhmet, Chairman of the Committee on Civil Society Affairs of the MISD of the RK, noted,

“Previously, the format of grant funding was similar to the mechanism of state social procurement. In this regard, based on international experience, the following new mechanisms of grant funding have been introduced. ... according to the new format the state bodies form grants in pools for different areas and with indication of the actual problems to be addressed and expected results. In their turn, NGOs are expected to present their approaches to finding solutions in the course of participation in the competition.”⁴⁰

What does the new grant mechanism look like and what are the requirements for NGOs applying for grant funding?⁴¹

Grants are awarded on the basis of competitive selection of NGOs.

The CISC may preclude an NGO from participating in the competition on the following grounds:

- 1) “non-compliance of the application with the requirements of the Rules Regulating State Grants;
- 2) non-compliance of the application with the approved list of priority areas of state grants;
- 3) non-compliance of the NGO’s statutory goal with the priority area of the state grant;
- 4) absence of information about the NGO in the NGO Database;

entities in accordance with the civil legislation of the Republic of Kazakhstan (paragraph 6 of Article 6-1 of the Law on SSP). In this case “non-governmental grants” are only perceived as grants issued through the CISC, and should not be confused with grants that are issued by NGOs without the participation of the CISC, as stipulated in paragraph 4 of Article 2 of the SSP Law: “4. The effect of this Law does not apply to relations arising in connection with the provision of grants without the participation of the operator, or to relations arising in the process of awarding grants, which are regulated by the Code of the RK on Taxes and Other Mandatory Payments to the Budget (Tax Code) and other laws of the RK.”

⁴⁰ “В Казахстане разработали новые принципы грантового финансирования НПО Читать,” Kazakhstan Today, December 19, 2022, at https://www.kt.kz/rus/business/_1377944534.html.

⁴¹ The new mechanism for providing state grants is detailed in the presentation of the CISC titled, “Procedure for Forming, Providing, Monitoring and Evaluating the Effectiveness of State Grants,” CISC, 2022, at <https://cisc.kz/wp-content/uploads/2022/12/prezentaciya-po-pravilam-npo-russ-yaz-1.pdf>

- 5) the NGO is in the process of liquidation;
- 6) the NGO has been declared bankrupt;
- 7) the NGO has debts under enforcement proceedings;
- 8) the NGO is on the register of unethical participants in public procurement;
- 9) the NGO has a lien on its assets;
- 10) the NGO's economic activity has been suspended;
- 11) the NGO's manager or founder is the spouse, a close relative, or an in-law of any authorized official of the government agency and/or the Operator (e.g., CISC); or
- 12) the NGO's director or founder is included in the list of persons engaged in terrorist activities, or in the list of organizations and persons associated with the financing of proliferation of weapons of mass destruction, and/or the list of organizations and persons associated with the financing of terrorism and extremism" (Paragraph 39 of the Rules Regulating State Grants).

Grants are provided in the 17 areas of work defined in Article 5 of the Law on SSP.

Advantages of grant funding in comparison with SSP:

- 1) The subject matters of the proposed grants consider proposals submitted by NGOs;
- 2) the use of 5% and 10% of the grant amount for logistical support and institutional development of NGOs (long-term grants constitute no more than 5%; short/medium-term grants – no more than 10%);⁴²
- 3) transparency in the distribution of grants and in the selection of project applications;
- 4) selection of social projects on the basis of qualitative rather than quantitative indicators;
- 5) provide an opportunity to implement large-scale and systemic social projects lasting up to three years;
- 6) create the conditions for social innovation in addressing social issues facing the local population; and
- 7) provide an opportunity to purchase quality services and goods at market value.⁴³

The formation of grants consists of the following stages:

⁴² See Rules Regulating State Grants.

Material and technical support means the acquisition of goods, works and services aimed at the development of the organization in accordance with the objectives of the social project, except for ongoing and capital types of repairs and construction, acquisition of immovable property. Institutional development means the purchase of goods, works and services aimed at training and professional development of the grantee's employees, expenditures on travel to the place of training, purchase of educational and methodological materials.

⁴³ *Id.* CISC 2022 Presentation, at <https://cisc.kz/wp-content/uploads/2022/12/prezentaciya-po-pravilam-npo-russ-yaz-1.pdf>.

- 1) First stage: collecting and analyzing proposals, and establishing the list of the grants' priority areas;
- 2) Second stage: submission of the list of priority areas of grants for consideration by the Coordination Council or councils established under government agencies for interaction and cooperation with NGOs;⁴⁴ and
- 3) Third stage: inclusion in the budget request and its subsequent review following the procedure established by the budget legislation of the RK.

At the first stage, state agencies collect proposals from NGOs annually by September 1 of the calendar year. By November 1 of each calendar year, government agencies shall complete the analysis of the submitted proposals in terms of their compliance with the following two factors:

- 1) incorporates the priorities of the RK national policy, strategic and program documents of the RK, and addresses delivered by the President of the RK; and
- 2) includes findings of sociological research, assessment of population needs, and outcomes and recommendations developed on the basis of the grant projects implemented over the previous two calendar years.

Based on the aforementioned analysis, government agencies compile a list of the grant priority areas for NGOs.

At the second stage, the central government agencies transfer the annual list of the government grant priority areas to the authorized body (e.g., MISD) not later than January 5 of the calendar year. Each year, MISD transfers the list of the government grant-making priority areas to the Coordination Council for consideration by February 5 of the calendar year. Within five (5) business days from the date of receipt of recommendations made by the Coordination Council pertaining to the priority areas for the state grant-making, MISD transfers these recommendations to the central government agencies in accordance with their jurisdiction.

Each calendar year, not later than August 1, local executive bodies (LEBs) submit a list of priority areas of state grant-making to the councils for interaction and cooperation with NGOs for their consideration.

At the third stage, based on the recommendations of the Coordination Council or the councils for interaction and cooperation with NGOs, government agencies form a list of priority areas of state grant-making and include data pertaining to the distribution

⁴⁴ Subparagraph 20) Paragraph 2 of the Rules Regulating State Grants "Coordination Council in charge of interaction with non-governmental organizations under the authorized body (hereinafter Coordination Council) is a consultative and advisory body established by the authorized government agency to elaborate proposals on improvement of interaction with NGOs."

of grants by type and their inclusion in budget requests following the procedure prescribed in the budget legislation of the RK.⁴⁵

The list of priority areas of government grant-making contains the following:

- 1) description of the problem to be addressed by social projects proposed by applicants;
- 2) the amount of funding by type of government grants;
- 3) target indicators; and
- 4) in the case of long-term grants, the requirement in regard to the existing material and technological capabilities.⁴⁶

When bidding for a grant, an NGO is expected to independently state: the goals and objectives of its proposed social project; the mechanisms (or methods) of implementation, answering how the intended goals will be attained, how the set tasks will be performed, who will implement the project, and what resources will be involved; the project's region of focus; the project's timeline; the expected outcomes; the calendar planning; the project's cost estimates; among others. In its application, the NGO is also expected to provide a description of the problem it intends to address accompanied with a substantiation of the societal significance of the proposed social project. The problem should be substantiated by objective research-based data, analysis of statistical and analytical information, publications in the mass media, etc.

Another innovation is the introduction of a system of graded grants. These are short-term, medium-term, and long-term projects.⁴⁷ Depending on the type of grant, there are different requirements for the amount of funding, terms of implementation, conditions of participation in the competition for NGOs, and reporting requirements. Unlike short- and medium-term grants, long-term grants are awarded in two stages.

⁴⁵ Paragraph 3-6 of the Rules Regulating State Grants.

⁴⁶ Paragraph 9 of the Rules Regulating State Grants.

⁴⁷ Short-term grants:

- 1) the implementation period is between three months and one year;
- 2) the amount of funding is not less than 500 times (\$3,791) and not more than 3,000 times the MCI (\$22,744);
- 3) addressing local problems within at least 1 major town in the region or village or township or rural county.

Medium-term grants:

- 1) the implementation period of one to two years;
- 2) the amount of funding is not less than 3,000 times and not more than 10,000 times of the MCI;
- 3) addressing regional problems on the territory of at least 2 (two) oblasts, and (or) a city of republican significance and (or) the capital.

Long-term grants:

- 1) the implementation period of two to three years;
- 2) the amount of funding is not less than 10,000 times the amount of the MCI (\$75,813);
- 3) addressing all-republican problems on the territory of at least 10 (ten) oblasts, and (or) a city of republican significance and (or) the capital;
- 4) a complex of activities consisting of several components and (or) services (item 6 of the Policies Regulating State Grants).

The first stage includes the submission of applications for participation in the competition, application review, and evaluation of applications by members of the expert commission.⁴⁸ The second stage includes the presentation of applications by bidders who qualified at the first stage, and the selection of grant recipients.

A mechanism for assessing the effectiveness of grants with the participation of civil society representatives has also been introduced, which will improve the effectiveness of project implementation and provide substantiation for the subsequent grant-making.⁴⁹

In general, after the government amended the Law on SSP and the Rules Regulating State Grants, the stages of grant funding are as follows⁵⁰:

Establishing priority areas of work	LEBs prepare a list of priority areas on the basis of analysis, the NGO proposals, and recommendations in regard to interactions with NGOs Upon completion: establish the list of priority areas of work to be financed by grants (<i>Article 2 of the Rules Regulating State Grants</i>)
Carrying out competition procedures	The Operator engages outside experts and selects the best bids submitted by NGOs. Upon completion: The Operator announces the NGOs that have been awarded government grants (<i>paragraph 3 of the Rules Regulating State Grants</i>)
Monitoring of implementation of projects and acceptance of reports	NGOs implement projects and submit interim and final deliverables and reports to the Operator. Upon completion: The Operator compiles a report to submit to LEBs on the implementation of grants (<i>Chapter 4 of the Rules</i>)
Evaluation of the projects' effectiveness	Commissions, formed by the LEBs, evaluate the effectiveness of the projects funded by their grants. Upon completion: A report on the effectiveness of the grant-funded projects is published on the government agency's website (<i>Chapter 5 of the Rules Regulating State Grants</i>)

AWARDS

The decisions in regard to awards are rendered by the MISD. The awards can be allocated to NGOs that submitted information to the NGO Database in compliance with the procedure established by the RK legislation.⁵¹

Applications for awards shall be submitted by NGOs to the MISD each year by September 1.

⁴⁸ Paragraph 5 of the Rules Regulating State Grants.

⁴⁹ Адиль АЛШЕР, "Твори добро — другим во благо," Комсомолки, August 12, 2022, at <https://www.kp.kz/daily/27431.5/4631433/>.

⁵⁰ *Id.* <https://cisc.kz/wp-content/uploads/2022/12/prezentaciya-po-pravilam-npo-russ-yaz-1.pdf>.

⁵¹ Paragraph 1 Article 6-3 of the Law on SSP.

In order to participate in the competition, the following documents shall be submitted by the applicants:

- 1) application for participation in the competition;
- 2) filled out questionnaire of the applicant;
- 3) description of the applicant's activities (with supporting materials attached);
- 4) recommendations (not less than two) of representatives of the community (NGOs) and/or state bodies confirming the ability to implement projects and specifying the achieved results of joint work in the nominated field for the last three (3) years; contact information attached;
- 5) copies of award diplomas, commendations, letters of thanks (if any);
- 6) copies of articles and/or publications by or about the applicant (if any);
- 7) copies of constituent documents; and
- 8) a link to the webpage/social networks (if available).⁵²

NGOs may not be re-nominated for an award within three years of receiving a grant award.⁵³ The same NGOs may be nominated for an award in one field only.⁵⁴ The minimum amount of an award is 2,000 times the MCI (6,900,000 tenge or \$15,164⁵⁵) as established for the relevant fiscal year by the Law on the National Budget.⁵⁶ An award in one social issue area may be simultaneously provided to one or several applicants. If an award is allocated to several applicants, the total amount is equally divided among them.⁵⁷

In 2022, 54 NGOs received awards in 14 areas for a total amount of 95 million tenge (\$208,791).⁵⁸

⁵² Paragraph 9 of the Policies governing allocation of awards to NGOs, approved by the Decree of the Minister in charge of religious affairs and civil society of the RK dated May 25, 2018 #52.

⁵³ Paragraph 3 Article 6-3 of the Law on SSP.

⁵⁴ Paragraph 2 Article 6-3 of the Law on SSP.

⁵⁵ As of January 1, 2023, MCI amounts to 3450 tenge.

⁵⁶ Paragraph 4 Article 6-3 of the Law on SSP.

⁵⁷ Paragraph 5 Article 6-3 of the Law on SSP.

⁵⁸ "В Казахстане разработали новые принципы грантового финансирования НПО," Kazakhstan Today, December 19, 2022, at https://www.kt.kz/rus/business/_1377944534.html.

2. FOREIGN FINANCING

GRANTS

The definition of “grant” is included in a number of laws of the RK: the Tax Code of the RK (TC RK⁵⁹), the Law on SSP, and the Law on Charitable Activities. The main concept of a “grant” for taxation purposes is provided in the TC RK. A grant

“is recognized as an asset provided on a gratuitous basis for the purpose of attaining certain goals (objectives):

- by states, or governments of states – to the RK, the Government of the RK, individuals and legal entities;

- by international and national organizations, foreign and Kazakhstani non-governmental public organizations and funds, whose activities are of charitable and (or) international nature and do not run counter to the provisions of the Constitution of the RK, which are included in the list established by the Government of the RK pursuant to the decisions of government agencies – to the RK, the Government of the RK, individuals and legal entities;

- by foreigners and stateless persons to the RK and the Government of the RK.”⁶⁰

It is important to note that foreigners and stateless persons may act as grantors only for the RK and the Government of the RK, but not for NCOs.

In order for an NCO to be eligible for tax benefits provided to grantees, the grantor must meet a number of conditions:

- 1) the grantor must be a “public” organization (Kazakhstani legislation does not define the concept of “public”, but, in practice, and as a rule, “public” refers to most forms of non-profits);
- 2) the grantor must be a “non-governmental” organization (Kazakhstani legislation does not provide a general definition of “non-governmental,” but defines it only for the purposes of the Law on SSP);
- 3) the activities of the grantor must be of a charitable and/or international nature (the Law on Charitable Activities defines “charity” as socially useful activities based on the provision of charitable assistance and satisfaction of humane needs, carried out voluntarily, free of charge or on favorable terms in the form of philanthropic, sponsorship and patronage activities. Kazakhstan legislation does not define the term “international nature”);

⁵⁹ Code of the RK dated December 25, 2017 #120-VI “On Taxes and Other Mandatory Payments to the Budget (Tax Code)” (TC RK).

⁶⁰ Subparagraph 13, Paragraph 1, Article 1 of the Tax Code of the RK.

- 4) the activities of the grantor should not contradict the Constitution of the RK;
and
- 5) the grantor must be included in the List of Grantors, established by the Government of the RK pursuant to the resolutions of the government agencies.

In practice, requirement 5) could be deemed as the main criterion. Currently, there are 100 organizations in the List of Grantors⁶¹ approved by the Government of the RK. There is no existing publicly available procedure for inclusion in or exclusion from the List of Grantors.

There is also a separate list of international and state organizations, NGOs and foundations that provide grants for biodiversity conservation and the development of specially protected natural areas, which at the moment includes 23 organizations.⁶²

In addition to the definition of “grant” provided for in the Tax Code of the RK, the notion of “grant” is also defined in the Law on SSP.

“Grant for NGOs” is defined as funds provided to NGOs by an operator in the field of grant financing of NGOs, in order to support civic initiatives and engage the potential of NGOs to address pressing issues of social development.⁶³ The Law on SSP mainly regulates state grants. However, grants acquired from non-state sources, i.e., from individuals and legal entities, including international and foreign organizations, may also be regulated by this law in regard to the provision of such grants by the Operator.⁶⁴ The Law on SSP does not limit the possibility for foreign grantors to provide grants directly to NGOs without the intermediation of the Operator. However, for the purposes of tax exemption, a grant must meet the requirements of the Tax Code of the RK.

In addition, the Law on Charitable Activities defines “charitable grant” as “*money allocated for financial assistance to a recipient, provided the intended use of said funds is confirmed by a report.*”⁶⁵ However, the definition in this law is not relevant to the issue of taxation or the grantor's right to award grants. The recipient shall utilize a charitable grant in accordance with the contract concluded with the benefactor.⁶⁶ In practice, it is not yet clear on the specifics of the legal regulation of a charitable grant in comparison with the preexisting definitions of a grant.

⁶¹ Resolution of the Government of the RK dated April 9, 2018 #177.

⁶² “On approval of the list of international and state organizations, foreign and Kazakhstani non-governmental public organizations and foundations providing grants; on invalidation of some decisions of the Government of the Republic of Kazakhstan”.

⁶³ Decree of the Minister of Ecology, Geology and Natural Resources of the RK dated February 21, 2022 #44.

⁶⁴ Paragraph 7-1 Article 1 of the Law on SSP.

⁶⁵ Paragraphs 1 and 6 Article 6-1 of the Law on SSP.

⁶⁶ The Law on Charitable Activities, Paragraph 8 Article 1.

⁶⁷ The Law on Charitable Activities, Paragraph 6 Article 20.

Other income from foreign sources: Kazakhstani NCOs are entitled to receive funds from other foreign sources. In addition to grants, NCOs may obtain resources from foreign sources in the following forms: humanitarian aid; gratuitous technical assistance; or other forms of income received on a non-reimbursable basis for statutory purposes (e.g., donations). At the same time, legal regulation of other incomes acquired on a gratuitous basis from foreign sources has no specificity in comparison with incomes received from local sources, except for the requirements of notification of the state body about their receipt and reporting on their expenditure, as established by law. Specifics on notification and reporting related to the receipt of funds from foreign sources will be discussed below. Other issues of legal regulation of revenues received on a grant basis will be considered in the Section “Income from local non-governmental sources.”

Restrictions on receipt and use of funds from foreign sources: Kazakhstani legislation has certain restrictions on the receipt and use of funds from foreign sources for NCOs. In particular, it is prohibited to use funds acquired from foreign sources to organize and hold meetings, rallies, marches, pickets and demonstrations, or calls for participation in them, if their purpose is to incite racial, national, social and religious intolerance, class discrimination, violent overthrow of the constitutional order, encroachment on the territorial integrity of the RK, or violation of other provisions of the Constitution, laws, and other NLAs of the RK, or, in the event when carrying out such events threatens to violate the Constitution, laws, and other NLAs of the RK.⁶⁷

The legislation prohibits financing of political parties and trade unions in the RK by foreign legal entities and citizens, foreign states, and international organizations.⁶⁸ In addition, political parties and their branches and representative offices may not receive funds from: foreign states, foreign legal entities, and international organizations; foreigners and stateless persons; legal entities with foreign participation; state bodies and state organizations; religious associations and charitable organizations; anonymous donors; or citizens or NGOs of the RK receiving grants and other funds from international or foreign NGOs.⁶⁹

DONATIONS

In accordance with the definition given in the Budget Code of the RK, “gratuitous technical assistance is the implementation or organization by donors of delivery of goods, works and services to state organizations of the RK.”⁷⁰ At the same time, donors are foreign states, their governments and agencies, international and foreign state organizations, foreign non-governmental public organizations and foundations,

⁶⁷ Para. 20 p. 1 of Art. 6 of the Law of RK on National Security of the RK dated January 6, 2012.

⁶⁸ Article 5 of the Constitution of the RK.

⁶⁹ Paragraph 2 Article 18 of the Law of the RK on Political Parties dated July 15, 2002.

⁷⁰ Subparagraph 64, Paragraph 1, Article 3 of the Budget Code of the RK.

whose activities do not contradict the Constitution of the RK.⁷¹ NCOs may not be direct recipients of gratuitous technical assistance.

HUMANITARIAN ASSISTANCE

Humanitarian aid is defined in the TC RK as property provided free of charge to the RK in the form of food, consumer goods, machinery, equipment, medicines and medical devices, and other property provided by foreign countries and international organizations to improve living conditions and everyday life of the population, and also for the purpose of prevention and elimination of military, environmental, natural and man-made emergency situations, distributed by the Government of the RK through authorized organizations.⁷²

Donors of humanitarian aid are foreign states and their governments while the recipient is the RK.

The procedure for importing humanitarian aid is regulated by the Rules of importing goods, except for excisable goods, as humanitarian aid, approved by Resolution #374 of the Government of the RK dated June 25, 2018. In practice, almost all humanitarian aid comes to the RK and is distributed by the Government of the RK through authorized organizations. NCOs do not receive humanitarian aid directly.

Specifics of reporting when receiving income from foreign sources⁷³

On July 26, 2016, the President of Kazakhstan signed the Law on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan Regulating Payments and Payment Systems (the Law On Payments).

The Law on Payments introduced new requirements for individuals and legal entities receiving money or other assets from foreign sources:

- on notification of receipt and on reporting in regard to the use of money and/or property obtained from foreign states, international and foreign organizations, foreigners, and stateless persons (hereinafter foreign sources); and
- on labeling of all materials published, distributed and/or placed online at the expense of funds received from foreign sources.

According to Article 29 of the TC RK, the requirements to provide this reporting apply to individuals and legal entities and/or structural subdivisions of a legal entity that

⁷¹ Subparagraph 25, Paragraph 1, Article 3 of the Budget Code of the RK

⁷² Subparagraph 14, Paragraph 1, Article 1 of the Tax Code of the RK.

⁷³ This subparagraph is included in the Overview because notification and reporting requirements on the receipt and expenditure of funds from foreign sources may often be deemed a significant factor precluding NCOs from obtaining resources from various sources, thus directly affecting their financial sustainability.

acquired funds and/or other property from foreign states, international and foreign organizations, foreigners, and stateless persons for the following types of activities:

- 1) rendering legal assistance, including the distribution of legal information, protection, and representation of the interests of citizens and organizations, as well as consulting;
- 2) conducting public opinion studies and polls (except for public opinion polls and surveys conducted for commercial purposes), as well as the distribution and publication of their results; and
- 3) collecting, analyzing, and disseminating all types of information, except when such activity is carried out for commercial purposes.

The tax authorities should be informed not only about the receipt, but also about the expenditure of foreign funds in an amount exceeding one tenge.⁷⁴ Moreover, information on recipients of funds and persons providing these funds, alongside with information regarding the amount of funds received and other data, is included in the database⁷⁵ maintained by the State Revenue Committee under the Ministry of Finance of the RK (hereinafter SRC). In accordance with the 2018 edition of the Rules for Maintaining the Database⁷⁶, the information contained in the database was posted on the SRC's internet resource at www.kgd.gov.kz, where one could enter a BIN⁷⁷ or ITN⁷⁸ and see information about a particular recipient of foreign financing. However, Article 29 of the TC RK itself fails to mention the publication of the database altogether.

On December 21, 2022, amendments were made to Article 29 of the TC RK, according to which the SRC was mandated to publish on its internet resource a register of persons who have received money or other assets from foreign sources. The Rules for Maintaining the Database were also amended accordingly. Now, the SRC is obliged to publish the register every six months, not later than the 20th day of the month following the end of the reporting period. The register will contain the BIN or ITN, as well as the name of the organization or individual receiving foreign funding. The first such register will be published by September 2023. The SRC notes that the requirement of publication of the register is aimed at "increasing the level of trust of

⁷⁴ This threshold (over 1 tenge) was not set in the Tax Code; it was provided for in the Decrees of the Minister of Finance of RK dated February 20, 2018, #241, 242.

⁷⁵ The Decree of the Minister of Finance of the Republic of Kazakhstan dated February 20, 2018 # 240 on Approval of the Rules for maintaining the database of persons who received and spent money and (or) other assets acquired from foreign states, international and foreign organizations, foreigners, stateless persons; their inclusion and exclusion from the database (hereinafter – Rules for maintaining the database).

⁷⁶ Par 8 of the Rules for maintaining the database

⁷⁷ BIN - Business Tax ID Number

⁷⁸ ITN - Individual Tax ID number

citizens” in the state and in NGOs.⁷⁹ It is not clear how the publication of such information will help improve citizens’ trust in NGOs. NGOs themselves have expressed doubts and concerns about this initiative in the media; some view the register as the beginning of the introduction of the concept of a “foreign agent” as seen in Russia⁸⁰; others perceive it as a violation of the right to protection of personal data. It is not clear yet how this initiative will be implemented in practice and what purpose it might serve, given that such information was already available in a truncated form on the website of the SRC and in the open NGO Database maintained by the MISD (more information about the NGO Database later in this Section).⁸¹

In addition to the above requirements, information and materials published, distributed and/or posted by legal entities and/or their subdivisions at the expense of foreign funds must contain information on the persons who placed the order as well as an indication of the production, distribution and/or posting of information and materials at the expense of these funds.

The Law on Payments also amended the Code on Administrative Offenses of the RK (CoAO RK), which introduces administrative penalties for non-compliance with the above requirements. In particular, NCOs are administratively liable for the following offenses⁸²:

- “failure to notify in due time, or failure to submit, or late submission of information on receipt and expenditure of money and (or) other assets acquired from foreign sources shall entail a fine in the amount of 100 MCI (\$758⁸³);

- submission of inaccurate or knowingly false information on receipt and expenditure of money and (or) other assets acquired from foreign sources shall entail a fine in the amount of 200 MCI (\$1516) and suspension of activity;

- repeated occurrence of one of the above violations committed within one year after the first administrative penalty was imposed shall entail a fine in the amount of 250 MCI (\$1895) and the prohibition of activity;

⁷⁹ “Комитет госдоходов опубликует реестр лиц, получающих иностранное финансирование Читать,” Kazakhstan Today, March 17, 2023, at

https://www.kt.kz/rus/finansy/komitet_gosdohodov_opublikuet_reestr_lits_poluchayuschih_1377947882.html.

⁸⁰ “«Позорный столб» и «давление на независимые НПО». Зачем властям Казахстана считать «иностранные» деньги?” 5Media, April 7, 2023, at <https://bes.media/pojmyom-cto-k-chemu/pozornyi-stolb-i-davlenie-na-nezavisimye-npo-zachem-vlastyam-kazahstana-schitat-inostrannye-dengi-1027>.

⁸¹ <https://infonpo.gov.kz/> The NGO database contains a tab Register of NGO projects, where information on all projects implemented by NGOs is available, regardless of who finances such a project (state, foreign entity, Kazakhstani individuals). In particular, the Register contains information regarding the name, objectives and area of work under the project, BIN and name of the donor organization, total budget of the project, period of project implementation and the region where it is implemented. Information in the Register is updated once a year.

⁸² Art. 460-1 CoAO RK.

⁸³ Monthly calculation index (MCI) as of January 1, 2023 – 3,450 tenge. As of April 19, 2023 the exchange rate of the National Bank of Kazakhstan: 455.07 tenge for 1 USD.

*- failure to indicate in the publication the source of foreign funding, or failure to indicate that the publication was made at the expense of foreign sources shall entail a warning for the first violation; a fine of 25 MCI (\$190) for a repeated violation within one year after the warning was issued (note: this sanction is applied equally to all entities)."*⁸⁴

In addition, all NCOs must annually submit, by March 31, to the authorized body in charge of interaction with NGOs (e.g., MISD) *"information on the NGO activities, including their founders (participants), the composition of their assets, sources of financing and areas the resources are spent on,"* including property received from foreign sources, with detailed information on each project implemented by the NGO.⁸⁵ The information submitted by NGOs is entered by the MISD into the NGO Database.⁸⁶ The NGO Database is an information database formed to ensure transparency and public awareness of NGO activities, as well as to use in the framework of SSP, grant-making, and allocating awards. This reporting is mandatory for all NGOs, regardless of their participation in the competition for government social procurement, grants, and awards.⁸⁷

Administrative liability has been introduced for failure to submit, late submission, provision of inaccurate or false information.⁸⁸ The requirement to report to the NGO Database applies to the following forms of NCOs: private institutions; public associations; non-profit joint stock companies; public, corporate and private foundations; associations of legal entities in the form of a union (association); and branches and representative offices (separate subdivisions) of foreign and international non-commercial organizations operating in Kazakhstan.

The volume and structure of NCO income, as well as information on the size and composition of NCO assets, its expenditures, the number and composition of employees, their compensation, and the use of pro bono work within the framework of NCO activities may not be treated as confidential business information.⁸⁹ This means that all information regarding the structure and amount of NCO revenues, including

⁸⁴ Art. 460-2 CAO RK.

⁸⁵ Paragraph 5, Article 41 of the Law on NCOs.

⁸⁶ The Law of the RK on SSP, Grants and Awards for NGOs in the RK.

⁸⁷ Decree of the Minister of Culture and Sports of the Republic of Kazakhstan of February 19, 2016 # 51 On Approval of the Policies of providing information about their activities by non-governmental organizations and formation of the NGO Database.

⁸⁸ Article 489-1 of the CAO RK Violation of the legislation of the Republic of Kazakhstan on non-profit organizations: "1. Non-submission, untimely submission, or submission of inaccurate or knowingly false information to the authorized body in the sphere of interaction with NGOs in regard to the NGO's activities, their founders (participants), the structure of assets, sources of formation and types of expenditures by non-profit organizations established in the form of a private institution, public, corporate and private NCOs, and also by NCOs established in the form of a private, public, corporate and non-profit organizations in the form of NCOs, shall be sanctioned in the form of a warning.

2. Actions (inaction), provided for by part one of this article, committed repeatedly within a year after the imposition of an administrative penalty shall entail a fine in the amount of twenty-five monthly calculation indices or suspension of activities for a period of three months."

⁸⁹ Paragraph 4, Article 41 of the Law on NCOs.

information on foreign funding received, should be readily available to interested parties and presented immediately upon request.

3. INCOME FROM LOCAL NON-GOVERNMENTAL SOURCES

In addition to grants, NGOs may receive the following income on a gratuitous basis to carry out their statutory activities: admission and membership fees, charitable assistance, and donated property and other non-reimbursable gifts. These types of income are recognized as exempt from corporate income tax (CIT) for NGOs. At the same time, these types of income are not subject to some of the exemptions provided for by the TC RK in respect to grants (i.e., social tax, individual income tax, value added tax, and customs duties).⁹⁰ Tax benefits is discussed in more detail in Paragraph 5 “Taxation of NGOs and their donors.”

DONATION

The concept of “donation” is contained in Article 516 of the Civil Code of the RK. It is understood as “the gift of a thing or right for generally useful purposes.” NCOs have the right to both receive and make donations. Based on the definition of “donation,” any legal or physical entity may become a donor. Acceptance of a donation does not require anyone’s authorization or consent. The donation must be made for a certain purpose.

The Law on Charitable Activities also contains the concept of “voluntary donations.” They are understood as “money or other property given to users to seek resolution of social issues.” Thus, the definition of donation under the Civil Code is a gift of a thing or title, while under the Law on Charitable Activities donation is a transfer of money or other property. It is unclear whether these are different terms or definitions of the same concept provided for in different laws. This contradiction continues to remain in the legislation, and, in the absence of any official clarification, there is no clear understanding of how this situation will be resolved in practice.

CHARITABLE ASSISTANCE

NCOs in Kazakhstan have the right to receive charitable assistance from individuals and legal entities and NCOs also have the right to provide such assistance to other NCOs, individuals or organizations operating in the social sphere. Recipients of charitable assistance are referred to as “users,” i.e., persons receiving assistance to address social issues.⁹¹ Any legal entity and individual can be a charitable benefactor.

At the same time, charitable assistance may be provided to an NCO solely to support its statutory activities. If an NCO is a charitable organization, then all funds raised

⁹⁰ Selected Issues of Legal Regulation of NCO Activities in Central Asian Countries, pp. 14-15.

⁹¹ Subparagraph 15) paragraph 1, Article 1 of the Law on Charitable Activities.

must be used for charitable programs, including charitable assistance to ultimate beneficiaries.

According to the definition of charitable assistance in subparagraph 38) paragraph 1 of Article 1 of the Tax Code of the RK, charitable assistance is deemed as property provided free of charge:

- in the form of sponsorship;
- in the form of social support of an individual;
- to an individual who suffered as a result of an emergency situation;
- to an NCO for the purpose of supporting its statutory activities;
- to an organization operating in the social sphere for the purpose of carrying out the activities specified in paragraph 2 of Article 290 of the Tax Code; or
- to an organization carrying out activities in the social sphere that meets the criteria specified in paragraph 3 of Article 290 of the Tax Code.⁹²

The definition of “charitable assistance” in the Law on Charitable Activities differs from the definition provided in the Tax Code.⁹³ For instance, the definition in the Law on Charitable Activities does not stipulate the provision of charitable assistance to an individual who has suffered as a result of an emergency. Moreover, it also stipulates an additional condition for the provision of charitable assistance: it must be given “for the purpose of assisting the user in improving his financial and (or) material situation.”

ADMISSION AND MEMBERSHIP FEES

“The legislation of the RK does not define the concepts of admission and membership fees. Membership-based NCOs, according to the civil legislation of the RK, include associations (unions), public associations, religious associations, unions of auditors, defense attorneys’ bar associations, associations of notary public lawyers and of appraisers. Only these organizations have the right to obtain income from admission and membership fees. This right should be stated in the charter of the organization, and can also be regulated by the organization’s bylaws (for instance, by the provision on admission and membership fees), or agreements with each member of the organization, which envisage their obligation to pay admission and membership fees

⁹² Subparagraph 38) paragraph 1, Article 1 of the Tax Code RK.

⁹³ Subparagraph 10) paragraph 1 of Art. 1 of the Law on Charitable Activities: “..charitable assistance includes property provided by the benefactor on a gratuitous basis in order to assist the user in improving his financial and (or) material situation:

in the form of social support of an individual;

in the form of sponsorship;

to an NCO for the purpose of supporting its statutory activities;

to an organization carrying out activities in the social sphere defined in accordance with the Tax Code of the Republic of Kazakhstan.

to the association. Also, in our opinion, when establishing an NGO of any organizational and legal form (both membership and non-member organizations), founders can make an affiliation payment that will not be taxable [CIT...].”⁹⁴

SPONSORSHIP

The TC RK defines the concept of “sponsorship assistance” as property provided to the following individuals and entities on a gratuitous basis in order to spread information about the person providing this assistance:

- to individuals in the form of financial (except social) support for participation in competitions, contests, exhibitions, shows and development of creative, research, scientific, technological, and innovation activities, improvement of education and sports; and
- to NCOs for pursuing statutory goals.⁹⁵

Any legal entity and individual may become a sponsor. NCOs may both receive sponsorship and provide it to other NCOs or individuals for the purposes described above.

PHILANTHROPIC ACTIVITIES

Philanthropic activities are perceived as actions undertaken by a philanthropist for the purpose of the provision of charitable assistance on the basis of goodwill for the development of science, education, culture, art, sports, preservation of historical and ethno-cultural heritage of the society and the state.⁹⁶ Philanthropic activities are voluntary activities of a philanthropist based on the distribution of his or her private resources for the purpose of meeting the needs of society and individuals and improving their living standards.⁹⁷

DONATED PROPERTY

Proceeding from Article 238 of the TC RK, property donated free of charge means any property, including work and services rendered, received by a taxpayer for free (i.e., a gift). Consequently, in the event when an NCO can prove the “gratuitous nature” of the transfer of funds to it by a legal entity or individual, this income may be exempt from taxation in accordance with Article 289 of the TC RK.

4. INCOME FROM ENTREPRENEURIAL ACTIVITY

An NCO may engage in entrepreneurial activity only insofar as it corresponds to its statutory goals. Legislative acts of the RK may establish restrictions on the

⁹⁴ ‘Legal status of NCOs in the RK’, ICNL publication, Almaty, 2016, pages 66-67.

⁹⁵ Subparagraph 15) paragraph 1, Article 1 of the TC RK.

⁹⁶ Article 1, Paragraph 13 of the Law on Charitable Activities.

⁹⁷ Article 1, Paragraph 17 of the Law on Charitable Activities.

entrepreneurial activities of NCOs of certain organizational and legal forms. For example, the Law on SSP bans the participation of political parties, trade unions, and religious associations in the competition for SSP. Income from entrepreneurial activities of NCOs may not be distributed among members (or participants) of NCOs and shall be utilized only for statutory purposes. Public and religious associations and foundations may use their funds for charitable assistance.⁹⁸

Entrepreneurial activity includes any NCO activity aimed at generating income, regardless of what the profit will be spent on, even if all of the revenue from the entrepreneurial activity is used for charitable purposes or for the NCO's statutory purposes.

5. LEGAL REGULATION OF VOLUNTEERS

In Kazakhstan, the legal status of volunteers and issues related to the implementation of volunteer activities are regulated by the Law on Volunteering dated December 30, 2016 (hereinafter the Law on Volunteering).

The Law gave a new impetus to the development of volunteering in Kazakhstan, formed a generally accepted concept of volunteering, established unified principles of volunteer activities, and created legal prerequisites for further development of volunteering.

According to the findings of a sociological study conducted by the TALAP Center for Applied Research (a public foundation) in 2020, the volume of contribution of volunteer activity to the socio-economic development of Kazakhstan amounted to 3.41 billion tenge in 2019.⁹⁹ The study further notes most significant contribution of volunteering in Kazakhstan is made in two types of economic activity: "Water supply; sewerage system, control over the collection and disposal of waste" and "Health and social services." The former also includes free landscaping and public amenities works, while the latter includes various social and charitable activities. According to the TALAP Center study, as of 2020, more than 50,000 people were involved in volunteer activities for more than 200 volunteer organizations working in Kazakhstan. In August 2022, at the Central Asian Volunteer Forum, the Minister of the MISD noted the growth of the Kazakhstani volunteer movement, and indicated that the number of volunteer organizations and groups exceeded 680, and that more than 200,000 people were engaged in volunteering on a permanent basis.¹⁰⁰

⁹⁸ Article 33 of the Law on NCOs; Art. 25 of the Law of RK on Public Associations.

⁹⁹ Outcomes of the social project "Implementation of the assessment of the contribution of volunteer activities to the socio-economic development of the country" 2020, implemented under the state grant of the Center for Support of Civic Initiatives with the support of the Ministry of Information and Social Development of the RK. [Волонтерство оценка ru 4.pdf \(gazvolunteer.kz\)](#)

¹⁰⁰ See [inform.kz](#).

However, according to international comparative studies, Kazakhstan continues to belong to the group of countries with a low level of civic engagement and volunteer activity (93rd place out of 114 countries under review).¹⁰¹ This is confirmed by the findings of sociological research conducted in Kazakhstan.¹⁰² Local experts believe that the legislation does not contain sufficient incentives for the development of volunteer activities in Kazakhstan. In 2022, amendments were introduced to the Law on Volunteering and several attempts were also undertaken to diversify the tools of incentivizing volunteers and volunteer activities.¹⁰³

These incentives included the following:

- recognizing volunteers with state awards;
- granting volunteer organizations communal property in trust management without the right of subsequent buyout on favorable terms;
- granting volunteers who were awarded with a badge of honor for patriotism and active citizenship the right to certain privileges for participation in the competition for educational grants and in the enrollment in the institutions of higher learning within the framework of the government-paid tuition, provided said volunteers scored the same number of points at competitive entrance exams as other applicants (following the procedure established by the laws of the RK); and
- taking into account volunteer activities when employing for civil service (in compliance with the legislation of the RK.)

The Law on Volunteering introduced a new type of volunteering, namely, “corporate volunteering,” understood as “*voluntary collective participation of employees of an organization in various volunteer programs (projects) and volunteer actions undertaken with the support of their organization.*” The procedure for corporate volunteering is determined by the organization’s internal documents.

The Law on Volunteering initially established the notification aspect of accounting for volunteer activities. According to Article 16 of the Law on Volunteering,

¹⁰¹ According to the research of Charities Aid Foundation, in 2022 Kazakhstan has risen by five positions compared to last year and took 93rd place out of 114 surveyed. At the same time, in terms of such indicators as monetary donations, the country is in 40th place, and in terms of time spent on volunteering – in 87th place. (<https://forbes.kz>)

¹⁰² Only 6% of Kazakhstanis are active volunteers (sociological survey “A Study of the Situation in Civil Society” KazStat LLP) while 63% of respondents have no experience of volunteering at all (sociological survey “The System of Charity and Donation in the Republic of Kazakhstan,” SIC Youth). Source: Concept of the draft Law of the RK on Amendments and Additions to Some Legislative Acts of the RK on Volunteer and Charitable Activities.

¹⁰³ Law of the Republic of Kazakhstan on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Volunteer and Charitable Activities, Government Social Procurement, State Procurement for Strategic Partnership, Grants and Awards for Non-Governmental Organizations, Medicinal and Social Security dated July 4, 2022 #134-VII ZRC.

“in order to streamline the organization of volunteer activities, a Register of records of volunteer activities shall be maintained. ... The registration of volunteer activities shall be of a notification nature.”

Each CEB working with volunteers is expected to maintain such a register. In practice, such a register, if created, is solely for documentation purposes and does not play a role in the field of volunteering. In fact, state registers of volunteers are not functional; however, since April 2019, a private platform of volunteers called QazVolunteer.kz has become a unified information resource aimed at developing systematic management of volunteers and creating closer coordination among volunteer organizations. The private platform unites about 53 thousand volunteers, more than 10 thousand projects, and more than 3.4 thousand volunteer organizations. The platform includes information on the most diverse projects in the field of volunteering. It was launched with the support of the MISD, the National Volunteer Network of Volunteers, and the CISC.

In 2022, an amendment to the law on Volunteering removed the requirements of each CEB to keep a register of its volunteers and the registration of volunteer activities. There will be a single register maintained by the MISD as an authorized body in the field of volunteer activities. As of yet, there is no by-law on maintaining a unified register, and the basis and organization of such a register is unclear. The current legal framework does not stipulate an obligation for volunteers and volunteer organizations to register in order to carry out volunteer activities.

6. TAXATION OF NCOs AND THEIR DONORS

This Section partially uses materials from a 2020 ICNL publication titled [Legal Regulation of NCO Fundraising via Electronic Means \(Analytical Review\)](#), specifically, excerpts from Paragraph 2 “Taxation of NCOs.” The text has been edited and supplemented in accordance with the current legislation.

TAX REGIMES FOR NCOs

The Tax Code provides for two main categories of NCOs for which different preferential tax regimes are envisaged: non-commercial organizations (Article 289 “Taxation of non-commercial organizations”) and organizations carrying out activities in the social sphere of types 1 and 2 (Paragraphs 1 and 3. of Article 290 “Taxation of organizations carrying out activities in the social sphere”). There is also a third category that is applicable to NCOs: Article 291 “Taxation of Autonomous Educational Organizations,” but we will not consider it within the framework of this study, as this category refers to a very narrow number of NCOs, which are created by decision of First President of the RK or Government of the RK.

To fall under any of the three tax regimes, NCOs are not expected to submit any applications or seek any permits or confirmations. The NCO confirms its tax status

(application of one of the two tax regimes) by submitting an appropriately filed annual tax return 100.00.

The first preferential tax regime, which arises automatically from the moment an NCO is established, applies to NCOs that meet the definition of an NCO provided for in paragraph 1 article 289 of the TC RK. Namely, “for the purposes of this Code, a[n] [NCO] is an organization registered in the form established by the civil legislation of the [RK] for an NCO, except for joint stock companies, institutions and consumer cooperatives, (not including associations of property owners of an apartment building), which carries out activities in the public interest and meets the following criteria:

- 1) does not pursue the goal of making profits;
- 2) does not distribute the obtained net profit or property among its participants.”

In order to benefit from this regime, an NCO must:

- be registered in any organizational and legal form of NCO, except joint-stock companies, institutions, and consumer cooperatives (not including associations of property owners of an apartment building);
- carry out activities in the public interest;
- refrain from pursuing the purpose of obtaining profits (while the civil law only requires that obtaining net income should not be the main purpose of the activity); and
- refrain from distributing the acquired net income or property among its participants.

In practice, so far there have been no problems with this part of the definition of NCO in the TC RK, as local tax authorities do not interpret this provision of the TC RK and apply the tax regime under Article 289 of the TC RK formally on the basis of the legal form in which the NCO is registered.

According to Article 289 of the TC RK, the following types of NCO income are exempt from CIT, “subject to exclusion from aggregate annual income”:

- income under a contract for the implementation of a SSP;
- deposit bonuses;
- admission and membership fees;
- dues from owners of apartments and non-residential premises of an apartment building;
- excess of the amount of positive exchange rate difference over the amount of negative exchange rate difference arising from money placed on deposit, including interest accumulated thereon; and
- income in the form of property obtained free of charge, including charitable assistance, grants, including those specified in subparagraph 13), Paragraph 1,

Article 1 of this Code, sponsorship, money, and other property received on a gratuitous basis.

The above types of NCO income are not subject to CIT in the event when the NCO meets a number of criteria listed above (see definition of NCO). If these conditions, or at least one of them, are not met, the NCO income shall be subject to CIT in accordance with the generally established procedure.

The second preferential tax regime applicable to NCOs may be applied to “organizations engaged in social activities” (OESA). Such entities may include both commercial and NCOs. Article 290 of the Tax Code provides for two types of such organizations.

TYPE I:

Paragraph 2 of Article 290 of the TC RK reads:

“For the purposes of this Code, organizations operating in the social sphere include organizations that carry out the types of activities specified in part two of this Paragraph, the income from which, with account of income in the form of property received free of charge, deposit bonuses and the excess of amount of positive exchange rate difference over the amount of negative exchange rate difference that arose on such income shall not be less than 90% of total annual income of such organizations.”¹⁰⁴

¹⁰⁴ Paragraph 2 of Article 290 TC RK: “2. For the purposes of this Code, organizations operating in the social sphere include organizations that carry out the types of activities specified in part two of this Paragraph, the income from which, with account of income in the form of property received free of charge, deposit bonuses and the excess of amount of positive exchange rate difference over the amount of negative exchange rate difference that arose on such income shall not be less than 90% of total annual income of such organizations. Activities in the social sphere are as follows:

- 1) rendering of services in the form of medical assistance in accordance with the legislation of the Republic of Kazakhstan (including medical activities not subject to licensing) by a healthcare entity licensed to carry out medical activity;
 - 2) rendering of services for primary, secondary, general secondary education, technical and professional, post-secondary, higher and postgraduate education under appropriate licenses entitling to carry out educational activities, including any additional/preschool education.
- The income specified in this subparagraph also includes the income of a non-profit organization created in the form of a public fund as:
- dividends received from an organization operating in social sphere, the founder of which is an NGO created in the form of a public fund carrying out activity in social sphere specified in this subparagraph;
 - income from capital gain from sale of shares and (or) participatory interests in organizations carrying out the activity in social sphere, the founder of which is such a non-profit organization created in the form of a public fund carrying out activity in social sphere specified in this subparagraph;
 - 3) activities in the field of science (including scientific research, use of the said research outcomes, including their sale, by the author of scientific intellectual property), carried out by scientific and (or) scientific and technological entities accredited by the authorized body in the field of science, sports (except for sports and entertainment

Activities in the social sphere include the following types of activities:

- 1) provision of services in the field of medical care;
- 2) provision of services in primary, basic secondary, general secondary education, technical and vocational, post-secondary, higher and postgraduate education;
- 3) activities in the spheres of science, sports, culture, provision of services for the preservation of objects of historical and cultural heritage and cultural values, and in the field of social protection and social security of children, the elderly, and persons with disabilities; and
- 4) library services.

The income of such organizations is not subject to taxation when directed to the above activities.

In accordance with Paragraph 1, Article 290 of the TC RK,

“1. When determining the amount of corporate income tax payable to the budget by taxpayers defined by this Article as organizations carrying out activities in the social sphere, the amount of corporate income tax calculated in accordance with Article 302 of this Code is reduced by 100%.”

In the event when conditions stipulated by the Tax Code are met, NCOs of any organizational and legal form may be treated as OESA, including organizations recognized by the Tax Code as NCOs, and those not recognized as such, but treated as NCOs under civil law, for instance, institutions or joint-stock companies.

The peculiarity of taxation of organizations applying the OESA regime includes full exemption from CIT of all income of such an organization, including income received from social activities and the one received from other types of activities, provided that a number of conditions are met, in particular:

- the organization’s main income is derived from the social activities listed in Article 290 of the Tax Code;
- the established limit for the ratio of income from different types of activities is observed;

commercial activities), culture (except for entrepreneurial activities, with the exception of entrepreneurial activities of organizations with 100% participation of the state in the authorized capital), provision of conservation services (except for the dissemination of information and propaganda) historical and cultural heritage sites and cultural values included in the State List of monuments of history and culture in accordance with the legislation of the Republic of Kazakhstan, and in the field of social protection and social security of children, the elderly and people with disabilities; and

4) library services.”

- activities related to the production and sale of excisable goods are not allowed; and
- the income is directed to the specified social activities, i.e., it must cover the current activities, go to the development of the specified social activities and must not be distributed among the founders or allocated to any other types of activities.

In the event when these conditions are violated, a non-profit (or other) organization is not entitled to apply this tax regime.

Please note that 90% of income includes revenues obtained not only from the aforementioned social activities, but also income in the form of property that was received free of charge, deposit bonuses and the excess of the amount of positive exchange rate difference over the amount of negative exchange rate difference arising on such income.

TYPE II:

The second type of OESA, according to paragraph 3 of Article 290 of the TC RK, includes public associations of disabled people of the RK and organizations created by public associations of disabled people of the RK, which for the reporting tax period, as well as the tax period preceding the reporting tax period, meet one of the following conditions:

- 1) the average number of disabled persons in the employ of the organization makes up no less than 51% of the total number of employees; or
- 2) expenses for compensation of the people with disabilities in the employ of the organization makes up at least 51% (in specialized organizations employing the disabled with loss of hearing, speech, and vision – at least 35%) of the total expenses on salaries and wages.

In this case, compliance with the condition referred to in part one of this paragraph shall be determined by:

- newly-created organizations during the reporting tax period in which they were registered with the justice authority; or
- organizations operating under a long-term contract during the entire period of such a contract.

Income of the organizations provided for by this paragraph shall be exempt from taxation if 90% of the revenue is received (receivable) from the sale of produced (manufactured) goods, performance of work, provision of services, the production of which was carried out with participation of people with disabilities in the employ of such an organization, and the received income is directed exclusively to support the organization's activities.

These provisions may not be applied to organizations receiving income from activities related to the production and sale of excisable goods.

TAXATION OF CHARITABLE AID AND OTHER GRATUITOUS RECEIPTS

Let us consider the types of taxes that may arise for benefactors and recipients of charitable assistance. Prior to proceeding to taxes directly, it is important to understand what, according to the TC RK, refers to the notion of charitable assistance. According to subparagraph 38), paragraph 1, Article 1 of the TC RK, “charitable assistance is property provided on a gratuitous basis:

- in the form of sponsorship;
- in the form of social support of an individual;
- to an individual who suffered as a result of an emergency situation;
- to an NCO for the purpose of supporting its statutory activities;
- to an organization engaged in the provision of social services for the purpose of carrying out the types of activities specified in paragraph 2 of Article 290 of this Code;
- to an organization carrying out activities in the social sphere, which meets the conditions specified in paragraph 3, Article 290 of this Code.”

According to subparagraph 15, paragraph 1, Article 1 of the TC RK, “sponsorship” is *“assets provided on a non-reimbursable basis to disseminate information regarding a person rendering this assistance:*

among individuals in the form of financial (except for social) support for their participation in competitions, contests, exhibitions and festivals; for the development of creative, research, scientific, technological and innovation activities; to increase the level of education and sports;

among non-commercial organizations to enable them attain their statutory goals.”

REGARDING RECIPIENTS OF CHARITABLE ASSISTANCE

Let us consider the cases when the recipient of charitable aid is an NCO using various tax incentive regimes.

As seen from the definition of charitable assistance, benefactors may provide such assistance to:

- an NCO for the purpose of supporting its statutory activities (the first tax preferential regime for NCOs);
- an organization operating in the social sphere for the purpose of carrying out the activities specified in Paragraph 2 of Article 290 of this Code (the second tax preferential regime for NCOs – type I of OESA); and

- an organization carrying out activities in the social sphere that meets the conditions specified in Paragraph 3 of Article 290 of this Code (the second tax preferential regime for NCOs – type II of OESA).

Unlike charitable aid, only NCOs that are recognized as recipients of charitable assistance under Article 289 of the TC RK can receive sponsorship for the implementation of their statutory goals. Moreover, unlike charitable aid, sponsorship is provided for the purpose of spreading information about the person providing such assistance. In order to receive sponsorship, it is necessary to conclude an agreement on sponsorship.

Charitable aid, irrespective of which tax preferential regime an NCO enjoys, is not subject to CIT for NCOs, provided that the conditions stipulated in Articles 289 and 290 of the Tax Code are met. In this case, it is advisable for an NCO to conclude an agreement with a benefactor in order to be able to receive such aid for its statutory goals and objectives.

The provision of charitable aid and other gratuitous assistance in the form of money is not a taxable income from sales and, accordingly, is not subject to Value Added Tax (VAT). According to subparagraph 29) of Paragraph 5, Article 372 of the Tax Code of the RK (“fulfillment by the recipient of conditions for acquiring charitable and, sponsorship assistance or grant”), the allocation of charitable and sponsorship assistance or grants should not be treated as a taxable receivable from sales. This applies to all NCOs, regardless of the applicable tax regime.

Article 394 of the TC RK provides for the conditions under which sale of goods, works and services by OESA of Type I and Type 2 may be exempt from taxation.¹⁰⁵

As far as the charitable assistance received by NCOs is concerned, there exists an additional tax benefit for individuals in the form of exemption from individual income tax, which may be applicable in the event when, having acquired the assistance, the NCO subsequently distributes this aid to individuals.

¹⁰⁵ For instance, according to subparagraph 11, Paragraph 1 of Article 394 of the TC RK – “Turnover from the sale of goods, works, services exempt from VAT” – “Exempt from VAT are turnovers from the sale of goods, works, services, the place of sale of which is the Republic of Kazakhstan, such as:

11) goods, works, services, provided that in the taxable period of a sale, and also in the four preceding taxable periods, one of the following conditions is observed:

the average number of people with disabilities constitutes at least 51% of the total number of employees;

expenses for the labor compensation of people with disabilities make up at least 51% (in specialized organizations employing people with the loss of hearing, speech, vision – at least 35%) of the total labor expenses.

The provisions of this subparagraph shall not be applicable to the sale of excisable goods.

With respect to turnovers on realization under long-term contracts, the provisions of this subparagraph shall be applied subject to compliance with the conditions hereof during the entire period of validity of such contract....

25) services on realization by libraries of informational, cultural, educational functions;

26) services and works in the sphere of culture and education performed by theaters, philharmonic societies, cultural and leisure organizations....”

In fact, according to subparagraph 34), Paragraph 1, Article 341 of the TC RK, “*the following types of income shall be excluded from the income of an individual subject to taxation (hereinafter – income adjustment):*

34) the value of property received in the form of charitable and sponsorship aid.”

In addition, according to subparagraph 53) Paragraph 1, Article 341 of the TC RK: “*1. The following types of income shall be excluded from the income of an individual subject to taxation (hereinafter referred to as income adjustment):*

52) incomes of an individual received in the form of expenses of a non-profit organization determined by paragraph 1 of Article 289 of this Code, within the framework of implementation of the statutory goals and objectives for travel, accommodation and meals of an individual who is not in labor relations with such an organization and (or) not within the framework of a contract for the provision of services, performance of works.”

Consequently, payments to individuals for travel, accommodation, meals, etc., including through third parties, where these services are paid for directly to service providers, are exempt from the payment of personal income tax with the adoption of these amendments.

DONATED PROPERTY

In the event an NCO cannot characterize exactly the type of property that was received free of charge (when there is no clear indication in the contract of the type of aid, i.e., sponsorship, charitable assistance, or something else), but it is explicitly stated that it is provided on a non-reimbursable basis, it is possible to apply the “donated property” regime, which is also exempt from CIT. In cases where an NCO collects funds through SMS messages, its website, payment terminals, boxes, etc., the NCO cannot identify these as a specific type of assistance (e.g., sponsorship, charitable aid, etc.) as there is no contract. However, it is clear that such money was credited to the NCO’s account on a non-reimbursable basis, and therefore the “gratuitously received property” regime, which is not subject to CIT, may apply.

REGARDING BENEFACTORS

We have considered what tax benefits an NCO may take advantage of when receiving charitable assistance. Let us consider what tax benefits are provided for charitable organizations. According to the definition of charitable assistance, provided in the TC RK, any legal entity (commercial and non-commercial, public, and private) and individual (citizens of the RK, foreign citizens and stateless persons) can become donors of charitable assistance. However, the tax benefit provided for in Article 288 of the TC RK does not apply to all benefactors, but only to legal entities operating under the generally established tax regime, which spent resources on charitable or sponsorship assistance, or donated property to NCOs (OESA), or provided funds for payments of compensation to persons with disabilities and paid social tax

deductions from their salaries. Unfortunately, there are no benefits for physical persons providing charitable assistance in the Tax Code of the RK.

In compliance with Article 288 of the TC RK, “A taxpayer has the right to reduce taxable income with regard to the following types of expenses:

1) taxpayers who were monitored as large taxpayers in a taxable period – to the extent of total amount **not exceeding 3% of taxable income:**

... the value of property transferred free of charge, the recipient of which is:

a non-commercial organization;

an organization carrying out activity in the social sphere;

in the event when charitable assistance was provided pursuant to the taxpayer’s decision based on an application from a recipient of assistance...

2) taxpayers, except for taxpayers specified in subparagraph 1) of this Paragraph – to the extent of total amount **not exceeding 4% of taxable income:**

the value of property transferred free of charge, the recipient of which is:

a non-commercial organization;

an organization carrying out activity in the social sphere;

in the event when charitable assistance was provided pursuant to the taxpayer’s decision based on an application from a recipient of assistance...

3) twice the amount of incurred expenses for disabled people’s salaries and 50% of the amount of calculated social tax from wages and other payments to people with disabilities...”

A taxpayer has the right to reduce their taxable income by the above types of expenses in the total amount not exceeding 3% and 4% of their taxable income depending on the size of the business, whether the taxpayer is a large taxpayer or not. If a benefactor wants to take advantage of the tax exemption provided for in Article 288 of the TC RK and reduce their taxable income in connection with the provision of charitable assistance, they should prepare an application from the NCO for charitable assistance as well as a written decision to allocate funds (resolution of the management to provide assistance). It is advisable to conclude an agreement with the NCO on the provision of charitable assistance and sign an act of acceptance and transfer of property. It is also a good idea to obtain copies of state registration certificates of the NCO, confirming its status. Charitable aid is not deductible since the costs of providing charitable aid do not relate to income-generating activities. The transfer of charitable aid should be mentioned in payment documents. Based on the NCO’s application, funds are transferred either by wire transfer to the NCO’s checking account or by depositing money in the NCO’s cash office (a cash receipt order is issued by the person

receiving the aid). Additionally, property may be transferred in compliance with an acceptance certificate.

However, in order to take advantage of this exemption under Article 288 of the TC RK and to provide assistance to NCOs, it is not necessary to formalize it in the form of “charitable assistance.” Article 288 of the TC RK also provides for assistance in the form of “donated property” to NCOs or OESA. The legislation does not specify the procedure for the provision of donated property. However, in order to avoid disputes with the tax authorities, it is advisable to draw up a civil law contract between the entity donating the property and the NCO (OESA) accepting such property. The parties may then agree on stating the purpose of the property transfer and sign an acceptance certificate.

TAXATION OF INCOME FROM ENTREPRENEURIAL ACTIVITIES

The definition of entrepreneurial activity in terms of legislative regulation was discussed in the previous chapter of the Overview (*See Section 1.5. Income from entrepreneurial activity*). In that section, it is noted that an entrepreneurial activity includes any NCO activity aimed at generating income, regardless of what this income will be spent on. After payment of CIT, such income will be referred to as net profit and will be allocated to the statutory goals and objectives of the NCO and/or to charity.

NCO income from entrepreneurial activities (except for income under a contract for the implementation of SSP, rewards on deposits, or excess of the amount of a positive exchange rate difference over the amount of a negative exchange rate difference arising on monetary funds placed on deposit, including bonuses thereon) is subject to taxation under the generally established procedure at the rate of 20% (reported in Tax Form 100.00).

If an NCO, in addition to carrying out activities at the expense of income received from gratuitous receipts, carries out entrepreneurial activities, it is obliged to keep records of income and expenses on entrepreneurial activities separately.¹⁰⁶

“The amount of expenses of a non-profit organization subject to deductions is determined in one of the following ways:

- *on the basis of the proportion of income not specified in paragraph 2 of this article (not related to tax privileges regimes, for instance, entrepreneurial income) in the total amount of income of the NCO;*
- *on the basis of tax accounting data providing for separate accounting of expenses incurred at the expense of income specified in paragraph 2 of this Article and expenses incurred at the expense of other income.”* (Paragraph 3, Article 289 of the TC RK)

¹⁰⁶ Paragraph 3, Article 33 of the Law on Noncommercial Organizations in the RK

Consequently, NCOs may deduct expenses related to entrepreneurial activities in one of two ways: proceeding from the share of income or from separate accounting. However, tax reporting is prescribed in such a way (rather incorrectly) that, as a result, the method in which share of income is used cannot be applied normally. For instance, the share of income may not be correlated to all NCO expenses, but only to expenses from entrepreneurial activities, and, as a result, an NCO may not deduct all expenses on entrepreneurial activities, but rather only part of them, which is extremely unfavorable for NCOs. Therefore, NCOs mainly use the second method, namely, separate accounting of expenses covered by income received by NCOs free of charge (grants, charitable and sponsorship aid, etc.) and expenses covered by revenues from entrepreneurial activities.

At the same time, according to subparagraph 21) of Article 264 of the Tax Code, *“expenses of a non-profit organization made at the expense of income specified in paragraph 2 of Article 289 of the Tax Code are not subject to deduction.”* That is, expenses made at the expense of gratuitous receipts that are not subject to CIT cannot be deducted by an NCO when calculating CIT on income from entrepreneurial activity.

NCOs fill in Tax Form 100.00 for all their income and expenses for the year, regardless of the sources of income (gratuitous or entrepreneurial).

OTHER TAXES AND MANDATORY PAYMENTS AFFECTING NCOS

SOCIAL TAX

According to subparagraph 5) of part two of Paragraph 3, Article 484 of the TC RK,

“payments made from the funds provided by grants are not subject to social tax. In this case, payments should be made in accordance with the agreement (contract) concluded with the grantee or the executor appointed by the grantee to implement the goals (objectives) of the grant. In other words, in the event when an NCO receives a grant from one of the grantors from the list of eligible grantors, has a duly executed grant agreement, and uses grant resources to pay salaries to its employees, the NCO shall be exempt from the payment of mandatory social tax on said payments.”

LAND TAX

Article 510 of the TC RK provides for the following land tax exemptions for NCOs, depending on their organizational and legal form and field of activity:

- 1) When calculating the land tax, the following taxpayers may apply the zero-value coefficient to appropriate rates:

- legal entities defined by Paragraph 3 of Article 290 of the TC RK (organizations of people with disabilities);¹⁰⁷ and
 - legal entities defined by Paragraph 1 of Article 291 of the TC RK (autonomous educational organizations).¹⁰⁸
- 2) The following taxpayers may apply the 0.1 coefficient to calculate the amount of taxes due:
- NCOs established in accordance with Paragraph 1 of Article 289 of this Code¹⁰⁹, except for religious associations and non-profit organizations specified in Paragraph 4 of Article 289 of this Code;¹¹⁰
 - legal entities defined in Paragraph 4 of Article 290 of this Code (OESA) – on land plots used in the course of carrying out activities specified in Paragraph 2 of Article 290 of this Code.¹¹¹

These privileges on land tax according to paragraph 4 of Art. 510 of the TC RK do not apply in the event when a parcel of land and/or its part (together with buildings, structures, facilities located on it or without them) is provided under the contract of property lease, transfer for use on other grounds or utilization for commercial purposes, except for the case when the income from such transfer of a parcel of land

¹⁰⁷ Paragraph 3, Article 290 of the TC RK: “For the purposes of this Code, organizations operating in the social sphere shall also include public associations of people with disabilities of the RK and organizations created by public associations of people with disabilities of the RK, which for the reporting tax period, and in the tax period preceding the reporting tax period, meet one of the following conditions:

1) the average number of people with disabilities in the employ of the organization constitutes at least 51% of the total number of employees;

2) expenses for compensation of people with disabilities in the employ of the organization constitute at least 51% (in specialized organizations employing the disabled with loss of hearing, speech, and vision – at least 35%) of the total labor compensation expenses.”

¹⁰⁸ The Status of autonomous educational organizations is regulated by the Law of the RK on the Status of Nazarbayev University, Nazarbayev Intellectual Schools and Nazarbayev Foundation dated January 19, 2011 #394-IV ZRK.

¹⁰⁹ Paragraph 1, Art. 289 of the TC RK: “1. For the purposes of this Code, a non-commercial organization is an organization registered in the form established by the civil legislation of the Republic of Kazakhstan for non-commercial organization, with the exception of joint stock companies, institutions and consumer cooperatives, except for cooperatives of owners of premises (apartments), associations of property owners of an apartment building, which carries out activities in the public interest and meets the following criteria:

1) has no purpose of generating income as the main purpose of its activities;

2) does not distribute the received net profits or property among the participants.”

¹¹⁰ Paragraph 4, Art. 289 of the TC RK: “The provisions of this article shall not apply to non-profit organizations that are recognized as:

1) autonomous educational organizations in accordance with Article 291 of this Code;

2) organizations carrying out activities in the social sphere in accordance with Article 290 of this Code.”

¹¹¹ Paragraph 2, Art. 290 of the TC RK: “For the purposes of this Code, organizations operating in the social sphere include entities that carry out the types of activities specified in part two of this Paragraph, the income from which, with account of income in the form of property received free of charge, deposit bonuses, and the excess of amount of positive exchange rate difference over the amount of negative exchange rate difference that arose on such income constitutes not be less than 90% of total annual income of such organizations.”

and/or its part under the contract of property lease, or transfer for use on other grounds, is credited to the state budget. When part one of this paragraph is applied:

- taxpayers shall be obliged to keep separate accounting of objects of taxation; and
- the amount of land tax on a part of the land plot shall be determined by the ratio of the of such part of the parcel of land to the total area of the entire plot of land.

Religious associations are exempt from the payment of land tax under paragraph 3 of Art. 498 of the TC RK.

PROPERTY TAX

The TC RK stipulates the following privileges in respect to property taxes for NCOs depending on their organizational and legal form:

- 1) In accordance with Paragraph 3 of Article 521 of the TC RK, the following legal entities calculate the property tax at the rate of 0.1% to the tax base:
 - legal entities specified in Article 289 of this Code, except for religious associations and non-commercial organizations, specified in paragraph 4 of Article 289 of this Code;
 - legal entities specified in Article 290 of this Code (OESA); and
 - organizations, whose main activity is the performance of works (provision of services) in the field of library services.

At the same time, these legal entities calculate and pay property tax on the property that was transferred to them for use, lease or trust management at the tax rate established by paragraph 1 of Art. 521 of the TC RK (1.5% of the tax base¹¹²), except for the legal entities specified in:

1. paragraph 2 of Article 290 of this Code – in the event when the payment for such use, trust management or lease goes to the state budget (OESA);
 2. paragraph 3 of Article 290 of this Code (organizations of persons with disabilities);
 3. subparagraph 12) of paragraph 3 of this Article (entities engaged in organizing and holding specialized international trade shows on the territory of the RK).
- 2) According to paragraph 5 of Art. 521 of the TC RK, property tax at the rate of 0% to the tax base shall be available to:
 - legal entities specified in paragraph 1 of Article 291 of this Code (autonomous educational organizations);

¹¹² Paragraph 1, Art. 520 of the Tax Code RK: “... the tax base for taxable items of individual entrepreneurs and legal entities ... is the average annual book value of taxable items determined on the basis of accounting data.”

- 3) According to subparagraph 4 of paragraph 3, Article 517 of the TC RK, religious associations are exempt from the payment of property tax. At the same time, religious associations pay this tax on taxable objects transferred for use, trust management or lease.

STATE DUTY

In accordance with Article 607 of the TC RK, the state duty is a payment to the budget charged for committing legally significant actions, including those related to the issuance of documents (their copies, duplicates) by authorized state bodies or their officials.

NCOs become state duty payers when they apply to state-authorized bodies or officials for the performance of legally significant actions and/or the issuance of documents.

Certain categories of NCOs may enjoy privileges in regard to the state duty payments:

- 1) State duty in the Constitutional Court and other courts is waived for:¹¹³
 - claimants – on claims for violations of electoral rights of citizens and public associations, and violations of the rights of citizens and public associations to participate in a nationwide referendum; and
 - public associations of persons with disabilities and/or organizations created by them, employing at least 35% of disabled people with losses of hearing, speech, and vision – when filing statements of claim to protect their own interests.
- 2) The state duty on notarial actions is not paid by:¹¹⁴
 - the Voluntary Society of Disabled People in Kazakhstan (VSDPK), the Kazakhstan Society of the Deaf (KSD), the Kazakhstan Society of the Blind (KSB), and their manufacturing facilities – on all notarial actions.

FEE FOR STATE REGISTRATION OF LEGAL ENTITIES

NCOs are payers of the fee for state (record) registration of legal entities in the following cases:

- 1) state registration of the establishment of legal entities and record registration of their branches and representative offices;
- 2) state registration of termination of activities of legal entities and record registration of termination of activities of their branches and representative offices;
- 3) re-registration of legal entities and record re-registration of their branches and representative offices; or

¹¹³ Art. 616 of the TC RK.

¹¹⁴ Art. 617 of the TC RK.

- 4) when legal entities, their branches and representative offices receive a duplicate of the certificate of state (record) registration.

The rates of fee for state (record) registration of legal entities, their branches and representative offices, except for commercial organizations and their re-registration, are as follows:

- 1) The amount of payment for state registration (including reorganization in cases provided for by the legislation of the RK) of children's and youth public associations, public associations of people with disabilities, record registration of their branches and representative offices, branches of national and regional ethnic-cultural public associations is 2 MCI (600 tenge). For re-registration and for registration of termination of activity (including reorganization in cases stipulated by the legislation of the RK), and deregistration – 1 MCI (3,450 tenge);
- 2) The fee for state registration of associations of property owners of an apartment building, for registration of termination of activity, record registration and deregistration of their branches and representative offices is 1 MCI (3,450 tenge); for re-registration – 0.5 MCI (1,725 tenge);
- 3) The fee for state registration (and re-registration) of political parties, their branches and representative offices, for registration of termination of activity, record registration, and deregistration is 14 MCI (48,300 tenge);
- 4) The fee for state (record) registration, re-registration of other legal entities, their branches and representative offices, registration of termination of activity, record registration, and deregistration is 6.5 MCI (22,425 tenge).

There are no special features pertaining to taxation of NCOs with regard to other types of taxes or other mandatory payments to the budget.

CUSTOM DUTY RELIEF

Paragraph 1 of Article 80 of the Code of the RK On Customs Regulation in the RK dated December 26, 2017 lists the objects exempt from customs duties, including:

- 1) goods, except for excisable goods, imported as humanitarian aid (subparagraph 4);
- 2) goods, except for excisable goods (except for cars specially designed for medical purposes), imported for the purposes of charitable assistance within the framework of assistance provided by states, governments of states, international organizations, including technical assistance (subparagraph 5); and
- 3) goods purchased at the expense of grants provided by states, state governments and international organizations specified in accordance with the tax legislation of the RK (subparagraph 8).

The procedure for submission of documents for exemption from customs duties is established by the authorized government agency.

KYRGYZSTAN

GENERAL OVERVIEW

NCOs in Kyrgyzstan have many sources of income that are guaranteed by legislation. The key among them are foreign funding and income from entrepreneurial activities. Membership fees, donations from local legal entities and individuals, and state support also play a role but are secondary in importance, which is confirmed by research.

Between November 2012 and June 2013, the Association of Civil Society Support Centers (ACSSC¹¹⁵) conducted a study on the development of the NCO sector in the KR.¹¹⁶ One of the parameters of the study was the sector's financial sustainability, namely the sources of funding. The study found that grants from foreign donor organizations continued to occupy a leading place in the structure of NCO revenues, although their share in the overall income had significantly decreased compared to the previous study conducted by ACSSC in 2008. As for diversification,

“the range of sources used is rather broad, with one in three [NCOs] partially funded by grants from donor organizations, and one in five receiving income from the sale of goods and services, as well as membership fees. Sponsorship income from business entities, donations from individuals, and grants under State Social Procurement (SSP) are also common sources of funding. While a small proportion [of NCOs] (approximately 20%) have a diversified (three or more sources) funding system, most NCOs rely on no more than two sources of funding.”¹¹⁷

In 2012, in percentage terms, the most significant sources of funding for NCOs were grants from international organizations (22%) and revenue from the sale of the organization's goods and services (15%). Other sources of NCO funding, such as membership fees (13%) and donations from members, staff and founders (13%), also played a significant role. In addition, founders' contributions (12%) and private donations by individuals (9%) made up a notable part of funding. Donations from local and foreign business organizations accounted for 6% and 4%, respectively.

¹¹⁵ ACSSC changed its name in 2019 and was re-registered as the Smart Zharan Association of Legal Entities.

¹¹⁶ *Sostoyaniye i perspektivy razvitiya nepravitelstvennogo sektora Kyrgyzstana (Otchet po issledovaniyu)* (The Status and Prospects of the Development of the Nongovernmental Sector of Kyrgyzstan (Study Report)). – Bishkek: 2013. As no similar studies have since been conducted in Kyrgyzstan, the data of this analysis is recognized as relevant to this day.

¹¹⁷ *Ibid.*, p. 62.

Respondents rarely mentioned funding from SSP (1%) and government subsidies or grants (1%) as sources of funding for their organizations.¹¹⁸

The authors of the study point out, however, that although there is no statistical data to support this information, and the volume of foreign funding in the KR has also started to gradually diminish. For example, major donors, such as the Embassy of Finland, Soros Foundation Kyrgyzstan, and the Global Fund, have significantly reduced their budgets for grant funding of NCOs in the KR. In addition, many post-conflict rehabilitation projects that were initiated and under way in 2010 have also ceased their activities.

While local sources of funding in Kyrgyzstan exist, they provide insufficient amounts. Partly, this can be explained by insufficient tax incentives for NCOs and donors. Many companies help those in need directly rather than through NCOs. Individuals also rarely donate through NCOs. In-kind assistance is more common in rural areas and is usually provided to NCOs on an ad hoc basis. Donations from individuals are small and often go undocumented (Kyrgyz legislation does not provide any tax benefits for private donors). The number of NCOs engaging in entrepreneurial activities is still small due to an insufficiently favorable tax regime and a lack of initial capital.

Next, let us consider the legal regulation of the following sources of funding for NCOs in the order of their priority for most NCOs in the KR, as well as the current legislation on taxation of NCOs and their donors:

- 1) foreign funding;
- 2) income from entrepreneurial activities;
- 3) income from local non-governmental sources;
- 4) government funding;
- 5) taxation of NCOs and their donors; and
- 6) legal regulation of volunteering.

1. FOREIGN FUNDING

Funds from foreign sources constitute a significant part of income for many Kyrgyz NCOs. The legislation of the KR regarding the regulation of foreign assistance is in line with international best practice and does not create obstacles for its receipt. In particular, the Kyrgyz legislation does not contain a requirement for NCOs to obtain special authorization from government authorities to receive foreign aid. Also, Kyrgyzstan does not require the registration of foreign funding received. Reporting

¹¹⁸ *Ibid.*, p. 63.

requirements for NCOs receiving foreign funding do not differ from those for NCOs receiving funding from local sources.

NCOs in the KR receive the following types of foreign aid:

- 1) grants;
- 2) donations; and
- 3) humanitarian aid.

Most NCOs in the KR receive foreign funding in the form of grants. Let us further consider the legal regulation of each of the above three types of foreign aid.

GRANTS

Much of the foreign aid to Kyrgyz NCOs comes as grants. The Tax Code of the KR (hereinafter TC of the KR ¹¹⁹) defines a grant as follows:

“A grant is assets donated by governments or international, foreign and domestic organizations to the Cabinet of Ministers, local governments, government, and non-profit organizations not involved in supporting political parties or candidates for elected campaigns.” ¹²⁰

DONATIONS

The Kyrgyz legislation does not contain any special norms regulating the procedure for providing donations to or receiving donations from NCOs and does not differentiate between donations from local and foreign sources. See an overview of donations in Section 3 “Revenues from Local Non-Government Sources” below.

HUMANITARIAN AID

Humanitarian aid is assets provided free of charge by governments and organizations to the Cabinet of Ministers, local governments, and government and non-profit organizations, as well as needy individuals in the form of food, machinery, equipment, appliances, medical supplies, medicines and other property to improve the living conditions and everyday life of the population and prevent and eliminate the consequences of emergencies of military, environmental or man-made nature on the condition of their further consumption and/or gratuitous distribution. ¹²¹

2. INCOME FROM ENTREPRENEURIAL ACTIVITY

NCOs in the KR are allowed to engage in the sale of goods and services and receive profits from these activities. The Law of the KR On Noncommercial Organizations

¹¹⁹ Tax Code of the KR (TC of the KR) of Jan 18, 2022.

¹²⁰ Paragraph 9 Article 174 TC of the KR.

¹²¹ Paragraph 10 Article 174 TC of the KR.

(hereinafter the Law on NCOs) establishes the basic principles of NCOs' entrepreneurial activities:

*“A noncommercial organization has the right to engage in economic activities, including production, without distributing profits among founders, members, officers, other employees and members of management bodies. Such activities may include the production and sale of goods, performance of work, rendering services for remuneration, and other types of entrepreneurial activities, if they do not contradict the goals and objectives of the organization.”*¹²²

The Civil Code of the KR (CC of the KR) defines entrepreneurial activity as “independent activity carried out at one’s own risk and aimed at obtaining profit.”¹²³ The TC of the KR contains no reference to the CC of the KR when defining the concept of “entrepreneurial activity.” The TC of the KR also contains a definition of a broader concept – “economic activity,” which includes “entrepreneurial and other activities.”¹²⁴ Other activities, in their turn, include activities such as:

- carrying out activities in accordance with the labor legislation of the [KR];
- investing monetary funds in banks;
- acquisition, transfer or sale of securities or the share of an individual or legal entity in authorized capital;
- receiving any payments in accordance with the share of an individual or legal entity in authorized capital;
- receiving penalties, fines, compensation for moral damages;
- receiving insurance money (indemnities) under insurance contracts; and
- other activities that are not entrepreneurial activities.

NCOs may conduct their entrepreneurial activities either directly or through the establishment of subsidiary commercial organizations. In the latter case, the subsidiary commercial organization transfers the profit received to the founder, i.e., an NCO, which, in turn, directs these funds to achieving the goals of its creation.

The Law of the KR on Philanthropy and Charitable Activity [the more frequent translation; also, The Law on Arts Patronage and Charitable Activity – *Tr.*] contains a restriction on the right of charitable organizations to carry out entrepreneurial activities: their entrepreneurial activities must correspond to the objectives of their establishment.¹²⁵ For example, a charitable organization for the support of persons with disabilities has the right to open a store where special goods intended for persons with disabilities (wheelchairs, crutches, prostheses, etc.) will be sold. However, if a charitable organization engages in other types of entrepreneurial activities, for

¹²² Article 12 of Law #111 of the KR On Noncommercial Organizations of Oct 15, 1999.

¹²³ Part 4 of Article 1 of the Civil Code of the KR of May 8, 1996 (Part I).

¹²⁴ Article 23 TC of the KR.

¹²⁵ Law #119 of the KR on Philanthropy and Charitable Activity of Nov 6, 1999.

example, opens a sewing shop, sets up an auditing company or sells other goods, it will not correspond to the purposes of its establishment and will lose its status and tax benefits as a charitable organization under the TC of the KR.

Paragraph 2, Part 1 of Article 161 of the CC of the KR and Part 1, Article 18 of the Law on NCOs contain a similar unsubstantiated restriction of the right to carry out entrepreneurial activities for “public [civil society] associations,” and in Part 2, Article 162 of the CC of the KR – for “public foundations.”

In other cases, ordinary NCOs, according to Article 12 of the Law on NCOs, have the right, unlike charitable organizations, to carry out any type of entrepreneurial activity that does not contradict the objectives of their establishment. For example, an NCO established for the purpose of protecting the health of citizens has no right to trade in tobacco and other goods harmful to health but may trade in all other goods that are not harmful to health.

3. INCOME FROM LOCAL NON-GOVERNMENTAL SOURCES

DONATIONS BY LEGAL ENTITIES AND PRIVATE INDIVIDUALS

Assistance from local legal entities and individuals to NCOs normally comes as donations and, less frequently, gifts. A donation is recognized as “the giving of a thing or property right for a generally useful purpose.”¹²⁶ A gift or donation may be made by an individual or a legal entity, regardless of citizenship or country of registration, location, or place of transfer. The CC of the KR provides that a donation may be given to

*“individuals, social protection agencies, medical, educational, scientific, educational, charitable and other similar institutions, museums and other cultural establishments, foundations, community and religious organizations, as well as to the state and its administrative-territorial units.”*¹²⁷

In accordance with Part 2 of Article 518 of the CC of the KR (Part II), “acceptance of a donation does not require anyone’s consent or authorization.”¹²⁸ Part 3 of Article 518 of the CC of the KR (Part II) provides that “*donation of property to an individual shall be designed for, and to legal entities may be conditioned by the donor on its use for a certain purpose.*”

“Donations may be collected in the following ways:

- 1) receiving cash in the NCO’s cash office;*
- 2) installing cash collection boxes in public places;*
- 3) collecting donations via cell phones;*

¹²⁶ CC of the KR of Jan 5, 1998 (Part II), Article 518.

¹²⁷ Paragraph 2 Part 1 of Article 518 CC of the KR (Part II).

¹²⁸ *Some Issues of Legal Regulation of NCOs’ Activity in Countries of Central Asia*, p. 43.

- 4) *via quick payment terminals; and*
- 5) *via the Internet using a bank card or in any other way not prohibited by law.*¹²⁹

The Law of the KR on Philanthropy and Charitable Activity¹³⁰ also establishes the right of individuals and legal entities to provide charitable donations to charitable organizations. The use of these donations is carried out in accordance with the procedure established by the Law of the KR on Philanthropy and Charitable Activity.¹³¹ This law became the first experience in legal regulation of charitable organizations in Kyrgyzstan. Under the Law, an NCO registered in the organizational and legal form of a public (civil society) association, foundation or institution has the right to obtain the status of a charitable organization on a voluntary basis. The charitable organization status entitles NCOs to tax benefits provided for charitable organizations by the TC of the KR, but, at the same time, obliges them to meet more stringent reporting and transparency requirements than regular NCOs do.

While benefits for charitable organizations are provided for by the TC of the KR, no organization seems to enjoy them, as there are no charitable organizations in the country that have formally received that status. The problem is that the current Law of the KR On Philanthropy and Charitable Activity sets far too stringent requirements for charitable organizations. For example, in order to be recognized as a charitable organization, an NCO must spend at least 98% of its income on charitable purposes and no more than 2% on its administrative needs (e.g., office rent, payment for utilities, purchase of office supplies, employee salaries, etc.). This condition is near impossible to meet since no organization can survive on 2% of its income.

ADMISSION AND MEMBERSHIP FEES

Membership NCOs receive part of their income in the form of admission and membership fees. Non-membership NCOs include foundations and institutions; all other NCOs in Kyrgyzstan are membership organizations, such as public associations, associations of legal entities, religious organizations, homeowners' associations, water users' associations, trade unions, and the like.

"Membership fees" are assets transferred by a member of an NCO in the amount and in accordance with the procedure stipulated in the organization's constituent documents, provided that such transfer is not conditioned by the reciprocal provision of goods, works or services to the member of this organization free of charge or at a price lower than cost.¹³²

¹²⁹ *Ibid.*, pp. 43-44.

¹³⁰ Law #119 of the KR on Philanthropy and Charitable Activity of Nov 6, 1999.

¹³¹ Part 4 of Article 14 of the Law of the KR on Philanthropy and Charitable Activity.

¹³² Paragraph 62, Article 174 TC of the KR.

“Entrance fees” are assets transferred to a person upon joining a membership NCO in the amount and in accordance with the procedure provided for in the organization’s constituent documents, provided that such transfer is not conditioned on the reciprocal provision of services to the member of this organization free of charge or at a price lower than cost.¹³³

4. STATE FUNDING

The main forms of government funding of NCOs in Kyrgyzstan are SSP: the purchase of services for the population from non-governmental providers, including NCOs, as well as subsidies and other forms of government aid. Below we briefly discuss each of these SSP forms.

SSP

SSP is a general trend that emerged in Europe in the 1990s: a gradual withdrawal of the government and local authorities from the direct provision of social services to the population and the purchase of these services from private entities (commercial and non-commercial organizations). At the same time, the government retains control over the financing and oversight of SSP services.

The first Law of the KR on Government Social Procurement was adopted in 2008. Based on this law, the Ministry of Labor and Social Development (MoLSD) of the KR began to annually finance socially beneficial projects of NCOs in the social sphere on a competitive basis. Since the law had a number of shortcomings, a new version was adopted in April 2017 (hereinafter the SSP Law).

The SSP Law provides for three forms of SSP implementation:

- 1) public procurement;
- 2) grants for socially beneficial projects of NCOs; and
- 3) social coupons (vouchers) for the purchase of social services.

State procurement is used when the types of social services or goods to be procured for citizens in need and their approximate prices are known. Legal entities (commercial and non-commercial organizations) and individual entrepreneurs can be SSP providers in the form of state procurement of social services (referred to as suppliers). The SSP Law does not contain the procedure for procurement of services and goods but refers to the public procurement norms of the umbrella Law of the KR on Public Procurement¹³⁴, which is widely applied by all government bodies.

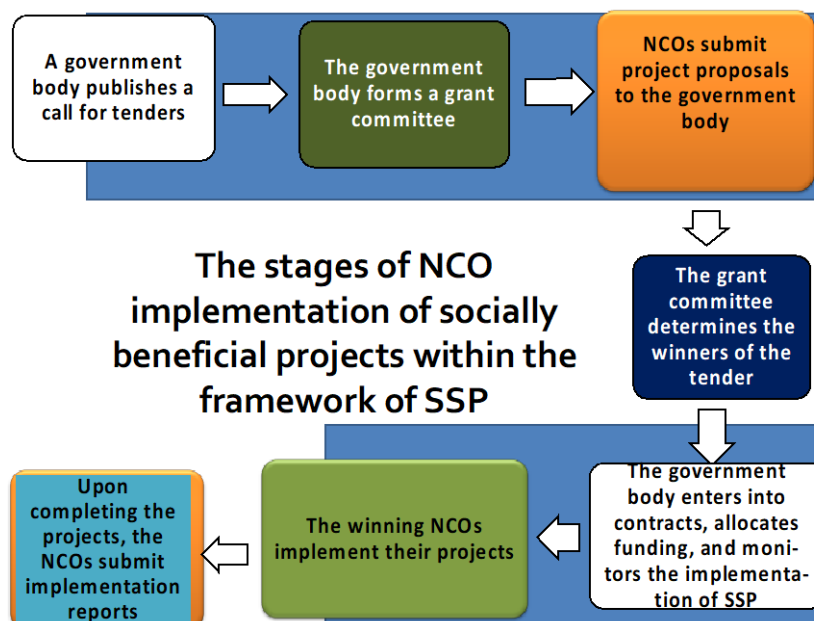
Grants for socially beneficial projects of NCOs are used when social problems and public benefit goals are known, and NCOs’ ideas and proposals to achieve these goals are in order. The best proposals that contain effective ways of solving social problems

¹³³ *Ibid.* Paragraph 7.

¹³⁴ Law #27 of the KR on Public Procurement of Apr 14, 2022

and achieving public benefit goals are selected for funding in a competitive procedure. Only NCOs can implement SSP in the form of grants for socially beneficial projects.

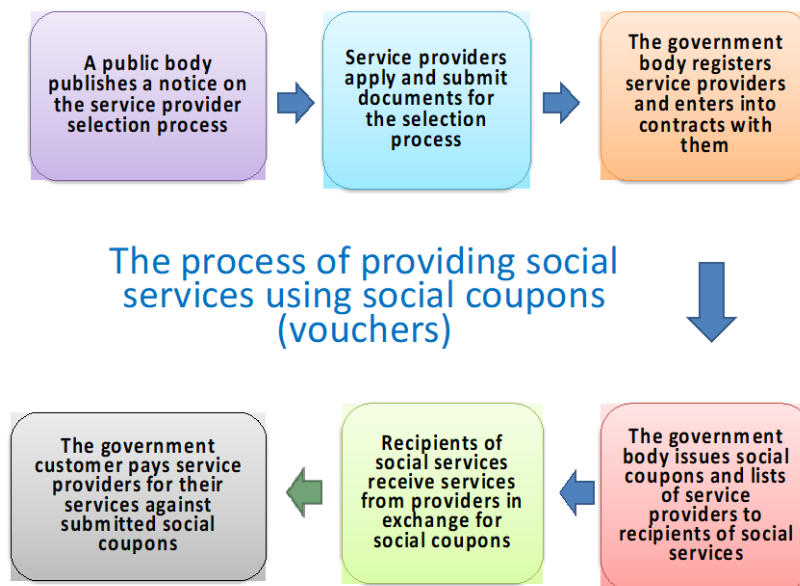
The diagram below shows the stages of the implementation of NCOs' socially beneficial projects that are funded by grants within the SSP framework.



Social coupons (vouchers) are used where there is a wide network of providers of purchased social services. Legal entities, whether for-profit or not-for-profit organizations, and individual entrepreneurs can become providers (or suppliers) of social services for social coupons (vouchers).

In implementing SSP under this procedure, a government body publishes an announcement that it intends to procure certain services from the private sector. Service providers willing to participate in the program are then registered with the government body (referred to as a government customer). Then, the government customer issues social vouchers with a list of the names and addresses of respective service providers to individuals in need of these services. Further, service recipients choose their own providers and receive services in exchange for social vouchers. The service providers return social vouchers to the government customer and receive the value of social vouchers in their bank account.

The diagram below shows the stages of procurement of social services for social coupons (vouchers) under SSP.



Article 5 of the SSP Law lists the following areas in which SSP can be applied to solve social problems and achieve socially beneficial goals:

- 1) protection of socially disadvantaged categories of the population, including families and children in difficult life situations, senior citizens, and persons with disabilities;
- 2) support of youth;
- 3) education and enlightenment;
- 4) health and physical well-being;
- 5) medical care;
- 6) social entrepreneurship (entrepreneurial activity for socially useful purposes);
- 7) poverty reduction;
- 8) environmental protection, including protection of endangered plants and animals;
- 9) physical education and amateur sports;
- 10) science;
- 11) literature;
- 12) art;
- 13) culture;
- 14) tourism;
- 15) human rights, including the elimination of racial, ethnic, religious, gender or any other form of discrimination;
- 16) public order and social harmony;
- 16-1) probation; and
- 17) assistance to migrants, forced migrants and refugees.

SSP is financed from the national and/or local budgets.

Information about the SSP program, its implementation plan, any tenders being conducted, the topics, terms and procedures of the tenders, their participants and the qualification selection, winner selection criteria, organizations that have applied for a tender, and any socially beneficial projects being funded should be available to the public. Such information should be published on the official website of the government customer, or, in the absence of an official website, the government customer should post the information on its information board and publish it in the national or local mass media, the circulation and territory of distribution to ensure awareness of potential contractors and recipients of social services.

In Kyrgyzstan, the number of government bodies implementing the SSP Law is growing year by year, and the amounts allocated from the budget to finance SSP are also increasing. For example, (1) the MoLSD¹³⁵ provided 5 million soms to fund SSP in 2010 and 38 million soms (\$410,810) in 2019;¹³⁶ (2) the Ministry of Health (MoH) also began to implement the SSP Law in 2019 by allocating 3 million soms (\$32,432); (3) the State Agency for the Affairs of Youth, Physical Culture and Sports (SAAYPCS) allocated 1 million soms (\$10,810) to fund youth programs within the framework of SSP the same year¹³⁷; and (4) it should be noted that a number of local self-government (LSG) bodies, in particular, the municipal authorities of Bishkek, Osh and Karakol and some village councils (*ayil okmotu*) with their own municipal budgets, also began to implement the SSP program.

The Ministry of Education and Science of the KR (MoES), the Bishkek City Hall, and some other LSG bodies annually purchase social services for needy and socially vulnerable segments of the population by means of social vouchers from the private sector, including NCOs, using the SSP mechanism.

The following table shows the amounts allocated by various Kyrgyz government and LSG bodies under SSP from 2010 to 2019.¹³⁸

¹³⁵ The Ministry of Labor and Social Development (MoLSD) has been renamed the Ministry of Labor, Social Security and Migration (MoLSSM)

¹³⁶ The average annual exchange rate in 2019 was 92.5 Kyrgyz soms to 1 US dollar.

¹³⁷ The functions of SAAYPCS have been transferred to the Ministry of Culture, Information, Sports and Youth Policy (MoCISYP).

¹³⁸ Unfortunately, there is no information available after 2019 on the allocation of SSP funds per government agency in the public domain.

Funding GSP in Kyrgyzstan

Year	MoLSD	SAAYPCS	LSG	MoH	MoES	
2010	5 mn soms					
2011	12 mn soms					
2012	13 mn soms					
2013	13.9 mn soms					
2014-2015	22.5 mn soms					
2016	22.5 mn soms	2.83 mn soms	11 mn soms			
2017	22.5 mn soms					
2018	36 mn soms	2 mn soms			Teacher in- training	
2019	38 mn soms	1 mn soms	4-5 LSG amount -	3 mn soms	Coupons for daycare	

STATE PROCUREMENT

The procedure for government procurement of goods, works, and services is regulated by the Law of the KR on State Procurement.¹³⁹ In Article 10, the Law lists the following stages of this process:

- 1) procurement planning;
- 2) development of procurement documents;
- 3) publication of the procurement announcement;
- 4) opening of bids;
- 5) evaluation and comparison of proposals;
- 6) selection of the winner;
- 7) awarding of a contract; and
- 8) administration of the contract.

Even though NCOs may formally participate in tenders for government contracts on an equal footing with commercial entities, most NCOs do not use this mechanism for the following reason: Article 22 of the SSP Law provides that the procuring organization may request from the supplier (contractor) a guarantee of contract performance. The guarantee may be provided in the form of cash or a bank guarantee in an amount not exceeding 2% of the planned value of the subject of procurement,

¹³⁹ Law #27 of the KR on State Procurement of Apr 14, 2022.

which is paid to the government body in charge of public procurement. As a rule, NCOs do not have free funds that they can provide as security.

SUBSIDIES AND OTHER TYPES OF GOVERNMENT AID

Subsidies are defined in a number of laws of the KR.¹⁴⁰ The TC of the KR defines subsidy as

*“assistance provided by the Cabinet of Ministers, Jogorku Kenesh or local councils in the form of transfer of assets to a taxpayer in exchange for past or future fulfillment of certain conditions related to its economic activity.”*¹⁴¹

Part 5 of Article 22 of the Budget Code of the KR of May 16, 2016 (#59) states that

“subsidies are monetary funds provided to legal entities – producers of goods, works or services – on a gratuitous and irrevocable basis to compensate for losses incurred by them in carrying out their production activities, in accordance with the government economic and social policy.”

Therefore, NCOs may receive subsidies from the government budget.

In accordance with Article 11 of the Law on Philanthropy and Charitable Activity, participants in charitable activities (meaning individuals and legal entities engaged in charitable activities or in whose interests such activities are carried out) may receive support from national and local authorities in the following forms:

- provision, in accordance with the laws of the KR, of tax, customs and other fees and charges and other benefits;
- material and technical support and subsidizing of charitable organizations (including full or partial exemption from payment for services rendered by government organizations, from payment for the use of public property);
- financing on a competitive basis of charitable programs developed by charitable organizations; and
- transfer of public property in the process of its denationalization and privatization into the ownership of charitable organizations on a free or preferential basis, carried out in the manner prescribed by law.¹⁴²

Currently, there are several known cases of government subsidizing of NCOs:

- The MoLSD of the KR provided a separate building to one of the NCOs on a gratuitous basis for the establishment of a day care center for children with

¹⁴⁰ While Law #140 of the KR on Subsidies and Compensatory Measures of Oct 31, 1998 contains a definition of the word “subsidies,” it regulates relations to which NCOs are not a party.

¹⁴¹ Paragraph 49, Article 174 TC of the KR.

¹⁴² Article 11 of the Law of the KR on Philanthropy and Charitable Activity.

disabilities, where children are provided with food, care, medical and educational services, and taught self-care skills;

- The Bishkek Mayor's Office provided premises to an NCO (a crisis center) for a shelter for women suffering from domestic violence;
- The Bishkek Mayor's Office provided a building to an NCO supporting children with autism to organize a day center for children with autism and provide them with various services; and
- other similar cases.

5. TAXATION OF NCOs AND THEIR DONORS

DEFINITION OF NCO FOR TAXATION PURPOSES

Before considering tax benefits for NCOs and their donors under the Kyrgyz legislation, let us consider the definition of NCOs set forth in the tax legislation of the KR for taxation purposes. According to Paragraph 25 of Article 174 of the TC of the KR, an NCO is an organization that meets the following requirements:

- a) it is registered in an organization-legal form provided for by Kyrgyz legislation on NCOs, as well as other KR legislation;¹⁴³ and
- b) it does not pursue profit making as the main purpose of its activity and does not distribute the profit received among its members, founders and officers.¹⁴⁴

NCO status in itself does not entitle an organization to any specific tax regime or receiving tax benefits. NCO taxation is determined by the NCO's choice of tax regime: whether it chooses a general tax regime or a simplified one (i.e., single tax).¹⁴⁵ In turn, the choice of taxation regime depends directly on the type of NCO, whether charitable, religious, general educational or other organization, and its activities, such as the implementation of grant programs, training of adults using their own funds, receiving income from entrepreneurial activity to finance socially useful projects, and others.

Under the general tax regime, an NCO is registered as a payer of:

- Profit tax;
- VAT; and

¹⁴³ Kyrgyz legislation provides for the establishment of NCOs in the following organizational and legal forms: public (civil society) organizations, funds, institutions, associations (unions) of legal entities, *jamaats* (community organizations), homeowners' associations, non-profit cooperatives (housing and maintenance, dacha and garage owners, etc.), trade unions, employers' associations, water users' associations, self-regulated organizations of professional participants of the securities market, stock exchanges, non-government pension funds, political parties and religious organizations.

¹⁴⁴ Paragraph 25, Article 174 of the TC of the KR.

¹⁴⁵ Article 46 of the TC of the KR.

- Sales tax.

If an NCO meets the conditions for taxation under each of the above types of taxes and is not entitled to benefits or exemptions established under each tax, it submits tax reports and pays these three taxes.

The simplified tax regime provides taxpayers (including NCOs, if they have chosen this regime) with the right to pay one (single) tax instead of income tax, VAT, and sales tax.

Tax legislation stipulates that an NCO is also obliged to pay property tax if it owns property classified as objects of taxation (e.g., buildings, premises, land plots, and vehicles) under this tax by the TC of the KR.

An NCO acts as a tax agent and is obliged to withhold certain taxes from a taxable entity and transfer to the state budget: (1) income tax, (2) tax on income of foreign organizations that do not have a permanent establishment in Kyrgyzstan, as well as (3) in certain situations defined by the legislation, VAT on payments for services rendered to a foreign organization, if rendered in the territory of Kyrgyzstan.

As an employer, the NCO withholds insurance contributions from accrued wages for the benefit of its staff and pays them to the Social Fund of the KR in accordance with the legislation on state social insurance.

The tax legislation of the KR, providing privileges and exemptions for NCOs (especially charitable organizations), creates conditions for their development and encourages their socially useful activities. Significant tax exemptions are provided for charitable organizations if they carry out their activities under the general tax regime, they are exempt from three types of taxes: (1) profit tax; (2) VAT (if supplies are made for charitable purposes), and (3) sales tax provided that the payment received does not exceed the costs of selling goods, works, and services.

Ordinary NCOs without the status of a charitable organization are exempt from taxes on certain types of income, turnover, and supplies of a socially useful nature. The point of this approach is that it does not allow any NCO that has declared itself a “non-commercial” organization to receive immediate tax exemption. As long as it enjoys a favorable regime regarding income, turnover, and supplies, the NCO does not pay taxes. As soon as objects of taxation appear, it will begin to pay taxes on general grounds. This can happen at any stage of activity, as any NCO has the right to conduct a business operation not prohibited by law, obtain income, or make deliveries subject to taxation.

PROFIT TAX

This paragraph discusses the taxation conditions and profit tax liabilities arising for an NCO when it is registered under the general tax regime.

The following organizations are not profit taxpayers:

- societies of persons with disabilities and organizations in which persons with disabilities (except for those with disability of the 3rd category as a result of other than occupation disease or injury) constitute at least 50% of the total number of employees and their wages constitute at least 50% of the total wage fund;¹⁴⁶
- pre-school educational organizations and general educational organizations established on the basis of private ownership, regardless of whether they are non-profit or for-profit organizations;¹⁴⁷ and
- charitable organizations.¹⁴⁸

In accordance with Paragraph 5, Article 174 of the TC of the KR, a charitable organization is an NCO

- 1) established and carrying out charitable activities in accordance with the legislation on non-profit organizations and charitable activities;
- 2) not engaged in the production and/or sale of excisable goods; and
- 3) not involved in supporting political parties or election campaigns.

The Law of the KR on Philanthropy and Charitable Activity specifies that such an organization must be an NCO, established for the implementation of the purposes specified in this Law, in the interests of society as a whole or certain categories of persons.¹⁴⁹

Paragraph 4 of Article 174 of the TC of the KR defines “charitable activity” as a voluntary activity of an individual and/or legal entity aimed at the realization of charitable purposes provided for by the legislation of the KR on charitable activity for the transfer of assets to citizens and legal entities, the provision of services and performance of work on a disinterested (gratuitous or on preferential terms) basis or for a payment not exceeding the costs incurred in their realization.¹⁵⁰ Article 1 of the Law on Philanthropy and Charitable Activity includes the words “provision of other support” in this definition.

This law also lists the purposes for which charitable organizations may carry out their activities:

- social support and protection of citizens, including improvement of the material situation of the poor, social rehabilitation of the unemployed, disabled, and other persons who, due to their physical and/or intellectual

¹⁴⁶ Paragraph 2, Part 1 of Article 239 TC of the KR.

¹⁴⁷ Paragraphs 7 and 8, Part 1 of Article 239 TC of the KR.

¹⁴⁸ Paragraph 1, Part 1 of Article 239 TC of the KR.

¹⁴⁹ Article 5 of the Law of the KR on Philanthropy and Charitable Activity.

¹⁵⁰ The Law on Philanthropy and Charitable Activity has “property, including monetary funds” instead of “assets.”

distinctions and other circumstances, are unable to independently realize their rights and legitimate interests;

- providing assistance to victims of natural, environmental, industrial, or other disasters as well as of social, national, and religious conflicts and internally displaced persons;
- contributing to the strengthening of peace, friendship, and harmony between peoples and the prevention of social, national, and religious conflicts;
- promoting activities in the fields of education, science, culture, art, enlightenment, and the spiritual development of the individual;
- promoting the protection of motherhood and childhood;
- promotion of activities in the area of prevention and protection of public health, as well as the promotion of a healthy lifestyle and the improvement of the moral and psychological status of people;
- promotion of activities in the field of physical culture and mass sports;
- protection of the natural environment and animal welfare; and
- protection and proper maintenance of buildings, objects, and territories of historical, religious, cultural, or environmental significance and burial grounds.¹⁵¹

Tax legislation prohibits granting tax benefits on an individual basis to individual charitable organizations, their founders or members, and other participants in charitable activities. The Law of the KR on Philanthropy and Charitable Activity does not require NCOs to obtain written confirmation of their charitable organization status from tax or other government authorities. According to the KR legislation, three forms of NCOs — public associations, foundations and institutions (in private ownership) — may independently declare themselves a charitable organization at any time, but they must meet all the requirements established by the KR legislation for charitable organizations.

¹⁵¹ Article 1 of the Law on Philanthropy and Charitable Activity

The Organizational-Legal Forms of NCOs

<ol style="list-style-type: none"> 1) Civil society organization; 2) Fund; 3) Institution (private); 4) Association (union) of legal entities; 5) <i>Jamaat</i> (community organization); 6) Cooperative (not for profit); 7) Housing owners partnership (condominium); 8) Association of water consumers; 9) Stock exchange; 10) Self-regulated organization of professional participants of the securities market; 11) Non-government pension fund; 12) Trade union; 13) Employers' association; 14) Political party; 15) Religious organization. 	<p>can obtain the status of a charitable organization (CO)</p>
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In addition to certain types of NCOs exempt from profit tax, the TC of the KR exempts certain types of NCO income from profit tax. The following types of NCO income are exempt from profit tax:

- a) membership and admission fees;
- b) humanitarian aid and grants, provided they are used for statutory purposes;
- c) the value of gratuitously received assets, provided they are used for statutory purposes;
- d) payment for services related to technical maintenance of apartment buildings and their infrastructure;
- e) payment for irrigation water delivery services as part of statutory services rendered by water users' associations to their members; and
- f) income from the provision of religious rites, rituals, ceremonies, services for the organization, and conduct of pilgrimage, as well as voluntary donations.¹⁵²

The definitions of membership and initiation fees are provided above in Section 3, Income from Local Non-Governmental Sources. Definitions of humanitarian aid and grants are provided in Section 1, Foreign Funding above. NCO's sources of income listed above in items (c) and (e) as exempt from profit tax are not defined by the TC of the KR.

The Law of the KR on Freedom of Religion and Religious Organizations in the KR defines the following:

- "Pilgrimage", a visit of believers to religiously significant holy places;

¹⁵² Paragraph 6, Part 1 of Article 213 of the TC of the KR.

- “Religious rites”, a set of activities established by religious doctrine to embody religious concepts; and
- “Religious rituals and ceremonies”, a sequence of ritual activities established by religious doctrine.¹⁵³

Amounts of expenses unrelated to the receipt of tax-exempt income are not deductible.¹⁵⁴ For that reason, NCOs keep separate records of income and expenses for statutory non-commercial activities (i.e., non-taxable income and related expenses) and commercial activities. NCOs use internal regulatory documents to maintain separate accounting, such as Tax and Accounting Policies.

The TC of the KR contains provisions encouraging individual entrepreneurs and legal entities to make donations to charities as well as cultural and sports organizations. In part, the TC of the KR allows those taxpayers to make deductions for expenses incurred for the benefit of charities and cultural and sports organizations when calculating income subject to profit tax.

Article 234 of the TC of the KR contains the following provisions:

- “1. The value of property, including cash, donated to charitable organizations and cultural and sports organizations regardless of their form of ownership shall be deductible provided such property is not used for the benefit of the taxpayer who donated it.
2. The amount of the deduction specified in this Article shall be limited to the book value of the transferred property or the amount of cash within 10% of the taxpayer’s tax base for the reporting period calculated without taking into account the deduction established by this Article.”

At the same time, donors are not entitled to a deduction if they are supporting NCOs that do not have the status of charitable organizations or are not cultural and sports organizations.

Individuals who are not registered as individual entrepreneurs are not entitled to a deduction, either. The TC of the KR grants this right only to legal entities and individual entrepreneurs.

VAT

If an NCO has opted for the general tax regime, it must apply for registration as a VAT payer. If an NCO fails to apply for registration as a VAT payer in a timely manner, the NCO may still have obligations to pay VAT and submit VAT reports. By registering under the general tax regime, an NCO becomes a VAT payer for taxable deliveries of

¹⁵³ Article 3 of Law #282 on Freedom of Religion and Religious Organizations in the KR of Dec 31, 2008.

¹⁵⁴ Paragraph 15, Part 1 of Article 236 of the TC of the KR.

goods or services. Its deliveries are taxable at the rate of 12% or 0% unless they are specified as exempt in the tax legislation. An NCO that has made taxable deliveries must issue invoices for services rendered, work performed, or goods sold with a separate line item for VAT.

VAT is accrued as follows:

- where goods, work, and services are purchased from VAT payers, the amount of tax is allocated in the purchase invoice separately from the cost of the goods, work, or services;
- when preparing the report, a taxpayer calculates the amount of VAT charged to his customers during the reporting month and then deducts VAT paid and payable on the purchase of goods or services;
- if VAT on deliveries exceeds that on purchases, the difference is paid to the budget; and
- if the total is negative, the amount received is accumulated in the taxpayer's personal account and is used to pay VAT for future periods.

The TC of the KR provides for exemption of deliveries from VAT in the following cases:

- 1) Article 287 of the TC of the KR exempts certain deliveries made by NCOs from VAT if they are:
 - 1) for the welfare and protection of children or low-income elderly citizens;
 - 2) in the sphere of education, medicine, science, culture, and sport; and
 - 3) for state and local government bodies and/or their organizations.
- 2) Article 281 of the TC of the KR establishes that charitable organizations are exempt from VAT if their deliveries are for charitable purposes in accordance with the legislation of the KR on philanthropy and charitable activities. Article 1 of the Law on Philanthropy of Arts and Charitable Activities lists the purposes for which charitable organizations may be established. These purposes shall be taken into account when interpreting the concept of *“delivery for charitable purposes.”*
- 3) In accordance with Article 297 of the TC of the KR, goods imported as humanitarian aid and/or grants in accordance with the procedure determined by the Cabinet of Ministers of the KR, as well as a number of goods that are often imported by NCOs — such as specialized goods for persons with disabilities; educational aids and school supplies, scientific publications, baby food, etc. — are exempt for import into Kyrgyzstan. When imported, these goods are exempted from tax according to the list approved by the Cabinet of Ministers of the KR.

- 4) NCOs include general education and preschool educational organizations. Their services are exempt from VAT in keeping with Article 282 of the TC of the KR.
- 5) In accordance with Article 296 of the TC of the KR, the provision of religious rites, rituals, ceremonies, as well as services for the organization and conduct of pilgrimage are exempt from VAT.

NCO donors do not enjoy special VAT benefits and exemptions if they supply NCOs.

SALES TAX

Sales tax is payable by NCOs registered under the general tax regime where there is an object of taxation.

As far as sales tax is concerned, the object of taxation is the sale of goods, performance of work, and rendering of services, and the tax base is the proceeds from the sale of goods, work, and services, excluding VAT and sales tax.¹⁵⁵

The sales tax rate depends on whether the sale of goods, work, and services is subject to VAT or is considered exempt from it. Another factor in determining the sales tax rate is the type of activity of the organization: trade and production or other types of activities. From January 1, 2023, the tax rates do not depend on the form of payment, whether cash or non-cash payment.

Article 364 of the TC of the KR exempts from tax the sale of goods, performance of work, and rendering of services by:

- societies of persons with disabilities and organizations in which persons with disabilities (except for those with disability of the 3rd category as a result of other than occupation disease or injury) constitute at least 50% of the total number of employees and their wages constitute at least 50% of the total wage fund;
- pre-school educational organizations in accordance with Paragraph 4, Part 1 of Article 364 of the TC of the KR; and
- providers of services in connection with religious rites, rituals, and ceremonies, as well as the organization and conduct of pilgrimages.

Part 2 of Article 364 of the TC of the KR provides exemption from sales tax for NCOs if goods are sold, work is performed, or services are rendered by NCOs working:

- 1) for the welfare and protection of children or low-income senior citizens; and

¹⁵⁵ Articles 365, 366 of the TC of the KR.

2) in the field of education, medicine, science, culture, and sports provided that the payment does not exceed the costs of selling these goods, performing these works and rendering these services.

SINGLE TAX

If an NCO registers under the simplified taxation system, it will pay only one tax – called the single tax. It will not be subject to profit tax, VAT, and sales tax. If the NCO has an object of taxation, it will pay all other taxes (property tax, income tax, tax on income of foreign organizations, and others) on a general basis, unless benefits are provided for them.

As far as the single tax is concerned, the object of taxation is entrepreneurial activity. Entrepreneurial activity is activity carried out on a systematic basis, i.e., the sale of identical or similar goods, if more than two units of goods are sold during a calendar year, as well as the performance of work and provision of services on a reimbursable basis.¹⁵⁶

The tax base for calculating tax liability under the single tax is (1) revenue from the sale of goods, performance of work, and provision of services, as well as (2) income received from other activities listed in Section VIII, Income Tax of the TC of the KR.¹⁵⁷

In accordance with Paragraph 8, Part 2 of Article 4 of the TC of the KR, revenue is money received or receivable by a taxpayer from the sale of goods, works, and services. Revenue does not include such income as admission and membership fees, grants, humanitarian aid, donations, and property received free of charge. These incomes are non-taxable in accordance with Paragraph 6, Part 1 of Article 213 of the TC of the KR. Therefore, they are not considered as a tax base for calculating the single tax.

Single tax rates depend both on the type of activity of the organization, such as processing of agricultural products, production, trade, or other activities, and the type of settlement, either cash or non-cash payment. The TC of the KR provides for single tax rates in an amount of 2% to 6% of revenue.

PROPERTY TAX

NCOs shall pay property tax irrespective of the tax regime it chooses if there is an object of taxation for property tax.

Property tax includes tax on real estate, including buildings, premises, and structures, land tax, and transportation tax.

¹⁵⁶ Part 2 of Article 23 of the TC of the KR; Paragraph 10, Part 2 of Article 4 of the TC of the KR.

¹⁵⁷ Article 422 of the TC of the KR.

In accordance with Article 375 of the TC of the KR, the object of property taxation is rights to:

- 1) the ownership, economic management, or operational management of property objects registered or subject to registration in Kyrgyzstan;
- 2) temporary land use on state- or municipally-owned lands;
- 3) use of state and/or municipal property arising from a lease agreement; and
- 4) the use of tax-exempt property under a lease agreement.

The Cabinet of Ministers of the KR approves a list of property that is not subject to taxation, for example, religious worship sites.

The tax base for calculating property tax is:

- 1) (for a building, premises, structure or land plot) the area of the building, premises, structure, and land plot in square meters;
- 2) (for a motor vehicle powered by an internal combustion engine) the engine capacity in cubic centimeters or book value in soms.

The calculation of the taxable value of property depends on the year of construction, the type of construction materials from which it is built (brick, concrete, etc.), location both within the country and within a particular populated area, and the functional purpose of the building and land plot.

If the property is used for entrepreneurial activity, the property tax rate is set at 0.8% for buildings and premises, 1% for land plots, except for agricultural land, and at 0.01% for agricultural land (Article 379 of the TC of the KR).

Tax legislation provides for property tax benefits. As far as the tax on buildings, premises, and structures is concerned, Article 409 of the TC of the KR grants benefits to:

- societies of persons with disabilities and organizations in which persons with disabilities (except for those with disability of the 3rd category as a result of other than occupation disease or injury) constitute at least 50% of the total number of employees and their wages constitute at least 50% of the total wage fund. The Cabinet of Ministers of the KR approves a list of such organizations, establishments, and enterprises;
- NCOs operating in the field of science, education, health care, culture, sports, social welfare of persons with disabilities, low-income and disadvantaged families; and
- charitable organizations.

Article 411 of the TC of the KR exempts from land tax:

- societies of persons with disabilities and organizations in which persons with disabilities (except for those with disability of the 3rd category as a result of other than occupation disease or injury) constitute at least 50% of the total number of employees and their wages constitute at least 50% of the total wage fund. The Cabinet of Ministers of the KR approves a list of such organizations, establishments, and enterprises;
- land of trade union-owned sanatoriums, rest homes and boarding houses included in sanitary protection zones;
- land of religious worship sites belonging to religious organizations registered in accordance with the legislation of the KR;¹⁵⁸ and
- land of pre-school educational organizations established on the basis of private ownership.

In calculating the vehicle tax, the tax base is the engine capacity in cubic centimeters. The tax rate is set depending on the type, engine capacity, year of manufacture, and other technical characteristics of the vehicle as provided for by Article 405 of the TC of the KR.

EXCISE TAX

The TC of the KR provides for no tax benefits applicable to NCOs in connection with the excise tax. NCOs are not exempt from excise tax on excisable goods produced and imported by them. As a rule, however, NCOs do not produce or import excisable goods. Charitable organizations engaged in such activities immediately lose their status, no matter how well-intentioned they may be.

Tax legislation defines excisable goods as a limited list of goods: alcoholic beverages, tobacco products, fuels, and lubricants. The taxable base for these goods is the physical volume of the goods. The basic rates of excise tax are determined by the TC of the KR.

INCOME TAX

An NCO is a tax agent as a source of income when it pays taxable income, or wages, to employees in accordance with Article 200 of the TC of the KR, as well as when it pays income to other individuals who are not in an employment relationship with it in accordance with Article 201 of the TC of the KR.

Income of individuals is subject to income tax on a general basis at the rate of 10%. For the purposes of calculating tax, sources of payment of wages do not matter. Income tax

¹⁵⁸ Objects of immovable property used by religious institutions in the performance of rites and prayers for the purpose of joint confession and propagation of faith shall be recognized as religious worship sites.

is also levied if wages are paid out of non-taxable income received by the organization, such as grants, admission, and membership fees.

According to Part 2 of Article 187 of the TC of the KR, wherever relations regulated by the Labor Code of the KR arise, the income per month subject to income tax may not be less than the minimum estimated income. The minimum estimated income per month for the next calendar year is determined for various districts and cities of the KR in the amount of 60% of the average monthly wage of employees for the previous year based on data of the government statistics office in accordance with the procedure established by the Cabinet of Ministers of the KR. The amount of the minimum estimated income shall be published not later than November 1 of the current year.

For certain employees of NCOs, the minimum estimated income does not apply as a basis for income tax calculation. The minimum estimated income does not apply to employee income received by:

- employees working multiple jobs on a part-time basis;
- junior service personnel;
- employees of homeowners' associations, housing construction, garages, and gardening cooperatives; and
- persons with disabilities of categories I, II and III.

For tax purposes, in accordance with Part 5 of Article 187 of the TC of the KR, the list of employees classified as junior service personnel is approved by the Cabinet of Ministers. As a rule, junior service personnel include janitors, cleaners, sanitation workers, laboratory technicians, stokers, trainees, apprentices, and watchmen.

In case of part-time employment, the employer shall apply a minimum calculated income in proportion to the actual hours worked by employees:

- 1) receiving disability or maternity benefits;
- 2) working part-time;
- 3) on vacation, including unpaid leave; and
- 4) those newly hired or laid off, who have worked only a part of the month.

Article 191 of the TC of the KR lists the following income tax exemptions:

- certain categories of individuals exempt from income tax; and
- certain types of non-taxable income.

Under the tax legislation, the cost of services for organizing and conducting a seminar, workshop, or roundtable for participants on a free-of-charge basis, including teaching services, handouts, meals, accommodation, and transportation services, is considered

as non-taxable income of an individual participating in the above events according to Paragraph 16, Part 2 of Article 191 of the TC of the KR.

The TC of the KR does not provide any incentives for persons who want to make charitable donations if they are not registered as individual entrepreneurs.

Similarly, the TC grants no benefits to individual recipients of charitable aid. For example, grants given to individuals for study, research, literary, and other activities are not considered grants for tax purposes but are recognized as income for the recipient and are subject to taxation on a general basis.

LIABILITY OF TAX OFFENSES

NCOs are fully liable for tax offenses. No privileges or exemptions under the tax legislation are provided. In accordance with Article 155 of the TC of the KR, a violation of the tax legislation of the KR or a tax offense, through action or inaction, is a culpable and unlawful act of a participant of tax legal relations.

Liability for violation of the tax legislation is established by the Tax Code, the Code of Offenses, or the Criminal Code of the KR.

Tax sanction (or fine) is a punishment for a tax offense. Tax sanction is established and applied in the form of monetary penalties in the amount provided for by the TC of the KR. If one subject commits two or more tax offenses, tax sanctions provided for by the TC of the KR are levied for each offense separately without a more severe sanction absorbing a less severe one. Tax authorities may apply to court to execute a tax sanction not later than 6 years following the delivery to the tax offender of the decision to bring them to responsibility.

In Kyrgyzstan, tax sanctions are applied in the event of the following tax offenses:

- 1) evasion of taxpayer and/or accounting registration with tax authorities;
- 2) understatement of tax liability; and
- 3) A tax agent's failure to fulfill their obligation to pay taxes.

Each of these three types of tax offenses is described below.

EVASION OF TAXPAYER AND/OR ACCOUNTING REGISTRATION WITH TAX AUTHORITIES ¹⁵⁹

When a taxpayer conducts activities without taxpayer and/or accounting registration with a tax authority, a one-off penalty is applied in the amount of tax accrued and/or subject to accrual for the entire period of such activities, but not less than 50 calculated indicators.¹⁶⁰ This sanction is most often applied to individuals. However, there may be cases when a CSO is created in a grassroots approach, does not register as an NCO

¹⁵⁹ Article 162 of the TC of the KR.

¹⁶⁰ The calculated indicator for April 2023 is 100 Kyrgyz soms (1.1 USD), but the Cabinet of Ministers may change it as needed.

and, accordingly, does not have a taxpayer and accounting registration. Typically, these types of CSOs are faith organizations whose activities are not documented. These organizations may be collecting charitable contributions or engage in commercial activities to carry out their activities. Such activities without registration are illegal and are subject to criminal and/or administrative penalties. In addition, taxes may be charged on the income, turnover, and property received by this unregistered taxpayer. The amount of the penalty is equal to the amount of taxes owed. If it is impossible to determine the amount of tax, the penalty is equal to 50 calculated indicators.

UNDERSTATEMENT OF TAX LIABILITY¹⁶¹

If the amount of tax indicated in tax returns is understated compared to that which should have been indicated, sanctions (a fine) are applied to the taxpayer:

- 1) where the amount of tax is understated by up to 10% of the amount of tax which should have been stated in the tax returns for the relevant tax period, no sanctions are applied;
- 2) in case of tax understatement by 10% to 50%, a fine in the amount of 50% of the amount of understatement shall be applied; and
- 3) in case of tax understatement exceeding 50% of the correct amount, a fine in the amount of 100% of the amount of understatement shall be applied.

If it is established as a result of an on-site audit by the tax authority that a taxpayer has not submitted tax returns for a particular tax period, the entire amount of the tax liability that was to be stated in those tax returns is recovered for the benefit of the budget and a fine in the amount of 100% of the amount of the identified tax liability shall be applied to that taxpayer.

Where, following the results of an on-site audit by a tax authority, it is established that a taxpayer has exercised the right to offset VAT paid or payable for purchased material resources under invalid invoices, a fine of 100% of the amount of VAT accepted for offsetting shall be applied.

THE TAX AGENT'S FAILURE TO FULFILL HIS OBLIGATION TO PAY TAXES¹⁶²

In case of non-payment or incomplete payment of the amount of tax withheld and payable, the tax agent shall be fined the amount of 10% of the unpaid amount of tax payable and/or additional payment for each full or incomplete month from the day established for its payment, but not more than 50% of the said amount.

In certain cases, tax legislation imposes the obligation to charge and timely pay taxes on the source of payment of income. This source of payment of income is the tax agent. The tax agent may be an employer who pays wages and other income to his employee,

¹⁶¹ Article 163 of the TC of the KR.

¹⁶² Article 164 TC of the KR.

or a person who pays income to a foreign organization or a non-resident individual, or an organization which pays for services received from a foreign organization and is obliged to withhold VAT.¹⁶³

PENALTIES FOR NON-PAYMENT OR LATE PAYMENT OF TAXES

If an NCO commits tax offenses, it must also pay, in addition to the fine, penalties on the unpaid amount of tax for each day of delay. In accordance with Article 82 of the TC of the KR, a penalty is the sum of money to be paid by a taxpayer in case of non-fulfillment or delay in fulfillment of a tax obligation.

The amount of a penalty shall be charged and paid regardless of the application of measures for the enforcement of a tax obligation and other measures of liability for a tax offense.

A penalty is accrued for each calendar day of delay in fulfillment of a tax obligation, starting from the day following the day established by the TC of the KR for fulfillment of the tax obligation. The penalty for each day of delay is determined as a percentage of the unpaid tax amount. The amount of penalty is calculated in the amount equal to 0.09% of the unpaid tax amount for each day of delay.

The total amount of the penalty charged may not exceed 100% of the unpaid amount of tax.

INSURANCE FEES FOR STATE SOCIAL INSURANCE

In accordance with Article 4 of Law #8 of the KR on Tariffs of State Social Insurance Contributions of January 24, 2004, NCOs as employers are obliged:

- 1) to pay, at their own expense, insurance fees to the Social Fund from all types of payments
 - accrued for hired employees, except for employees with disabilities and pensioners, in amount of 17%; and
 - accrued for employees with disabilities and pensioners, in amount of 13%.
- 2) to withhold insurance fees from all types of payments except those exempted by law and remit them to the Social Fund
 - accrued for employees, in an amount of 10%; or
 - accrued in favor of disabled employees and pensioners, in an amount of 2%.

¹⁶³ Article 53 TC of the KR.

LIABILITY FOR VIOLATION OF LEGISLATION ON STATE SOCIAL INSURANCE

Liability for violation of legislation on state social insurance is established by Paragraph 2 of Article 26 of the Law of the KR on State Social Insurance.

The following fines are charged for the following violations of state social insurance legislation:

- 1) if there is an understatement or concealment of the amount of wages (income) to be paid, a fine is charged in the amount double of the understated or concealed payments;
- 2) if there is a failure to submit reports for a certain reporting period by the established deadline, a fine is charged in the amount of 25% of the insurance fees that should have been stated in those reports, with recovery of the entire amount of insurance fees that should have been stated. The fine shall not be charged if the reporting deadline is extended in accordance with the tax legislation of the KR.

In addition, a penalty of 0.09% for each day of delay is accrued on the unpaid amount of insurance fees. The total amount of penalty accrued for late payment of insurance fees may not exceed 100% of the principal amount of the arrears on insurance fees. The penalty shall not be accrued on the amount of the insurance fees unpaid as a result of force majeure circumstances.

Also, in case of violation of the terms of payment of payments related to state social insurance, Article 354 of the Code on Administrative Offenses NCOs as legal entities to pay a fine of 5,000 Kyrgyz soms.¹⁶⁴

6. LEGAL REGULATION OF VOLUNTEERS

Law #77 of the KR On Volunteer Activity of March 31, 2023 (hereinafter the Law on Volunteer Activity) establishes the legal basis for volunteering and defines the goals, objectives, and procedure for volunteer activities in the KR.

In accordance with Article 2 of this law,

- **“Volunteer organization** is a non-profit organization registered in accordance with the procedure established by the legislation of the [KR] and which conducts volunteer activities, acts as organizer of volunteer activities, implements volunteer programs or conducts volunteer actions, and engages in its activities volunteers acting on its behalf and on its instruction.”
- **“Volunteer activity (volunteering)** is the implementation by individuals and legal entities of socially useful activities aimed at satisfying community or state interests and performed on a voluntary basis in various forms without

¹⁶⁴ At the exchange rate of 88 Kyrgyz soms to US\$1 (as of April 2023), this amount is equal to approx. \$57.

receiving monetary remuneration, in the course of which they can acquire knowledge, experience and skills and demonstrate their abilities.”

The aims of volunteer activities may not include support for political parties or religious organizations, commercial promotion of goods, works, and services, and commercial mediation in order to achieve social or material benefits. It is also prohibited to establish volunteer organizations of the paramilitary type.

The main types of volunteer activities are:

- 1) assistance to persons affected by armed conflicts, natural disasters, fires, epidemics, epizootics, environmental, man-made, and other disasters, social conflicts, and accidents; and to victims of crime, refugees, internally displaced persons, and other categories and groups of persons in need of assistance and support, including in health care, education and social protection institutions;
- 2) participation in alerting the population to natural, environmental, man-made, and other disasters, as well as in preparing for and recovering from these disasters;
- 3) raising public awareness about the protection of population and territories in emergency situations, including fire safety;
- 4) participation in environmental protection and conservation, ecological activities, landscaping, and improvement of territories;
- 5) provision of free legal aid and legal education of the population, and protection of consumer rights;
- 6) caring for sick and elderly citizens, and assisting persons with disabilities, war and labor veterans, children in orphanages and shelters, and patients of institutions for physically or mentally disabled persons and other social institutions;
- 7) participation in the social rehabilitation of orphans, children left without parental care, neglected children, and children in difficult life situations;
- 8) participation in the prevention of child neglect and juvenile delinquency;
- 9) promoting the development of scientific, technical, and artistic creativity of children and youth;
- 10) participation in archeological, ethnographic, and other scientific expeditions, restoration, and repair works;
- 11) promotion of patriotic, spiritual, and moral education of children and youth;
- 12) support for youth initiatives and children’s and youth movements and organizations;

- 13) care of memorials and burial grounds, and work in forestry and wildlife sanctuaries (such as by clearing, planting, and other work);
- 14) promotion of the production and/or distribution of social advertising and other types of social activities;
- 15) assistance in the prevention of socially dangerous forms of behavior;
- 16) creation of opportunities for creative self-expression and realization of the creative potential of the individual, and cooperation for the development, employment, vocational training, and social reintegration of the individual;
- 17) participation in the preservation of cultural heritage, including historical and cultural environment and monuments;
- 18) participation in the development of education and science, the popularization of knowledge, and support of innovation;
- 19) participation in the development and popularization of physical culture, sports, outdoor recreation, and social tourism;
- 20) participation in the organization and holding of municipal, regional, national, and international physical culture and sports events and competitions;
- 21) participation in civil defense activities;
- 22) promoting a healthy lifestyle, and organizing and carrying out preventive work to counter the spread of socially significant diseases;
- 23) participation in organizing and conducting cultural, physical culture, sports, entertainment, and other public events;
- 24) participation in activities conducted to search for missing persons; and
- 25) other volunteer activities which do not contradict the legislation of the KR.

Volunteer activities can be carried out by individuals 18 years old or older and legal entities.

Individuals under 18 years of age may volunteer on the basis of a written consent of their parents or other legal representatives, provided that the volunteer activity does not harm their health and moral development and does not disrupt the learning process.

Volunteer activities may be carried out on the basis of a volunteering agreement entered into by the volunteer and the volunteer organization or organizer of volunteer activities, or without such an agreement if there is a direct understanding between the volunteer and the recipient of volunteer assistance.

VOLUNTEER ORGANIZATION

A volunteer organization acts as an organizer of volunteer activities, selects and trains volunteers to work in certain areas, concludes volunteer agreements with them, sends them to work for individuals and legal entities, and participates in the implementation of volunteer programs or implements them independently.

A volunteer organization may draft and implement volunteer programs and conduct volunteer actions together with the organizer of volunteer activities and other volunteer organizations or, singlehandedly, engage volunteers on an individual basis.

A volunteer organization:

- 1) engages volunteers to carry out volunteer programs and actions and do individual work on the basis of a volunteer agreement;
- 2) appoints a volunteer coordinator and defines the extent of his/her competence, rights, and duties;
- 3) keeps records in the log books of volunteers engaged in individual work regarding their socially useful activities, place of work, number of hours worked, incentives, and training; and
- 4) submits lists of its nominees to the authorized government body in the sphere of volunteer activity to award the most distinguished volunteers.

A volunteer organization has the right to engage organizations carrying out educational activities to train volunteers and conduct volunteer workshops, discussions, hearings, work meetings, and conferences.

A volunteer organization reimburses volunteers' expenses for travel, accommodation, meals, purchase of necessary personal protective equipment, and other expenses, and provides work clothes and tools to them if it is stipulated in the volunteer agreement.

A volunteer organization motivates its volunteers and submits lists of nominees for recognition and/or awards to central and local authorities in the manner prescribed by the legislation of the KR.

VOLUNTEER AGREEMENT

A volunteer agreement is entered into with persons 18 years of age or older. A volunteer agreement may be entered into with persons who have reached the age of 14 if there is written consent of their parents or other legal representatives.

A volunteer agreement may be entered into by and between a volunteer and a volunteer organization, volunteer organizer, recipient of volunteer assistance, or person acting on their behalf.

A volunteer organization may enter into a volunteer agreement with a volunteer if they are involved in volunteer activities for more than twenty hours per month.

A volunteer agreement shall be executed in writing in two copies, one of which is kept by the volunteer organization or the organizer of volunteer activities on a mandatory basis, and the other is given to the volunteer. An oral understanding does not create legal consequences, including liability, and cannot be the subject of court proceedings.

A volunteer agreement should define the subject of the agreement: the type of volunteer's activity; the character of services; the scope of work; days and hours of work; the duration of the working day; the term of work; the term of the agreement; the rights and obligations of the volunteer, the volunteer organization, the volunteer organizer, the volunteer coordinator or the recipient of volunteer assistance; key issues of work organization and safety; the procedure for termination of the volunteer agreement; and the responsibility of the parties, including mutual material responsibility for damage to property, including that of third parties.

VOLUNTEER'S PERSONAL BOOK

A volunteer's personal book is issued on a voluntary basis, is intended to record volunteer activities, and contains information about the volunteer's activities and their rewards. This information is entered into the volunteer's log book by volunteer organizations, organizers of volunteer activities, or recipients of volunteer assistance, and is certified by the signature of the director (or other authorized person) and the seal of the respective organization or the signature of the recipient of volunteer assistance.

A volunteer makes and maintains their personal book on their own in accordance with the form established by the authorized government body in the sphere of volunteer activity.

MEASURES TO ENCOURAGE VOLUNTEERING

In accordance with the Law on Volunteer Activity, the government should support volunteer activity at all levels by implementing a policy of stimulating and promoting volunteerism.

Volunteer experience verified by personal book records and letters of recommendation may be counted as work experience.

Volunteering by a university/college student for the purpose of developing skills and gaining professional experience, confirmed by their personal book and volunteer agreement, shall be recognized as field practice or work (pre-diploma) practice if the student has worked at least 40 hours and their institution of professional education has an agreement (or memorandum) of cooperation with the volunteer organization.

In order to recognize and appreciate their merits in promoting the principles and successful implementation of volunteer activities, individuals and legal entities may be awarded in accordance with the legislation of the KR.

The authorized government body in the sphere of volunteer activity together with volunteer organizations may hold:

- 1) annual events to promote volunteerism and recruit volunteers for programs and activities;
- 2) annual national volunteer recognition events; and
- 3) other events to popularize volunteerism.

TAJIKISTAN

GENERAL OVERVIEW

This section uses materials from the ICNL publication titled *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia* (2015). The text has been edited and supplemented to include changes in legislation that have occurred since the publication.

In Tajikistan, financial sustainability of NCOs is the key component necessary for the implementation of goal-oriented programs and tasks facing the not-for-profit sector. In this regard, current Tajik legislation provides the following opportunities for the establishment and strengthening of NCOs' financial sustainability: membership fees; voluntary donations and grants; proceeds from lectures, exhibitions, lotteries, auctions, sports, and other events held in accordance with the constituent documents; income from entrepreneurial activities; and other revenues not prohibited by law.

This review analyzes the legal regulation of various sources of funding for NCOs in order of their priority for most NCOs in Tajikistan, as well as legislation on taxation of non-profits and their donors:

- 1) Income from local non-governmental sources;
- 2) Foreign funding;
- 3) State funding;
- 4) Income from entrepreneurial activities;
- 5) Legal regulation of volunteers; and
- 6) Taxation of NCOs and their donors.

Among the main NLAs of the RT that regulate issues related to the establishment and strengthening of NCOs' financial sustainability, the following can be noted:

- the Civil Code of the RT (Part I) of June 30, 1999, as amended on January 02, 2020 (hereinafter the CC RT);¹⁶⁵
- the Tax Code of the RT of December 23, 2021, as amended on March 15, 2023 (hereinafter the TC RT);
- the Law of the RT on Public Associations of May 12, 2007, as amended on June 25, 2021 (hereinafter the Law on Public Associations);
- the Law of the RT on SSP of December 31, 2008 (hereinafter the Law on SSP);
- the Law of the RT on Investments of March 15, 2016, as amended on August 03, 2018 (hereinafter the Law on Investments);

¹⁶⁵ From July 1, 2023, Tajikistan's new Civil Code #1918 of December 24, 2022 will enter into force.

- the Law of the RT on State Procurement of Goods, Works and Services of March 15, 2023 (hereinafter the Law on State Procurement);
- the Law of the RT on Bodies of Public Self-Administration of January 05, 2008, as amended on December 23, 2021 (hereinafter the Law on Self-Administration);
- the Constitutional Law of the RT on Local Authorities dated May 17, 2004, as amended on June 8, 2022 (hereinafter the Law on Local Authorities);
- the Law of the RT on Charitable Activity of April 22, 2003, as amended on December 24, 2022 (hereinafter the Law on Charity); and
- the Law of the RT on Volunteer Activity of September 19, 2013, as amended on December 17, 2020 (hereinafter the Law on Volunteering).

1. INCOME FROM LOCAL NON-GOVERNMENTAL SOURCES

Donations and voluntary contributions are the main forms of financial support provided to Tajik NCOs by local donors, although they have not yet been widely used in practice.

Tajik legislation does not contain a clear definition of contributions, their types, or the procedure for their regulation. However, based on the legal norms regulating certain aspects related to contributions, as well as the analysis of law enforcement practice, contributions can be classified into mandatory and voluntary, one-time and regular, monetary and in-kind, and contributions from founders, members, or participants, among other classifications.

For example, **admission fees** can be distinguished as one-off contributions paid by the founders, members, or participants of an NCO upon joining or establishing the NCO, if this obligation is established by the charter. The form of the contribution, its amount, and procedure for payment are established by the NCO's constituent documents.¹⁶⁶

Membership fees are regular contributions paid by members of a membership-based NCO in accordance with the procedure and within the time limits provided for in the organization's constituent documents, if this obligation is established by the charter.

Failure to pay membership dues may result in expulsion from the organization.

Voluntary contributions are one-off or regular contributions made on a voluntary basis by founders, members, and participants of an NCO for the implementation of certain projects and programs or for its statutory purposes as a whole.

Contributions by founders refers to one-off contributions made by founders or participants when establishing an NCO or when joining an existing one, respectively. One-off contributions by founders may be made in addition to admission and

¹⁶⁶ Article 130 of the CC RT, Article 27 of the Law of the RT on Public Associations.

membership fees. Contributions made by owners of the property of institutions can be singled out separately. They are obliged by law (Article 132 of the CC RT) to finance their institution in full or in part (typically in the form of regular contributions).¹⁶⁷ Today, all institutions established in Tajikistan are budgetary organizations and their activity is therefore financed by their founders.

Voluntary property contributions are made by founders or participants in addition to admission and regular contributions, which are normally designated, i.e., allocated to certain projects and programs. It is also possible to transfer property for the statutory purposes of the NCO.

Donations are another source of forming a NCO's property base. Donations differ from contributions in that they may come from any person, not only founders, participants, and members of the organization. In accordance with Article 2 of the Law on Charitable Activities, a donation means voluntary gratuitous assistance in monetary or other form provided to NCOs or needy individuals for charitable purposes. Donations may be made to citizens, medical, educational, social protection, charitable, scientific, and educational institutions, foundations, museums and other cultural institutions, public and religious organizations, and the state as a whole. Acceptance of a donation does not require anyone's permission or consent.

Donations can be provided in the form of humanitarian aid, which is defined in Article 2 of the TC RT as goods, work, or services provided free of charge to the RT, sent from foreign countries and international organizations to prevent and mitigate the consequences of emergencies of a military, environmental, natural, man-made, and other nature, and to improve the living conditions and everyday life of the population. Humanitarian aid in Tajikistan can be provided only to the government. NCOs cannot receive humanitarian aid, but they may participate in the implementation of such aid by concluding relevant agreements with government bodies.

Donations may also be designated or not designated for specific purposes. Civil legislation of Tajikistan provides a definition of donation and establishes rules for the use and disposal of donations. In accordance with Article 613 of the CC RT, a donation is a gift for generally useful purposes. Various items, securities, and funds can be donated to NCOs, as the legislation does not contain any specific restrictions on the types of property that can be donated. In the case of a targeted donation, however, donated property must be used only for purposes specified by the donor. The NCO is obliged to keep separate records of all operations related to the use of designated donations. This method of forming the property base of NCOs has not yet been widely used in Tajikistan.

At the local level, the fact that local commercial organizations and individuals rarely help NCOs is accounted for by a number of factors, such as lack of awareness about

¹⁶⁷ Article 132 of the CC RT.

NCO activities, insufficient tax incentives, and the general economic situation in Tajikistan.¹⁶⁸ While assistance is usually rendered in the form of donations, the volume of private and corporate donations is insignificant. Only in rural areas do some NCOs receive in-kind and volunteer assistance to solve local problems. This often depends on the image and performance of the particular NCO to which assistance is provided.

It is also worth noting that new promising ways for NCOs to raise funds from the public (individuals and legal entities) for charitable and other socially useful purposes are gaining momentum in Tajikistan today. Such new promising methods include fundraising using electronic payment systems. The collection and provision of funds using electronic payment systems can be very simple for both NCOs and benefactors, and can be carried out via electronic wallets, payment terminals, cell phone operators, NCO websites, and crowdfunding platforms. While it provides for no special regulation of such mechanisms, Tajik legislation makes it possible to use electronic payment systems. In practice, however, not all mechanisms are widespread and effective. This topic is covered in greater detail in a separate ICNL study on the regulation of CSO e-fundraising in Tajikistan.¹⁶⁹

2. FOREIGN FUNDING

An increasingly important source of funding for NCO activities, foreign financial support may be provided in the form of a designated donation or through small grants or contracts to render services in the social sphere. There are no restrictions in Tajikistan on NCOs receiving designated foreign donations.

Since the adoption of amendments to the Law on Public Associations in 2015, public associations (PAs) must notify the Ministry of Justice of Tajikistan (MoJ RT) on receipt of any assistance from foreign sources.¹⁷⁰ PAs are obliged to notify the MoJ RT about the receipt of foreign aid in any form before they commence the funded activities. The notification procedure is defined in the Procedure for the Creation and Introduction of the Register of Humanitarian Aid (hereinafter the Procedure). According to the Procedure, PAs must notify the MoJ RT about the receipt of aid within ten days from its receipt. It should be noted that only PAs, as well as representative offices and branches of foreign PAs registered with the MoJ RT in accordance with the Law on Public Associations, are required to notify the MoJ of the assistance received. This requirement does not apply to other forms of NCOs. For instance, NCOs registered under the Law of the RT on State Registration of Legal Entities and Individual Entrepreneurs (hereinafter the Law on State Registration) rather than the Law on Public Associations, which includes owner-funded institutions, associations (unions)

¹⁶⁸ For more details on charitable tax deductions, see Tax Benefits for NCOs and Their Donors.

¹⁶⁹ “e-Fundraising in Tajikistan,” ICNL, December 2020, at <https://www.icnl.org/post/news/e-fundraising-in-tajikistan>.

¹⁷⁰ Article 27 of the Law of the RT on Public Associations.

of legal entities, and charitable and other funds, are not obliged to register the received aid in the Register of Humanitarian Aid.

Paragraph 5 of the Procedure contains the mandatory information a PA is obliged to indicate in its notification to the MoJ:

- name and registration number;
- registered office address;
- individual taxpayer number;
- director's name;
- form and type of contribution (donation or designated contribution);
- the source of the funding (if the donation or designated contribution comes directly from a foreign entity or through another entity, i.e., a subsidiary recipient of funding, as a foreign entity may provide funding through an intermediary);
- name and purpose of the project;
- the region in which activity under the project will be conducted;
- project implementation period;
- number of aid recipients; and
- the names of organizations to be directly involved in the project implementation.

At its discretion, the MoJ RT may request additional information not provided for in the Procedure, as well as check the activities of PAs with regard to the provision of information on foreign aid. Therefore, the amount of information that PAs must submit to the MoJ RT is unlimited. The heads of PAs are liable for violation of the obligation to submit such information in accordance with the requirements of the Law on PAs and the Procedure.¹⁷¹ This requirement applies to all PAs in Tajikistan. To the best of our knowledge, however, it has not yet led to a decrease in the amount of foreign financial assistance received by and available to NCOs in Tajikistan. Foreign aid recipients are the most professional NCOs and these NCOs often have effective financial management procedures in place while lacking systematic, long-term financial planning. Typically, NCOs plan their finances only for the duration of a particular project and do not plan for a longer period of time.

Foreign aid and aid from individuals and legal entities, aimed at strengthening the property sustainability of NCOs, may be in the form of grants. Grants are also a form of designated donations and may be provided by grantors on a competitive basis.

In Tajik legislation, the definition of a grant can be found in the Law on Charity, the Law #723 On Public Finance of the Republic of Tajikistan of June 28, 2011 (hereinafter the Law on Public Finance), and the TC RT. These definitions can be found below.

¹⁷¹ *Ibid.*

In the Law on Charity,

“Grants are property (including money) provided at no cost to individuals and nonprofit organizations to carry out a particular program or project.”¹⁷²

In the Law on Public Finance,

“Grants are monetary funds provided by public authorities, or by public administration authorities of other states, or by international financial organizations, free of charge and without assuming obligations regarding their repayment, to support a particular line of economic policy.”¹⁷³

In the TC RT,

“Grants [are] monetary funds and (or) other property provided (transferred) on a gratuitous and irrevocable basis to achieve certain goals (objectives):

1) by foreign states (governments of foreign states), international organizations, individuals and legal entities to the RT or the Government of the RT;

2) by individuals and legal entities who, in order to eliminate the consequences of natural disasters or solve other social tasks, create the necessary facilities that are transferred free of charge into the ownership of appropriate government bodies;

3) by international and foreign organizations, foreign non-governmental CSOs and foundations whose activities are charitable and (or) international in nature and are not in conflict with the Constitution of Tajikistan, the Government of Tajikistan, and legal entities and individuals of Tajikistan.”¹⁷⁴

In the above definitions of a grant, foreign states through their governments, international and foreign organizations, and individuals and legal entities of both foreign states and the RT can act as grantors, and the RT, its government, and individuals and legal entities of the RT, including NCOs, can be grantees.

3. STATE FUNDING

State funding in the form of funding allocated for the provision of social welfare services to the population of a certain territory is becoming one of the sources of financial support to NCOs in Tajikistan. While there is not yet a steady tendency to discuss mechanisms of government support to third sector organizations, the introduction of one such mechanism – SSP – is currently under consideration. According to the laws on SSP and on Government Procurement, the government

¹⁷² Article 2 of the Law on Charity.

¹⁷³ Article 2 of the Law on Public Finance.

¹⁷⁴ Article 2 of the TC RT.

supports NCOs by creating favorable financial, property, and other conditions for their activities. These laws allow various types of legal entities (both commercial and non-commercial) to participate in SSP, although, in practice, the main implementers of SSP are NCOs. This is due to the fact that the Regulation on SSP Tenders provides for NCO implementers only.¹⁷⁵

Government bodies and their structural subdivisions, whose competence includes SSP, develop social programs and projects annually – before they draw up the next year’s state budget – by identifying socially significant tasks in particular fields. Customers of state social contracts in Tajikistan are government bodies and their structural units that are charged with selecting the implementer, contracting, funding, and monitoring the implementation of SSP. Social programs are funded on the basis of a grant agreement by and between the NCO which wins the competition and the government body which has initiated this SSP. The subject of SSP is the “development and (or) implementation of goal-oriented social pilot activities (actions, programs).”

Unfortunately, at present, there are no official statistics on the volumes of government allocations to support the financial sustainability of third sector organizations. Rather, government funding appears to account for a small share of NCOs’ revenues. Only a few NCOs receive government support through SSP and only in small amounts.

When concluding SSP contracts, the authorized government body may be a ministry, agency, or local authority. For example, the Ministry of Health (MoH) and the Ministry of Labor, Migration and Social Security (MoLMiSS) annually provide SSP from their budgets to NCOs providing social services for children with disabilities, the elderly, and lonely people. In 2022, these SSP allocations amounted to 1.8 million somoni (approx. \$274,000).¹⁷⁶

SSP and grants are provided by only two government bodies: the Committee on Women’s and Family Affairs, which gives grants to predominantly women’s organizations, and the Committee on Youth, Sports and Tourism, which gives grants to youth organizations. The Youth Committee has awarded ten grants to youth organizations each year since 2005, in the amount of approximately \$2,000 per organization. In 2021, it provided ten grants from the state budget and 70 grants from other sources (under a World Bank project). The Committee on Women’s and Family Affairs has provided 80 grants of 2.5 million somoni annually since 2021 to women’s NCOs and women entrepreneurs who create jobs for women.¹⁷⁷

¹⁷⁵ Resolution #230 of the Government of the RT on Approval of Model Rules for Conducting a Tender for SSP of May 3, 2010.

¹⁷⁶ See Medium-Term Development Program of the Republic of Tajikistan for 2021-2025, approved by Resolution #168 of the Government of the Republic of Tajikistan of April 30, 2021.

¹⁷⁷ *Id.*

In addition to grants and SSP, the government can provide other types of assistance. The Law on State Finances, for example, provides for subventions and subsidies.

A subvention is budgetary funds provided to the budget of another level of the budgetary system of the RT or a legal entity on a gratuitous and irrevocable basis for the implementation of certain expenditures.¹⁷⁸

A subsidy is budgetary funds provided to the budget of another level of the budgetary system of the RT, as well as to individuals and legal entities, on the condition of shared financing of goal-oriented expenditures.¹⁷⁹

In practice, however, subsidies and subventions are not provided to NCOs. The Laws of the RT On the State Budget of the Republic of Tajikistan for the period from 2019 to 2022 do not contain any subventions or subsidies for NCOs.

The procedure of financing the activities of Tajik NCOs by local authorities is similar to that of financing by central government bodies. Given the nature of NCOs' activities, their socially beneficial status, and their ability to meet the social needs of the population, local government authorities of Tajikistan try to involve district and regional NCOs in the fulfillment of local social procurement tasks. For example, children's and sports playgrounds, public gardens, and green spaces in many neighborhoods of Dushanbe have been built and organized by *mahallas* (local grassroots initiative councils) with the funds of local government bodies provided under contracts with NCOs.

4. INCOME FROM ENTREPRENEURIAL ACTIVITY

Another source of funds forming an NCO's property base is its income from entrepreneurial activities, civil-law and foreign economic transactions, and other revenues.

Despite the fact that the statutory activities of NCOs do not provide for systematic profit, nonrecurrent revenue from civil-law and foreign economic transactions may compensate for all expenses incurred in carrying out these activities. Such income of NCOs should include income from the use of property in their ownership, interest on deposits in banks and other credit organizations, income from the sale (disposition) of property, income from advertising on their property, etc.¹⁸⁰

NCOs have the right to engage in entrepreneurial activities. Along with other revenues, income from the entrepreneurial activities of NCOs is one of the sources of their property. The concept of entrepreneurship or entrepreneurial activity is defined by the norms of the legislation of the RT, in particular, in Article 1 of the CC RT and in

¹⁷⁸ Article 2 of the Law on Public Finance.

¹⁷⁹ Article 2 of the Law on Public Finance.

¹⁸⁰ Articles 26, 27 of the Law of the RT on Public Associations.

Article 4 of the Law of the RT on State Protection and Support of Entrepreneurship of July 26, 2014.

Entrepreneurship is an independent activity carried out, at their own risk, by persons registered in accordance with the procedure established by the legislation of Tajikistan and which is aimed at obtaining profit from the use of property, production, sale of goods, performance of work, or rendering of services.

Since NCOs do not have a permanent source of income, Tajikistan's legislation allows them to participate in entrepreneurial relations in a variety of ways. While some NCOs are allowed to participate in entrepreneurial relations directly¹⁸¹, others may do so through economic societies established for these purposes, in which they can be participants or founders indirectly.¹⁸² NCOs may also engage in entrepreneurial activities both directly and indirectly.

For example, the civil legislation of Tajikistan gives the right to consumer cooperatives, public associations, and foundations to carry out entrepreneurial activities directly and, at the same time, establishes their right to carry out entrepreneurial activities by establishing and participating in economic societies.¹⁸³

For associations and unions of legal entities, Tajik civil legislation has established a complete prohibition of direct entrepreneurial activity. Associations and unions may participate in entrepreneurial activity indirectly, i.e., they can only be founders of business entities.¹⁸⁴

Direct entrepreneurial activities of NCOs may be carried out with specific restrictions. First, the activities must fully comply with the NCO's public benefit goals and be necessary to achieve the public benefit goals. Secondly, unlike a commercial organization, an NCO must direct all income from entrepreneurial activities, as well as all non-business income, to the purposes for which the NCO was established.

For an NCO, the ultimate goal of its entrepreneurial activities should be the realization of the core purposes set out in the NCO's charter. Therefore, limitations on the NCO's entrepreneurial capacity should be linked to three restrictions:

- 1) a direct prohibition of the distribution of profits from entrepreneurial activities among the NCO's founders, participants, and members;
- 2) goal-oriented use of the profit received (the profit must be used to achieve statutory goals and objectives); and
- 3) entrepreneurial activity should not be the NCO's primary purpose.

¹⁸¹ Articles 128-131 of the CC RT.

¹⁸² Article 133 of the CC RT.

¹⁸³ Article 128 of the CC RT.

¹⁸⁴ Article 133 of the CC RT.

The main distinction is that net income received as a result of entrepreneurial activity may not be distributed among the NCO's founders and participants. After taxes, such income must be directed and used to achieve the purpose for which this organization was established.

As opposed to direct entrepreneurial activity, Tajik legislation provides for indirect entrepreneurial activity for NCOs, when these NCOs found commercial organizations and receive dividends from the profits earned by their established organizations. Indirect entrepreneurial activity of NCOs is mainly related to the possibility for them to establish commercial organizations (invest their own funds) and participate in their activities. An NCO's capacity to create commercial organizations and participate in their activities varies in scope depending on its organizational and legal form.

For example, the Tajik civil legislation does not establish any restrictions on this aspect for public (civil society) associations and foundations. These NCOs can found economic societies, partnerships, and manufacturing cooperatives. Similarly, wide opportunities for indirect participation in entrepreneurial activity are established for consumer cooperatives.

For institutions, the restriction on establishing commercial organizations may be imposed by the owner of their property or the person who finances their operation.

An institution cannot invest any property assigned to it on an operational management basis in the activities of a commercial organization without the consent of the property owner or the person who finances its operation.

Associations and unions of legal entities may only be founders of business entities. As NCOs, associations are prohibited by law from directly engaging in entrepreneurial activities.

Tajik legislation provides for NCOs to obtain funds from other sources which are not prohibited by law. These sources may include state and local budgets; extra-budgetary funds; and the labor of volunteers. Other sources of NCO revenue not prohibited by law include income from the use of exclusive rights and the property of a liquidated NCO that is transferred by the liquidation commission to an NCO carrying out similar activities.

5. LEGAL REGULATION OF VOLUNTEERS

The legislation of the RT on volunteering is based on the Constitution of Tajikistan and consists of the Law on Volunteering and other Tajik statutes.

Article 2 of the Law on Volunteering defines volunteering as “*activities carried out in the form of work and services by individuals and legal entities in the field of improving the socio-economic and moral status of the state and society in the manner prescribed by the Law.*”

An NCO may engage individuals on a contractual basis to carry out volunteer activities without making a profit. Volunteer activities may be carried out in the following areas: social protection of the population, protection of human rights, health care, education, science, culture, sports, charity, and environmental protection.

An NCO must conclude a contract with a volunteer if the volunteer is engaged in volunteer activities for at least 20 hours per month. The contract may only be made with a person 16 years of age or older. Article 6 of the Law on Volunteering lists the conditions that must be contained in the contract, as well as the consequences of non-performance and termination.

In addition, Article 7 of the Law on Volunteering sets forth the rights and duties of a volunteer. A volunteer has the right to claim reimbursement of expenses related to their volunteer activities; receive from the NCO a volunteer personal book, volunteer certificate, and a letter of recommendation confirming acquired skills and experience; and use public transportation (except taxis) free of charge in Tajikistan upon presentation of a volunteer certificate. Among their duties, volunteers should handle with care the property used in the process of volunteering and observe confidentiality of information about the engaging organization.

The government supports the development of volunteerism through measures provided for in Tajik legislation. In part, the period of volunteer activity confirmed by the volunteer personal book, volunteer certificate, and the agreement on volunteer activity is taken into account when a volunteer enrolls in secondary vocational and higher vocational education establishments if that activity corresponds to the curriculum and profession taught, or is recognized as volunteer work experience if it is a mandatory condition for employment and the volunteer worked in the field of their professional specialization. Article 15 of the Law stipulates that in order to recognize and stimulate merit in the promotion of volunteer activities, individuals and legal entities may be awarded government awards and other types of incentives in accordance with the procedure established by the legislation of Tajikistan.

In turn, an NCO attracting volunteers is obliged to provide them with safe working conditions and medical care and reimburse them for the costs of their volunteer activities, according to Article 8 of the Law on Volunteer Activities.

The Law also defines the competence of the Government of Tajikistan, as well as the powers of the authorized government body and LEBs, in volunteer activities. In addition, NCOs, in accordance with the procedure established by the legislation of Tajikistan, shall cooperate with government bodies, LEBs of state power, and self-government bodies of settlements and villages for the implementation of measures aimed at promoting volunteer activities.

6. TAXATION OF NCOs AND THEIR DONORS

Taxation is the most urgent and topical problem of the Tajik not-for-profit sector today.

In December 2021, Tajikistan adopted its current tax code (in effect from January 1, 2022). According to Article 79 of the TC RT, NCOs are obliged to submit monthly, quarterly, and annual reports on payment of various types of taxes to the tax authorities. A key requirement is that public (civil society) associations and the branches and representative offices of foreign NCOs register as taxpayers with their local tax authorities within 30 calendar days after their registration with the justice authorities. Tax authorities are obliged to register a taxpayer within two calendar days from the submission of all necessary documents. Within the same time period, the taxpayer should be issued a certificate of registration and assigned a taxpayer identification number (TIN), which should also be confirmed with a certificate. A public association and a branch or representative office of a foreign NCO are considered registered as taxpayers from the moment they receive their TIN certificates. Registration is free of charge.

Other NCOs, such as public foundations, institutions, associations/unions of legal entities and consumer cooperatives, that register with the tax authorities in accordance with the Law on State Registration within the framework of the single window system receive their TIN and other codes together with the registration certificate.

The current TC RT provides for six types of national taxes and three types of local taxes.¹⁸⁵ Unlike the previous tax code, it does not provide for a special taxation regime for NCOs. At the same time, the TC RT repeatedly uses such concepts as non-profit organization, public association, and charitable organization without defining these concepts. In our opinion, the TC RT fills in these definitions by referring to the definitions provided for in the relevant laws and the Civil Code of the RT. In particular, it is stated that NCOs are understood as “organizations that do not have profit-making as the main purpose of their activities and do not distribute the received profit between their participants. NCOs may be established in the form of non-profit cooperatives, consumer cooperatives, public or religious organizations (associations), owner-financed institutions, charitable and other foundations, as well as in other forms stipulated by law. It is also allowed to establish associations of commercial and non-commercial organizations in the form of associations and unions of legal entities.” (Article 50 of the Civil Code of the RT)

The TC RT contains several forms of tax preferences (benefits) for NCOs. The TC RT directly provides full or partial exemptions from various types of taxes (primarily

¹⁸⁵ Article 27 of the TC RT.

profit tax and VAT) to them, and extends tax benefits to individuals and commercial organizations that have made donations to NCOs.

In particular, the tax legislation of Tajikistan exempts public organizations from income tax on the value of funds and other material values received free of charge from donors and as a grant or received under a contract from the state, and exempts income tax on the amount of membership fees. According to Part 2, Article 189 of the TC RT, all religious, charitable, budgetary, intergovernmental, and international NCOs are exempt **from income tax** with the exception of profits they receive from entrepreneurial activities. At the same time, such organizations should keep separate records of their statutory activities (which are exempt from income tax) and entrepreneurial operations. In addition, all gratuitous transfers, gratuitous property, membership fees, donations and grants received by any NCO are also exempt from income tax.

Unfortunately, the new tax legislation does not provide for tax preferences in the form of tax credits to NCOs (or to commercial organizations, for that matter).

In the TC RT, income received by NCOs from entrepreneurial activities is subject to the taxation rate similar to that of a commercial enterprise, regardless of the source of this income and the purposes for which it will be spent (Paragraph 1, Part 2 of Article 189).

If an NCO engages in entrepreneurial activities, it has the right to apply the following taxation regimes:

A. SIMPLIFIED TAXATION REGIME

The simplified taxation regime is applicable as long as the NCO's gross income does not exceed one million somoni. If this gross income threshold is exceeded, from January 1 of the following tax year, the NCO loses the right to use the simplified regime and is obliged to tax its income on the general conditions, i.e., to pay profit tax.

In accordance with Part 5 of Article 374 of the TC RT, taxpayer NCOs paying tax under the simplified regime are not payers of the following types of taxes:

- tax on income of legal entities, except for income on which tax is withheld at source;
- tax on income of a certified individual entrepreneur, except for income on which tax is withheld at source; and
- value added tax, except for VAT paid for the importation of goods into the customs territory of Tajikistan and non-resident VAT withheld at source.

According to Part 1 of Article 377 of the TC RT, the object of taxation under the simplified tax regime is gross income, including income from the supply of goods, performance of work, and rendering of services, as well as other income obtained, except that on which tax is withheld at source.

Within the simplified tax regime for NCOs, Article 380 of the TC RT sets a 6% tax rate for activity related to goods manufacturing.

According to Part 8 of Article 381 of the TC RT, NCOs shall submit a tax declaration in the form approved by the authorized government body. The declaration is submitted on a quarterly basis, not later than the 15th day of the month following the tax period. Under the simplified regime, tax is paid to the local budget at the place of the taxpayer's registration on a quarterly basis until the date set for submission of the tax declaration.

B. GENERAL TAXATION REGIME

As mentioned above, NCOs become income taxpayers if “*gross income from entrepreneurial activity for the preceding calendar year exceeds the amount of the established threshold income under the simplified tax regime – one million somoni.*” Such NCOs are obliged to inform the tax authority in writing and switch over to the general taxation regime (which implies payment of income tax). At the same time, it should be noted that income received as a result of charitable activities is not taken into account when calculating the above-mentioned income threshold.

According to Articles 182, 183 of the TC RT, the object of income taxation for a resident of Tajikistan is gross income minus deductions provided for by the TC RT:

“Gross income consists of the taxpayer’s income, remuneration and benefits in cash and in kind (in non-material form), together with all revenues leading to an increase in the net value of the taxpayer’s assets, except for revenues exempt from income tax.”

According to Part 2, Article 189 of the TC RT, the following revenues are not considered as income for taxation purposes:

- income of institutions, religious associations, charitable, intergovernmental and international NCOs, except for income received by them from entrepreneurial activities;
- income received by NCOs in the form of gratuitous transfers, donated property, and grants used for non-commercial activities, as well as income received by them in the form of membership fees and donations; and
- dividends received by taxpayers from resident enterprises.

Unlike other taxpayers, fixed assets of NCOs, state-owned institutions and public (civil society) associations, including fixed assets used by them to generate income, are not subject to depreciation and, therefore, are not deductible from taxable income (Article 198 of the TC RT).

VAT

NCOs carrying out entrepreneurial activities are exempt from paying VAT. Various types of exemptions are possible here: from full payment of VAT to the application of a zero VAT rate. The difficulty in applying these exemptions is that VAT is an indirect, multi-stage tax levied at all stages of production and sale of goods, works, and services.

In accordance with Article 189 of the TC, NCOs are not VAT payers in the following three cases:

- they are not engaged in entrepreneurial activities;
- they are engaged in entrepreneurial activities, but their gross income from those activities does not exceed 1 million somoni per calendar year; and
- they do not import taxable goods into Tajikistan.

Most Tajik NCOs are not VAT payers. If it is not a VAT payer, an NCO does not need to add VAT to the value of goods, works, and services when selling them or providing them free of charge to clients and beneficiaries. At the same time, being an end consumer, the NCO will pay VAT on goods and services it buys from others, as VAT is already included in the price of goods and services to be paid for. In addition, an NCO that is not a VAT payer cannot take advantage of special exemptions for certain supplies that are provided for in the TC RT, including exemption of supplies at the expense of international grant agreements to which the Tajik Government is a party.

VAT-paying NCOs are required to pay VAT and submit reports on a monthly basis.

According to Article 264 of the TC RT, the following VAT rates are established for taxable transactions:

- 1) the standard rate of 15%;
- 2) a reduced rate, in cases where NCOs will carry out these activities, except for taxable import and subsequent delivery of imported goods with respect to construction works, hotel services, and public catering services (7%), and the sale of agricultural products of domestic production, processing of agricultural produce, training services, and medical services in sanatoriums and resorts without the right to offset VAT (5%); and
- 3) the zero rate. The procedure for calculating VAT payable to the budget is complicated. It consists of reducing the amount of VAT received by an NCO from the sale of goods, work, and services by the amount of VAT paid by the NCO for purchased goods, work, and services used in its business activities. The positive difference received from the VAT expended has to be paid to the state. If the difference is negative and the NCO has paid more VAT than it has received, then a VAT offset — or a refund of overpaid VAT by the state or an offset against future VAT payments — is possible. Generally, VAT preferences (such as an exemption or reduced rate) do not apply to NCO supplies.

VAT exemption means that VAT-exempt supplies of goods, work performed, and services rendered are not taxable transactions and their value is not included by a taxpayer in his taxable turnover. NCOs that are VAT payers should not add VAT to the value of such supplies when they are realized.

According to Article 251 of the TC RT, the following supplies of goods, work performed, and services rendered made in the RT and related to NCOs are exempt from VAT:

- provision of religious and ritual services by a religious organization;
- gratuitous transfer (waiver) of goods to the state and delivery of goods, performance of work and rendering of services as humanitarian aid;
- supply of specialized products for individual use for the disabled according to the list determined by the Government of the RT; and
- supply of goods, work, and services purchased at the expense of credit (grant) agreements on financing (implementing) investment projects of the Government of the RT.

In addition to supplies, the TC RT lists the following types of VAT-exempt imports that are relevant for NCOs:

- import of goods donated to government bodies of Tajikistan, import of goods as humanitarian aid, and import of goods donated to charitable organizations for the purpose of liquidation of consequences of natural disasters, accidents, and catastrophes;
- import of goods carried out for the realization of investment projects of the Government of Tajikistan within the limits of the funds of grant (loan) agreements; and
- import of specialized products for individual use for the disabled according to a list determined by the Government of Tajikistan.

For goods, work, and services used for exempt operations, VAT payable to suppliers and on import is not offset. Where there are taxable and exempt operations, the amount of VAT determined using the proportional method for the tax period is offset. Using the proportional method, the amount of VAT to be offset is determined based on the proportionate share of the taxable transaction in the total amount of the transaction.

Where goods, work, and services are supplied using funds of loan (grant) agreements for the financing of investment projects to which the Government of Tajikistan is a party, such supplies may be exempt from VAT subject to the following conditions:

- such deliveries are approved by the grant (loan) recipient – typically, a government body – authorized as an implementer of the project (program, agreement) for the purpose of which the grant (loan) was provided;

- such deliveries are directly related to the project (contract, agreement) for the implementation of which the grant (loan) was provided;
- the deliveries are approved during the period of grant (loan) implementation; and
- the deliveries are to be completed before the end of the implementation period of the project (program, agreement) for the purpose of which the loan (grant) was provided.

The procedure for exempting from VAT the supply of goods, work, and services paid for from the funds of the agreements shall be approved by the Government of Tajikistan.

Such supplies shall be exempted from VAT on the basis of an application of the grantee (loan recipient) or a person authorized by them to the supplier of goods (work, services) if the following conditions are concurrently met:¹⁸⁶

- the goods, work, and services are delivered using funds of agreements approved by the Government of RT;
- the goods, work, and services are acquired exclusively for the purposes set forth in the said agreements; and
- the goods, work, and services are delivered in accordance with an agreement (contract) concluded directly with the grant (loan) recipient or a person authorized by him to implement the project.

It should be noted that the above exemptions do not apply to supplies not related to the direct implementation of the project (program, agreement) for the implementation of which the grant (loan) was allocated, or the concluded transactions (contracts, agreements) do not meet the above conditions.

The excess of the amount of tax to be credited over the amount of tax accrued over the reporting period is refunded after submission to the tax authority of documents specified in Part 2 of Article 274 of the TC RT. The Government approves the procedure for refunding the excess of the VAT to be offset over the amount of tax accrued over the reporting period in accordance with the TC RT.

TAX ON DONOR INCOME

In Tajikistan, tax preferences may be granted both directly to NCOs and to individuals and legal entities making donations to charitable organizations and charitable activities.

According to Part 1 of Article 193 of the TC RT, legal entities that are income tax payers on general conditions have the right to deduct payments to charitable organizations and for charitable activities from taxable income in the amount of actual payments

¹⁸⁶ Article 275 of the TC RT.

made, but not more than 10% of taxable income as determined without taking the deductible amount into account.

Paragraph 4 of Article 15 of the TC RT defines charitable activities as activities carried out in accordance with the Law on Charity.

There is also the provision that the rendering of assistance is not considered charitable activity if one of the following circumstances is present:

1. the person receiving assistance assumes an obligation of property or non-property nature (except for the obligation to use received funds or property for its intended purpose) to the person providing such assistance; or
2. the person accepting such assistance and the person providing it are considered related persons.

PERSONAL INCOME TAX

On the whole, the procedure for NCOs to charge and pay personal income tax is similar to that used in commercial organizations. According to Article 186 of the TC RT, the object of taxation is the gross income of an individual, in determining which of all income of the taxpayer is taken into account, including any payments, benefits, or remuneration received by them in cash or in kind.

An employee's gross income does not include either the amount of reimbursement by the employer of travel expenses within the norms established by relevant regulatory legal acts or the amount of reimbursement by international organizations and their agencies, foundations, and non-resident NGOs of travel expenses by the above-mentioned persons.

Humanitarian and charitable aid received by individuals from an NCO or a charitable organization, including in the event of natural disasters, is not subject to income tax.

SOCIAL TAX

According to Part 1 of Article 328 of the TC RT, social taxpayers include:

- NCOs that pay salaries, remuneration, and other benefits to resident individuals employed by them on the basis of labor agreements (contracts) or without them;
- NCOs that reimburse resident individuals not registered as individual entrepreneurs under civil law agreements (contracts) or without them for services (work) rendered in Tajikistan; and
- resident individuals who have received payment from NCOs on the basis of labor or civil law agreements (contracts) or without them.

According to Article 329 of the TC RT, the object of taxation for NCOs is wages, remuneration, and other income or benefits paid under labor and civil law agreements (contracts), including payments and remuneration under copyright agreements. For

individuals (except for individual entrepreneurs), the object of taxation is, respectively, any income received from NCOs.

In accordance with Part 4 of Article 329 of the TC RT, the following is not the object of taxation:

- amounts paid under civil law contracts on the transfer of ownership or other proprietary rights to property (property rights), as well as contracts related to the transfer for use of property (property rights);
- amounts paid for the benefit of individuals who are foreign citizens and stateless persons under labor agreements (contracts) concluded with branches and representative offices of resident legal entities located outside the territory of Tajikistan;
- amounts paid for the benefit of individuals who are foreign citizens and stateless persons in connection with their activities outside the territory of Tajikistan under civil law contracts for the performance of work and provision of services; and
- amounts paid to foreign citizens and stateless persons under civil law contracts on the performance of work or provision of services.

Part 1 of Article 332 of the TC RT defines the social tax rate as:

- 1) 25% for insurers (if they are budget NCOs, i.e., NCOs whose activities are financed from the budget, e.g., government agencies such as ministries and departments) or 20% for insurers (all other NCOs); and
- 2) 1% for insured persons (resident individuals receiving income from budget NCOs), or 2% for insured persons (resident individuals receiving income from all other NCOs).

What distinguishes this type of tax is the fact that NCOs are both payers of social tax and tax agents, since resident individuals who receive income from NCO employers are also payers of this tax. NCOs are obliged to withhold social tax from an individual's income in the amount of 1% if it is a budget NCO (an institution); or 2% if it is any other type of NCO. The NCO also pays 25% tax on the amount paid to that individual if it is a budget NCO (an institution); or 20% on the amount paid to that individual if it is any other type of NCO.

The amount of social tax to be transferred to the budget is obtained by multiplying the tax base by the relevant tax rate.

Article 331 of the TC RT lists the following types of income that are exempt from social tax:

- income of individuals who are not citizens of Tajikistan and who perform work for and render services to diplomatic and consular missions of Tajikistan abroad;
- income of foreign citizens from employment under within the framework of investment projects of the Government of Tajikistan; and
- income exempt from income tax in accordance with Part 1 of Article 189 of the TC RT.

In accordance with Article 333 of the TC RT, the tax period of social tax is a calendar month.

LAND TAX

Like all land users to whom land plots are transferred for lifetime, inheritable, perpetual, or fixed-term use, NCOs have to pay land tax. The Tax Committee annually posts indexed land tax rates for the current calendar year on its official website (www.andoz.tj).

Part 1 of Article 353 of the TC RT exempts from land tax the following land types, including, but not limited to:

- land of organizations with buildings used by them that are protected by the state as historical, cultural, and architectural monuments, based on a list of organizations and in accordance with the size of parcels of land established by the Government of the RT;
- public land in populated areas and land used for municipal services, including cemeteries, with the exception of such land used for commercial activity;
- one subsidiary land plot and one land plot for housing construction allocated to internationalist soldiers, participants in the Great Patriotic War, and persons with an equal status;
- land plots allocated for scientific and educational purposes, as well as for testing of agricultural crops and ornamental and fruit trees, to scientific organizations, experimental and research farms, research and educational institutions in the field of agriculture and forestry, the list of which, together with their users, are determined by the Government of the RT, provided that such land plots are not used for entrepreneurial purposes;
- subsidiary land plots allocated to persons resettled from other areas of the RT for permanent residence in the areas determined by the Government of the RT – for a period of 3 years after their allocation; and
- subsidiary land plots and land plots allocated for housing construction to non-working disabled persons of all categories in the absence of an able-bodied family member.

To apply tax benefits under Article 353 of the TC RT, the taxpayer shall submit relevant documents of title to the local tax authority in the area of the land plot.

REAL ESTATE TAX

Like all owners (users) of real estate, NCOs have to pay real estate tax.

Paragraph 1 of Article 347 of the TC RT lists real estate objects which are not subject to real estate tax (including but not limited to):

- real estate of religious organizations that are not used in entrepreneurial activities; and
- the floor space of state-owned real estate objects leased in accordance with the established procedure, the rent for which is paid in full to the state budget.

In accordance with Article 348 of the TC RT, the real estate tax rate is determined depending on the area occupied by the real estate object and the purpose of its use as a percentage of the indicator for calculations, with due account of regional coefficients for each particular city and district. The tax rate varies from 3% to 18% and the regional coefficient from 0.1 to 1.

TRANSPORT TAX

In accordance with Article 357 of the TC RT, NCOs have to pay transport tax like all other individuals and legal entities that own and/or use vehicles. Transport tax rates are set depending on engine power, jet engine pressure, the type, seating and carrying capacity, and field of use using measurement units such as one horsepower of engine power, 1 kWh of electric engine power and one kilogram of jet engine pressure are defined in Part 1 of Article 360 of the TC RT.

While Article 361 of the TC RT lists the types of means of transport exempted from transport tax, they are not applicable to NCOs. Therefore, it can be concluded that NCOs in Tajikistan enjoy no benefits with respect to this tax.

TAX REPORTING

Article 98 of the TC RT defines tax reporting as a process that includes filing an application that includes calculations and declaration for each taxable regime, type of tax, or income paid, as well as attachments to the calculations and tax declarations.

Tax reporting includes:

- tax declarations with attachments, calculations, and information to be filled out by the taxpayer for each type of tax;
- applications for registration or change of tax regime;
- applications for registration as a VAT payer;
- applications for refund of overpaid or erroneously paid tax, and/or VAT;
- requests for application of double taxation treaties and other tax-related international legal acts recognized by Tajikistan;
- annual financial statements, reports of audits of the taxpayer, as provided for by audit standards;

- information on the opening of accounts with financial institutions;
- copies of the decision on the liquidation, reorganization, or bankruptcy of the legal entity;
- information on foreign economic activity (exports and imports);
- information on obtaining a license to carry out certain types of activities; and
- information on obtaining a land use certificate and/or other document granting the right to use land.

The taxpayer (tax agent) or his representative, the tax authority and/or other authorized bodies involved in tax relations shall prepare tax reporting in electronic or paper forms in the official state language.

If certain data to be reflected in the tax returns and/or calculations are not available, relevant attachments to them, as required by the authorized government body, shall not be submitted.¹⁸⁷

Taxpayers may opt to submit their tax returns:

- electronically;
- by mail;
- in person; or
- through a representative.¹⁸⁸

According to Article 103 of the TC RT, when preparing tax reporting in electronic form, a taxpayer or tax agent shall submit paper copies of the above listed documents if so requested by the tax authorities. All tax reporting must be signed by the taxpayer and the tax agent (director and chief accountant) and certified by the seal of the taxpayer and tax agent. When preparing tax reporting in electronic form, the electronic document must be certified by the electronic signature of the director and chief accountant and the electronic seal of the legal entity.

Tax reporting is accepted without preliminary desk control. Tax reporting is kept by taxpayers and tax agents for at least five years after the expiration of the calendar year to which it relates. Amendments and additions to the tax declaration (tax calculations) are allowed within the five-year statute of limitations period provided by the TC RT. The taxpayer may make changes or additions to the tax declaration and/or calculation by filling out an additional tax declaration and/or calculation for the tax period to which these amendments and additions relate. When submitting an additional tax declaration and/or calculation prior to a tax audit, the taxpayer's identified tax amounts are subject to payment to the budget without accrual of penalties.

Tax reporting shall be submitted by the taxpayer to the tax authorities within the terms established by the TC RT. Tax reporting is not considered submitted to the tax

¹⁸⁷ Article 100 of the TC RT.

¹⁸⁸ *Ibid.*

authority if it does not indicate or incorrectly indicates the TIN, tax period, type and amount of tax, and/or date of submission.

If an authorized official of a tax authority uses equipment and materials of another person for the purpose of obtaining an extract from or a copy of records and other documentation, the tax authority must reimburse that person for the use of the equipment and materials, the amount of compensation being based on market prices for the use of such equipment and materials. If an authorized official seizes records and other documentation under the authority provided for in the TC RT, the tax authority may make a copy of the records and other documentation but must return the originals as soon as practicable, but not later than ten days from the date of seizure.¹⁸⁹

Where records and other documents are seized, an authorized person shall draw up an act and deliver a copy to the taxpayer.

Tax reporting is prepared by the taxpayer or their representative or tax agent independently in the order and according to the forms approved by the authorized government body in accordance with the TC RT.

The TC RT provides that the tax authorities shall exercise control over the sources of income of public associations, the amount of funds they receive, and the payment of taxes in accordance with the legislation of the RT.¹⁹⁰

Tax control is a form of government control exercised exclusively by tax authorities. Tax control takes the following forms:

- 1) desk examination;
- 2) time study;
- 3) additional checks on excisable goods and other activities;
- 4) monitoring of the process of electronic labeling of goods;
- 5) field tax audit;
- 6) unannounced inspection;
- 7) tax monitoring; and
- 8) transfer and market pricing.

According to Article 42 of the TC RT, **desk examination** is a method of tax control conducted by the tax authority without visiting the place of the taxpayer's activity, based on the study and analysis of the taxpayer's report and information received under the tax legislation, without requiring additional documents and information from the taxpayer. As an integral part of the risk management system, a desk examination is conducted to prevent violations of tax legislation and to enable the taxpayer to independently correct existing discrepancies.

¹⁸⁹ Parts 3, 4 of Article 103 of the TC RT.

¹⁹⁰ Article 167 of the TC RT.

A desk examination may be carried out automatically using appropriate software in accordance with the provisions of the TC RT. It may not be conducted during a field tax audit and tax monitoring. If the tax authority identifies discrepancies in tax reporting, it should send a request in writing or in electronic form, requiring the taxpayer to remove them within 10 calendar days.

Within 10 calendar days from the receipt of the request, the taxpayer is obliged to ensure its execution of removing the discrepancies or the taxpayer may provide appropriate explanations with supporting documents for the discrepancies. If there are valid reasons, such as illness of the responsible person or of their children or other close relatives, the responsible person's being on a business trip or outside the RT, and other similar cases, the period of execution of the request is extended by 10 calendar days.

To protect their rights and interests with respect to desk examination materials, a taxpayer may appoint a consultant or other person as his representative on the basis of a power of attorney in accordance with the procedure established by law.

In conducting a desk examination, the following conditions must be met:

- 1) tax reporting submitted to the tax authorities and which have not previously been subject to desk examination, shall not be examined more frequently than once in six consecutive months with respect to the same taxpayer, and a repeated desk examination of same is prohibited; and
- 2) a desk examination of tax reporting of *dekhkan* farms operating without forming a legal entity, which has not been subjected to desk examination before, shall be conducted once a year.

According to Article 42 of the TC RT, **time study** is a method of tax control to establish a taxpayer's actual income and expenditures in the period under scrutiny. Time study is conducted not more than once a year and takes up to three working days.

The objects of a time study are:

- compliance of data of the fiscal memory of cash registers with the cash balance on the day of inspection;
- accounting of financial and monetary operations;
- the keeping of income and expense records (when carrying out activities under the simplified regime); and
- the number of employees.

A time study is conducted by order of the tax authorities in accordance with the procedure established by the TC RT.¹⁹¹

¹⁹¹ Article 43 of the TC RT.

UZBEKISTAN

GENERAL OVERVIEW

*This chapter partially uses materials from the ICNL publication **Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia (2015)**.*

In the RUz, the sources of funding for NCOs¹⁹² include entrance and membership fees, one-off or repeated revenue from founders and participants, voluntary property contributions and donations, income from entrepreneurial activities, SSP, grants, foreign aid, and other income not prohibited by law.¹⁹³

Government funding in the RUz is provided in the form of subsidies, grants, and SSP orders. The main funding mechanism at the nationwide level is a special body under the Oliy Majlis of the RUz called the Public Fund, which supports NCOs and other civil society institutions (hereinafter the Public Fund or the Fund) by accumulating budgetary and non-governmental funds and by financing various NCO projects. A parliamentary commission for the management of the Fund's resources was established under the Oliy Majlis of the RUz to ensure transparency of the Fund's activity. Budgetary funds are allocated to the Public Fund on an annual basis. In 2022, 97.8 billion Uzbek soms (about US\$8.6 million) was allocated to finance NCOs and other civil society institutions. Of this amount, the RUz earmarked 82.4 billion soms from the establishment of the Fund.¹⁹⁴ The RUz allocated an additional 15.4 billion soms to support the 19 NCOs and other civil society institutions recommended for government subsidies in 2022.¹⁹⁵ All in all, the Fund has provided 97.8 billion soms (\$8.6 million) to NCOs in the form of:

- government grants (12.1 billion soms, or \$1.1 million);
- SSP (14 billion soms, or \$1.2 million); and
- subsidies (71.7 billion soms, or \$6.3 million).¹⁹⁶

¹⁹² Note: Uzbek legislation uses the term "non-governmental non-commercial organization" (NNO), but we will continue to use the term "NCO" in the text below and reserve "NNO" for titles of legislation and quotes from official publications.

¹⁹³ Article 29 of Law #763-I of the RUz On Non-governmental Non-commercial Organizations of Apr 14, 1999.

¹⁹⁴ Decree of the President of the Republic of Uzbekistan #PP-73 of Dec 30, 2021.

¹⁹⁵ Based on the directive of the Office of the President of RUz of Apr 27, 2022.

¹⁹⁶ Report of the Public Fund for 2022 (in Uzbek). https://drive.google.com/file/d/1BP7uBJL_75xngw9Nvzr-OtgTtq4tXU_/view.

A meeting of the Parliamentary Committee on Apr 28, 2022 made it known that 14 billion soms would be allocated for the implementation of SSP of 11 government bodies in the spheres of employment and labor relations, law, medicine, education, culture, tourism, ecology, family, women's and youth issues. In addition, it was determined to allocate 71 billion 700 million soms in the form of government subsidies for the implementation of statutory activities and annual work plans of 36 large CSOs. It was also planned in 2022 to support 150 national cultural centers, whose activities are aimed at strengthening friendship and tolerance in society (source: Narodnoye slovo from Apr 30, 2022 *Есть финансирование — будет результат — Народное слово* (xs.uz)).

In 2023, the Fund plans to allocate 226.5 billion soms¹⁹⁷ (approx. \$20 million) to finance NCOs, which is more than twice as much as the allocated amount from 2022. Of this amount, 17 billion soms will be allocated in the form of state grants, 18 billion soms in the form of SSP, and 191 billion soms in the form of government subsidies for NCOs.

In 2024, it is planned to allocate 1.27 trillion soms¹⁹⁸ (about \$100 million) to finance NCOs through the Public Fund to support NCOs and other civil society institutions under the Oliy Majlis of the RUz, of which 929 billion soms (about \$73.2 million) is allocated to finance the activities of the mahalla management system.

The Parliamentary Commission selects the best projects submitted to the competition and determines the winners. As a rule, the amounts allocated in the form of grants are 60-80 million soms per project (approx. \$5,300-\$7,000). In 2022, grants were allocated to 160 NCOs, totaling 12.8 billion soms. In 2023, based on the decision of the Parliamentary Commission, the Public Foundation held six state grant competitions in 2023, and financed 200 projects worth 18 billion soms.¹⁹⁹

It should be noted that NCOs receiving government funding are subject to thorough inspections by government authorities.

Obtaining foreign aid in Uzbekistan continues to be a complicated process. The process involves the Ministry of Justice and other justice bodies that, in accordance with the law, carry out state registration of NCOs (hereinafter referred to as the “registration authority”). In certain cases, it is necessary to obtain permission from those government bodies to approve or deny the receipt of foreign assistance.

For example, if the amount of all funds and property received from foreign sources over a year does not exceed 30 million soms (approx. \$2,646), NCOs are only required to notify the registration body (justice authorities) of the receipt of such funds/property. If it exceeds 30 million soms, the NCO must obtain approval from the registration body. At the same time, the registration body has the right to deny the NCO the receipt of the funds/property for any of a broad list of reasons stipulated in Resolution #858.²⁰⁰ NCOs are also obliged to provide information and supporting

¹⁹⁷ “Госбюджет-2023: Сколько финансирования получают госорганы Узбекистана,” *Gazeta.uz*, December 22, 2022, at <https://www.gazeta.uz/ru/2022/12/22/budget-2023-gov/>

¹⁹⁸ Limit amounts of budget allocations from the republican budget of the Republic of Uzbekistan to the first level budgetary funds managers for 2024, Annex # 5 to the Law of the Republic of Uzbekistan of December 25, 2023, # ZRU-886 “On the State Budget of the Republic of Uzbekistan for 2024”

¹⁹⁹ What parliamentary support did Uzbekistan's NGOs receive in 2023? - *Uzbekistan News Today*: nuz.uz

²⁰⁰ Resolution #858 of the CM of the RUz on Approval of the Regulation on the Procedure for Coordination with the Registering Body of the Receipt by Non-governmental Non-commercial Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Citizens of Foreign States or, on Their Instruction, from Other Persons of October 9, 2019

documents about their use of funds and property received from foreign persons upon request of the registration body.

With the adoption in June 2022 of the Decree of the Cabinet of Ministers of the RUz (CM of the RUz) Resolution #328 On Approval of the Regulation on the Procedure of Interaction Between NCOs and Government Bodies in Implementing International Grant Projects (hereinafter Resolution #328), the receipt and provision of foreign grants became more complicated for both Uzbek NCOs and foreign donors, respectively.²⁰¹ The new regulation of the receipt of grants by NCOs is now harder to understand and contradicts applicable legislation. For example, it is not clear how Resolution #328 agrees with Resolution #858 and whether the threshold of 30 million soms, above which required NCOs' mandatory coordination with the government for the receipt of foreign aid, is still in effect. For more details on Resolutions #328 and #858, see the section on foreign funding below.

Business assistance is an insignificant source of NCO funding as it lacks tax benefits for donors. Individual donations in the form of cash are extremely rare, while in-kind donations are more common. For example, some NCOs attract volunteers and in-kind support from their local communities. While there are opportunities to engage in entrepreneurial activities, only a small number of NCOs are involved in them owing to complicated reporting requirements. Overall, the financial sustainability of most NCOs in Uzbekistan is far from adequate. Even those NCOs that have managed to obtain government funding cannot be considered fully sustainable due to their inability to diversify their funding sources.

Below we consider the legal regulation of various sources of NCO funding in the order of their priority for most NCOs in the RUz, as well as legislation on the taxation of NCOs and their donors:

- 1) State funding;
- 2) Foreign funding;
- 3) Income from local non-governmental sources;
- 4) Income from entrepreneurial activity;
- 5) Legal regulation of volunteers; and
- 6) Taxation of NCOs and their donors.

1. STATE FUNDING

In Uzbekistan, financing of NCOs from the state budget is realized through subsidies, grants, and SSP.

²⁰¹ Resolution #328 of the CM of the RUz on Approval of the Regulation on the Procedure of Interaction Between Non-governmental Non-commercial Organizations and Government Bodies in Implementing International Grant Projects of June 13, 2022.

The legislative basis for government support of NCOs is provided in the Law of the RUz On Guarantees of Activity of Non-Governmental Non-Commercial Organizations of January 3, 2007 (hereinafter the Law on Guarantees of the Activity of Non-Governmental Non-Commercial Organizations).

This law enshrines the possibility for the government to support the activities of NCOs in the form of subsidies, grants, and SSP, and specifies that for these purposes a public fund and a parliamentary commission are established under the Oliy Majlis of the RUz.²⁰²

In addition, the law defines the main funding mechanisms of subsidies, grants, and SSP.

A government subsidy is financial or other material assistance from the state budget of the RUz or government trust funds provided to support NCOs and not related to special projects.²⁰³

Government grants are monetary funds and material resources provided from the state budget of the RUz to NCOs on a competitive basis for the implementation of projects aimed at achieving socially useful goals.²⁰⁴

SSP for NCOs is a government assignment to perform work or carry out activities for the implementation of socially and publicly significant projects through the conclusion of an agreement between a government body and an NCO.²⁰⁵

The procedure and conditions for allocating subsidies, grants, and SSP are determined by the Parliamentary Commission.²⁰⁶

Regulations on the Public Fund for the Support of NNOs and Other Civil Society Institutions under the Oliy Majlis of the RUz (hereinafter the Regulation on the Public Fund) and the Regulations on the Parliamentary Commission were approved by a joint resolution of the Kengashes of the Legislative Chamber and the Senate of Oliy Majlis of the RUz for the implementation of these provisions.²⁰⁷

²⁰² Article 11 of the Law on Guarantees of NNO Activity.

²⁰³ *Ibid.* Article 12.

²⁰⁴ *Ibid.* Article 13.

²⁰⁵ *Ibid.* Article 14.

²⁰⁶ *Ibid.* Part 2 of Articles 12,13, 14.

²⁰⁷ Attachment #1 Provision on the Public Fund to support NNOs and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan to Joint Resolution #132-III/PK-15-III of the Kengash of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan and the Kengash of the Senate of the Oliy Majlis of the Republic of Uzbekistan of May 13, 2015 on making amendments and additions to the Provision on the Public Fund to support NNOs and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan and the Provision on the Parliamentary Commission for managing the resources of the Public Fund to support NNOs and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan. See <https://lex.uz/ru/docs/2693272>.

According to the Regulation on the Public Fund, the Fund is a non-membership non-government NCO – an independent legal entity with settlement accounts in national and foreign currency. In its activities, the Fund is guided by the principles of publicity, transparency, and openness, as well as the goal-oriented use of funds allocated to NCOs and other civil society institutions. The purpose of the Fund is to promote further development of NCOs and other civil society institutions and their active participation in the implementation of democratic reforms and the liberalization of Uzbek society, and to create objective conditions for the formation of sources of their financing.

The main objectives of the Fund include:

- to accumulate funds received from the state budget of the RUz and other sources not prohibited by the legislation, organize their distribution for the implementation of programs aimed at stimulating the development and supporting the activities of NCOs and other civil society institutions, and promoting their participation in solving social, economic and humanitarian issues;
- to direct funds to public funds for the support of NCOs and other civil society institutions under the Jokargy Kenes of the Republic of Karakalpakstan and the councils of people's deputies of the country's regions and the City of Tashkent (hereinafter public commissions) for their further distribution to support NCOs and other civil society institutions;
- to assist in the implementation of projects and programs related to strengthening the material and technical base of NCOs and other civil society institutions and providing them with legal, advisory, organizational, technical, and other assistance; and
- to assist in the implementation of projects and programs related to strengthening the material and technical base of NCOs and other civil society institutions, providing them with legal, advisory, organizational, technical, and other assistance.²⁰⁸

The Fund obtains its resources from the state budget of the RUz, voluntary sponsor contributions by legal entities and individuals (both residents and non-residents of the RUz), grants and gratuitously transferred funds of international organizations and financial institutions, and other funds not prohibited by the legislation.²⁰⁹

The Parliamentary Commission was established to promote the development of NCOs, mass media, and other civil society institutions and their participation in the implementation of democratic reforms and liberalization of Uzbek society in

²⁰⁸ *Ibid.* Paragraph 7.

²⁰⁹ *Ibid.* Paragraph 14.

accordance with the legislation.²¹⁰ The Parliamentary Commission simultaneously performs the functions of the Board of Trustees of the Fund, defines priority areas, and exercises control over the activities of the Fund.

The powers of the Parliamentary Committee include:

- organizing the distribution of resources of the Public Fund under the Oliy Majlis to support NCOs and other civil society institutions and developing, on the basis of proposals from NCOs and other civil society institutions and government bodies, programs for financing socially and publicly significant programs and projects aimed at solving specific socio-economic issues and further increasing social activity;
- ensuring open and transparent allocation of the Fund's resources, and engaging the public in discussions on developing and improving the effectiveness of NCOs and other civil society institutions, their participation in ongoing socio-economic and socio-political reforms, and the protection of democratic values, rights, freedoms, and legitimate interests of citizens;
- determining and distributing, on the basis of applications from public commissions on social partnership under the public commissions, funds to support NCOs and other civil society institutions on the ground, and providing methodological guidance for the activities of these commissions;
- exercising control (monitoring) over the Fund's goal-oriented and effective use of its resources and the programs and projects it finances, hearing reports from NCOs and other civil society institutions and information from the local authorities on the progress and results of programs and projects, and developing and giving recommendations for the further development of social partnership;
- assisting in deepening cooperation between NCOs and other civil society institutions and government bodies for the implementation of socially and publicly significant programs and projects, and in strengthening the role of NCOs and other civil society institutions in the democratization of public life;
- assisting government bodies in organizing public discussion and scrutiny of social and economic development programs and drafting legal and regulatory acts, and carrying out systematic work to raise public awareness about the essence and significance of the democratic reforms being carried out in the country;

²¹⁰ Paragraphs 1-2, Attachment #2 Provision on the Parliamentary Commission for the management of funds of the Public Fund to support NNOs and other civil society institutions under the Oliy Majlis of the Republic of Uzbekistan to Joint Resolution #132-III/PK-15-III of the Kengash of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan and the Kengash of the Senate of the Oliy Majlis of the Republic of Uzbekistan of May 13, 2015.

- adopting decisions on issues under consideration in the field of social partnership, and exercising control over their realization;
- informing the public about its activities;
- defining the procedure and conditions for the allocation of government subsidies;
- defining the procedure and conditions for the allocation of government grants to NCOs and other civil society institutions;
- defining the procedure and conditions for granting SSP;
- defining the procedure for the use of returned funds of NCOs and other civil society institutions as they accumulate as balance of free funds on the accounts of the Public Fund;
- defining, in coordination with the Ministry of Finance of the RUz (MoF RUz) and the Central Bank of the RUz, the procedure and conditions of temporary placement by the Public Fund of the balance of returned free funds on deposit accounts of commercial banks, as well as the expenditure of withheld deposit interest payments;
- submitting to the Kengash of the Legislative Chamber and the Kengash of the Senate of the Oliy Majlis of the RUz its nominations for the position of the Director of the Public Fund;
- drawing up and approving annual programs of activity and development of the Public Fund; and
- exercising other powers in accordance with the legislation.

To regulate the distribution of public funding at the local level, a special provision was adopted within the framework of the Law of the RUz on Social Partnership, according to which

“in order to develop initiatives and strengthen the role of NCOs and other civil society institutions, as well as to stimulate their participation in addressing socially and publicly significant issues on the ground, the Jokargy Kenes of the Republic of Karakalpakstan and the councils of people’s deputies of the regions and the City of Tashkent may establish their own public funds in accordance with the law.”²¹¹

Local public funds have the following functions:

- to accumulate funds received from the local budget and the Public Fund, charitable donations from legal entities and individuals, and other sources not prohibited by law;

²¹¹ Article 17 of Law #ZRU-376 of the RUz on Social Partnership of Sep 25, 2014.

- to organize the use of accumulated funds to support the activities of non-governmental non-profit organizations and other civil society institutions and their participation in the resolution of socially and publicly significant issues at the local level; and
- to assist in the drafting and implementation of social and economic development programs, the resolution of humanitarian issues, and the protection of the rights, freedoms, and legitimate interests of citizens.²¹²

THE PROCEDURE OF ALLOCATING STATE BUDGET FUNDS TO NCOs

The Procedure for allocating funds of the Public Fund to NCOs and other civil society institutions (hereinafter the Procedure) was developed in accordance with the Law on Guarantees of NCO Activities.²¹³

According to the Procedure, budgetary support of NCOs is provided in the form of subsidies, grants, and SSP orders placed through the Fund. The Fund's resources can be allocated to NCOs that have passed state registration as legal entities in accordance with the established procedure.

“Budgetary funds in support of NCOs and [other] civil society institutions are allocated annually on the basis of recommendations of the Parliamentary Commission within the time limits of the preparation, consideration, discussion and approval of the State Budget of the RUz. The amounts of funds allocated from the state budget and government trust funds to support NCOs' activities is annually approved as a separate line within the basic parameters of state budget expenditures based on the proposals of the Parliamentary Commission. [...] Within the parameters of the approved state budget, the Parliamentary Commission determines the amount of funds to be allocated for each of the forms of support specified in the Procedure. The funds allocated by the Fund to NCOs shall be credited to their accounts with their servicing banks. The Fund shall annually publish in the mass media a report on its activities, distribution and realization of the funds allocated within the framework of supporting the activities of NCOs and other civil society institutions.”²¹⁴

SUBSIDIES

Support of NCOs' activities in the form of subsidies is provided as per Appendix #1 to the Procedure.²¹⁵ Subsidies are allocated and used exclusively for the fulfillment of

²¹² Ibid.

²¹³ Attachment to the Minutes of Meeting #1 of the Parliamentary Commission of Jul 11, 2008 with additions and amendments of Oct 2, 2008; the Minutes of Meeting #2 of the Parliamentary Commission. More recent minutes of the Commission's meetings could not be found in the public domain, but local experts say that in general the Procedure for the Distribution of PF Funds to Support NNOs from 2008 has not changed.

²¹⁴ *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, pp. 113-114.

²¹⁵ Attachment #1. Subsidy Allocation Mechanism.

NCOs' statutory goals and objectives, including for its ongoing upkeep (general operations), the strengthening of its material and technical base, and socially significant activities.²¹⁶

NCOs carrying out socially significant activities and participating in the formation of civil society in the RUz can apply for subsidies. The Parliamentary Commission distributes subsidies on the basis of applications from NCOs.²¹⁷

Some NCOs are financed outside the general procedure for allocation of subsidies, since they are considered as an independent object of financing. Examples of these NCOs include the National Association of Non-Governmental Non-Commercial Organizations of Uzbekistan (NANNOUz), the National Association of Electronic Mass Media, the Regional Policy Foundation, the Public Foundation for the Support and Development of Independent Print Media and News Agencies, the Ecological Movement of Uzbekistan, and the Yuksalish Nationwide Movement.

Budgetary funds allocated to these institutions are used for office maintenance and the realization of their statutory objectives.²¹⁸

The general procedure for distribution of subsidies is as follows. After it has considered NCOs' proposals and the results of their examination by the Fund, the Parliamentary Commission makes a decision on the feasibility and necessary amounts of subsidies and sends a budget request before June 20th of the calendar year to the CM of the RUz to be included in the draft state budget of the RUz for the following year.²¹⁹

The CM of the RUz considers the application within one week and makes a decision on inclusion of the relevant amounts of funds in the draft state budget for the next year. Within ten days after approving the state budget, the Fund submits to the Parliamentary Commission its proposals on the distribution of subsidies to each NCO within the approved budget. Within five days after receiving the Fund's proposals, the Parliamentary Commission determines the amount of subsidies to be allocated to each NCO.²²⁰

The Fund allocates subsidies to NCOs on a quarterly basis based on their written applications.²²¹ All activities related to the allocation of subsidies to NCOs are published in mass media.

²¹⁶ Paragraph 3.2. of the Procedure

²¹⁷ *Ibid.* Paragraph 3.3.

²¹⁸ *Ibid.* Paragraph 3.4.

²¹⁹ *Ibid.* Paragraph 3.6.

²²⁰ *Ibid.* Paragraphs 3.7. – 3.9.

²²¹ Attachment #4 to the minutes of the meeting of the Parliamentary Commission of Oct 2, 2008, Sample Application for the allocation of subsidies to the Public Fund for the support of non-governmental non-commercial organizations and other civil society institutions of Uzbekistan.

GRANTS

The mechanism of allocation of government grants is described in Appendix #2 to the Procedure.²²²

By June 15th of each calendar year, the Parliamentary Commission organizes a study of the opinions and proposals from the general public, NCOs, and other civil society institutions regarding support to NCOs through the organization of grant competitions.²²³

Based on the results of the study, the Commission prepares a budget request to be included in the draft state budget for the next year and sends it to the CM of the RUz by June 20th of the calendar year.²²⁴

The CM of the RUz considers the budget request within one week and makes a decision on including appropriate amounts of funds in the next year's draft state budget.²²⁵

Within ten days after the approval of the budget, the Fund submits its proposals on grant competitions and allocation of grants to NCOs within the approved budget to the Parliamentary Commission.²²⁶ Within five days of receiving the proposals, the Commission determines the priorities, conditions, and amounts of financial resources for the organization of grant competitions.²²⁷

The Fund organizes grant competitions on the basis of the Regulation on the Procedure of Competition and Selection of Projects (hereinafter the Competition Regulation).²²⁸ The Commission selects the best projects submitted for the competition and determines winners in accordance with the Regulation.²²⁹

The Commission forms expert groups of specialists in relevant areas with extensive professional and life experience for a preliminary review, selection, and evaluation of projects submitted by NCOs and other civil society institutions.²³⁰

The competition is open to NCOs and other civil society institutions that meet the requirements set out in the terms and conditions of the competition. After the publication of the announcement, NCOs and other civil society institutions wishing to

²²² Attachment #2. Grant-Making Mechanism.

²²³ Paragraph 4.2. of the Procedure.

²²⁴ *Ibid.* Paragraph 4.3.

²²⁵ *Ibid.* Paragraph 4.4.

²²⁶ *Ibid.* Paragraph 4.5.

²²⁷ *Ibid.* Paragraph 4.6.

²²⁸ Regulation on the procedure of contest and selection of projects of non-governmental non-commercial organizations and other civil society institutions of Uzbekistan (Attachment #3 to the minutes of the meeting of the Parliamentary Commission of Oct 2, 2008).

²²⁹ Paragraph 3 of the Competition Procedure.

²³⁰ Regulations on the independent expert group for qualitative selection of projects of non-governmental non-commercial organizations and other civil society institutions (Attachment #2 to the minutes of the meeting of the Parliamentary Commission of Oct 2, 2008).

participate submit their grant applications. Applicants may contact the Fund's Executive Office for additional information and samples of competition documents.²³¹ Grant applications may be submitted online in electronic form.²³²

The Executive Office selects grant applications which comply with the established samples. The Executive Office also:

- publishes a notice about the competition in the mass media;
- accepts applications from NCOs and other civil society institutions for grants, and ensures their registration, safe storage, and confidentiality;
- organizes the collection, summarization, and processing of necessary documents for preliminary selection and evaluation of the applications by an expert board;
- coordinates the activities of involved experts;
- submits necessary tender documents to the Parliamentary Commission for its final decision; and
- organizes work on concluding a contract with the winner of a grant.²³³

The notice in the mass media should contain the following information:

- the subject and priority areas of the submitted projects;
- the format of the competition;
- the amounts of grants to be allocated;
- the terms and conditions of registration of participating NCOs and other civil society institutions and the procedure of the competition; and
- the time and venue of the competition.²³⁴

The Competition Procedure defines the rules of the contest, which define the terms and conditions of the consideration of grant applications and projects of NCOs and other civil society institutions, and the execution by the Fund's Executive Office of necessary documents. Grant applications and projects are accepted in accordance with the requirements of the Competition Procedure and the announced terms and conditions of the competition. Should an NCO or other civil society institution fail to comply with the requirements, terms, and conditions, the submitted documents will not be considered. All grant applications shall be registered by the Executive Office of the Fund in a duly paginated and bound registration book. Applicants and project implementers who have not been admitted to the competition or have not submitted

²³¹ Paragraphs 7-8 of the Competition Procedure.

²³² See Sample application for participation in the competition for a grant to support non-governmental non-commercial organizations and other civil society institutions of Uzbekistan (Attachment #2 to the Regulations on the Procedure for Conducting a Competition and Selecting Projects of Non-government Non-commercial Organizations and Other Civil Society Institutions of Uzbekistan).

²³³ Paragraph 13 of the Competition Procedure.

²³⁴ Paragraph 14 of the Competition Procedure.

all the necessary documents within the established deadlines will be notified in writing.

The procedure for evaluation of the entrants is defined as follows:

- To conduct a preliminary selection and evaluation of project applications, the Parliamentary Commission may form expert groups.
- The Commission shall conduct an open evaluation and selection of competing projects. If necessary, it has the authority to hold a closed discussion. It shall make a reasoned decision on each competitive project by open voting.
- During the selection, evaluation, and consideration of projects, the Parliamentary Commission may engage applicants to request additional information and additional explanations.
- Having considered the conclusions of the expert groups, the Commission determines the winners of the competition and makes a decision on the funding of projects of NCOs and other civil society institutions.
- The decision is formalized in a protocol and sent to the Executive Office of the Fund for the financing of relevant projects.
- Within three days after the Parliamentary Commission determines the winners, the results of the competition are published by the Fund's Executive Office in the mass media and on the Fund's official website.

Based on the decision of the Parliamentary Commission, the Executive Office of the Fund ensures that appropriate grant agreements for the support of NCOs and other civil society institutions are prepared and concluded.²³⁵

A grant agreement is entered into by and between the Fund and an NCO. The results of the competition are published in the media. The Fund shall finance the winners within the terms and in accordance with conditions stipulated in the grant agreement.²³⁶

SSP

Attachment #3 to the Procedure describes the mechanism of support of NCOs by means of SSP.²³⁷

²³⁵ See also *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, pp. 114-116.

²³⁶ Paragraphs 4.7. – 4.9. of the Procedure.

²³⁷ Attachment #3. Social Procurement Placement Procedure.

Provision on the procedure of competition and selection of projects of non-governmental non-commercial organizations and other civil society institutions of Uzbekistan. (Attachment #3 to the minutes of the meeting of the Parliamentary Commission of October 2, 2008).

The procedure for distributing SSP orders is regulated by the Regulation on the Procedure for the Distribution of SSP to NCOs and Other Civil Society Institutions (hereinafter the Rules of SSP).²³⁸

The Parliamentary Commission organizes a study of proposals of NCOs, the general public, as well as government authorities on the implementation of socially significant projects on the ground before June 15th of each year.²³⁹ Based on the results of the study, the Commission determines the amount of necessary funds, forms its budget request and sends it to the CM of the RUz before June 20th of each year so that it could be included in the draft state budget for the next year.²⁴⁰ The CM of the RUz considers the request within one week and makes a decision by July 1st of each year on including the amount of funds in the next year's draft state budget.²⁴¹

Within ten days after the approval of the state budget, the Fund submits to the Parliamentary Commission its proposals on SSP allocation among NCOs within the approved budget limits.²⁴² Within five days after receiving proposals from the Fund, the Commission approves its priorities, terms and conditions, and the amounts to be allocated, and identifies the NCOs for SSP placement. The Fund and the NCOs enter into relevant agreements.²⁴³

The Fund finances SSP implementers on the basis of contracts with NCOs. Placement of SSP orders among NCOs is published in the mass media.²⁴⁴

The Regulation on SSP provides for the responsibility of NCOs to which SSP orders are placed. Heads of such NCOs are responsible for the correct and goal-oriented use of allocated funds, as well as for the qualitative and timely performance of socially important work and activities specified in the contract. Persons who violate the requirements of the Regulation shall be held liable in accordance with the procedure established by law.²⁴⁵ Liability depends on the offense committed. Disciplinary liability is applied in case of negligence without significant damage, civil liability in case of property damage, and criminal liability in case of embezzlement of funds.

In accordance with the procedure and terms specified in the Agreement, NCOs that have received funds for SSP implementation submit reports on the use of funds to the Fund. According to the reporting procedure for budgetary organizations, the Fund submits reports on the use of allocated funds to the MoF on a quarterly basis. Funds

²³⁸ Regulations on the Procedure for the Distribution of Social Procurement Orders among Non-Governmental Non-Commercial Organizations and Other Civil Society Institutions (Attachment #3 to the minutes of the meeting of the Parliamentary Commission of December 3, 2008)

²³⁹ Paragraph 4 of the Regulation on SSP.

²⁴⁰ *Ibid.* Paragraph 5.

²⁴¹ *Ibid.* Paragraph 6.

²⁴² *Ibid.* Paragraph 9.

²⁴³ *Ibid.* Paragraph 10.

²⁴⁴ *Ibid.* Paragraph 11.

²⁴⁵ *Ibid.* Paragraph 12.

allocated for SSP implementation but not used have to be returned to the Fund at the end of the implementation period.

The Fund monitors the goal-oriented and correct use of allocated funds in accordance with the established procedure.²⁴⁶

The Procedure provides for reporting and oversight of the goal-oriented use of allocated funds.²⁴⁷ On a quarterly basis, NCOs receiving budget funds submit two reports to the Public Fund before the submission deadlines and in accordance with the procedure established by the Fund: on the implementation status of grant and SSP activities; and on the use of received funds. In its turn, the Fund summarizes the NCOs' reports and submits its own report on the use of budget funds to the MoF of the RUz before the submission deadlines and in accordance with the procedure established for budget organizations.²⁴⁸

At the request of a group of deputies numbering at least one tenth of the total number of deputies of the legislative chamber, the receipt and goal-oriented use by NCOs of funds allocated for their activities may also be examined by the Accounts Chamber of the RUz.²⁴⁹

The Ministry of Justice of the RUz monitors compliance of NCOs' activities with applicable legislation and their charters.²⁵⁰

Budgetary funds required to support NCOs and civil society institutions are allocated to the Fund on an annual basis, upon request from the Parliamentary Commission, within the timeframe of preparation, consideration, discussion, and approval of the state budget. At the same time, funds allocated to NCOs and remaining unused at the end of the reporting year can be carried over for use in the next year. When allocating funds from the state budget, the MoF of the RUz has the right to take such budget funds into account.²⁵¹

2. FOREIGN FUNDING

In general, Uzbek legislation does not prohibit NCOs from receiving funding from foreign sources. Article 29 of the Law on NCOs allows them to receive "other revenues not prohibited by legislative acts."²⁵² Article 8 requires NCOs to

²⁴⁶ *Ibid.* Paragraph 15.

²⁴⁷ Regulation on the procedure for conducting the competition and selection of projects of non-governmental non-commercial organizations and other civil society institutions of Uzbekistan. (Attachment to the minutes of meeting #1 of the Parliamentary Commission of July 11, 2008 with additions and amendments of October 2, 2008; Minutes of meeting #2 of the Parliamentary Commission).

²⁴⁸ *Ibid.* Paragraph 6.1. of the Procedure.

²⁴⁹ *Ibid.* Paragraph 6.3. of the Procedure.

²⁵⁰ *Ibid.* Paragraph 6.4. of the Procedure.

²⁵¹ *Ibid.* Paragraph 7.2. of the Procedure.

²⁵² Law #763-I on Non-governmental Non-commercial Organizations of Apr 14, 1999

“coordinate with the registration authority the receipt of funds and property from foreign states, international and foreign organizations, citizens of foreign states or, on their instruction, from other persons.”

While this requirement is somewhat outdated, as not all NCOs are obliged to coordinate the receipt of foreign funding in all cases, the norm indicates that NCOs are allowed to receive such funding.

The prohibition on foreign funding exists only for political parties and mass movements pursuing political goals. They are prohibited from receiving financial and other material assistance from foreign states, international organizations and legal entities of foreign states, their representative offices and branches, enterprises with foreign investment, foreign citizens, stateless persons, citizens' self-government bodies, religious organizations, anonymous individuals, or individuals under a pseudonym. Upon receipt, the said funds must be returned, and should it be impossible to return them, they must be transferred to the state income.²⁵³

TYPES OF FOREIGN AID

The legislation of the RUz contains different terms for different types of foreign aid, such as:

- grants;²⁵⁴
- humanitarian aid;²⁵⁵
- gratuitous technical assistance;²⁵⁶ and
- monetary funds and material and technical resources allocated for the implementation of scientific research and R&D programs and projects received by legal entities and individuals under grants from international and foreign organizations and foundations, as well as within the framework of international agreements in the field of scientific and technical cooperation as gratuitous humanitarian and technical assistance.²⁵⁷

The definition of grant and humanitarian aid from the point of view of taxation is set forth in Article 48 of the Tax Code of the RUz.

²⁵³ Article 18 of Law #223-XII on Public Associations of Feb 15, 1991.

²⁵⁴ Article 48 of the Tax Code of the Republic of Uzbekistan (approved by Law #ZRU-599 of Dec 30, 2019) (hereinafter, TC RUz).

²⁵⁵ Article 48 TC RUz.

²⁵⁶ Decree #275 of the CM of the RUz on Measures for Further Expansion of Attracting Free Grant Technical Assistance in the RUz of Oct 20, 2009.

²⁵⁷ Procedure for issuing reports on funds and equipment imported from abroad within the framework of grants of international and foreign organizations and foundations and international agreements on scientific and technical cooperation // registered by the Ministry of Justice of the RUz on May 18, 1998 under #438.

REQUIREMENTS FOR RECIPIENTS OF FUNDS AND PROPERTY FROM FOREIGN SOURCES²⁵⁸

Effective October 4, 2023, the CM of the RUz approved the Regulation “On the Procedure for Approval of Receipt of Funds and Property from External Sources by Non-Governmental Non-Profit Organizations and the Procedure for Implementation of Projects on the Territory of the Republic of Uzbekistan Financed from External Sources” (hereinafter - “Regulation #527”).

Regulation # 527 replaced the previously existing provisions concerning Uzbek NCOs receiving funds from external sources (hereinafter - “foreign grants”). Compared to the earlier Regulations #328²⁵⁹ and #858²⁶⁰, in general, Regulation #527 is an improvement by simplifying the procedure for registering foreign grants. However, it retains excessive restrictions on the access of NCOs to sources of funding.

Regulation #527 simplifies the procedure of registration of funds and property from external sources by:

- 1) limiting the number of state authorities that must render their opinion and/or decision in the registration process. In particular, according to Regulation #527, the registering authority is not obliged to notify and request the opinion of the Ministry of Foreign Affairs of Uzbekistan before making a decision to approve a foreign grant;
- 2) changing the conditions and terms of the decision to approve a foreign grant. Regulation # 527 gives the registering body 15 days to consider an NCO's application for registration of a foreign grant. In addition, Regulation #527 allows the registering authority to add up to ten days for "further consideration," bringing the entire process to a maximum of 25 days (in past

²⁵⁸ This section partially used materials from the legal analysis “Regulation on Coordination Between Non-Governmental Non-Commercial Organizations and Public Authorities in the Implementation of International Grant Projects”, published by ICNL in November 2022 (<https://www.icnl.org/post/analysis/regulating-foreign-grant-projects-in-uzbekistan>) and “Overview comparing Regulation #527 to previously existing regulations related to Uzbek NNOs in receipt of foreign grants”, published by ICNL in October 2023 (<https://www.icnl.org/post/analysis/new-regulation-on-receipt-and-reporting-on-foreign-funds-by-nnos>).

²⁵⁹ Resolution #328 of the CM of the RUz on Approval of the Regulation on the Procedure of Interaction Between Non-governmental Non-commercial Organizations and Government Bodies in Implementing International Grant Projects of June 13, 2022. The Regulation¹ 328 established the procedure of interaction between local NNOs and government bodies (“national partners”) in implementing international grant projects on the territory of the RUz within the framework of funds received from foreign states, international and foreign organizations, citizens of foreign states or other persons on their behalf. The Regulation became invalid due to the adoption of a new Regulation # 527.

²⁶⁰ Resolution #858 of the CM of the RUz on Approval of the Regulation on the Procedure for Coordination with the Registering Body of the Receipt by Non-governmental Non-commercial Organizations of Funds and Property from Foreign States, International and Foreign Organizations, Citizens of Foreign States or, on Their Instruction, from Other Persons of October 9, 2019. The Regulation became invalid due to the adoption of a new Regulation # 527.

Regulations, this timeframe remained unclear);

- 3) clarifying that recipients of foreign grants are required to obtain approval from the registering authority for a foreign grant if the value of the foreign grant exceeds 100 BCV, which is equivalent to approximately \$2,700 (i.e., the minimum amount threshold still applies); and
- 4) establishing a new affirmative rule that “the requirement for the total amount of funds and property received in a single calendar year generally applies separately for each foreign source.” This new rule potentially represents an important positive change, given that the threshold that previously applied to the total amount of all foreign grants received by an NCO in a single year, regardless of the number of external sources, now applies to each funding source. For example, if an NCO receives ten (10) foreign grants, it does not need to register them all if the amount of each grant does not exceed \$2,700.

However, some norms of Regulation # 527 require additional interpretation by the Government of Uzbekistan to ensure common understanding of the norms of this Regulation by all stakeholders, namely:

- 1) the wording of “the requirement for the total amount of funds and property received in one calendar year is generally applied separately for each external source” is vague. The Government and the Ministry of Justice should clarify the meaning of the term “is generally applied”, as elsewhere in Regulation # 527, these words are no longer used and it is stated that “A nongovernmental non-profit organization does not need approval from the registering body to receive funds and property from external sources in the following cases: when the total amount of funds and assets received from external sources does not exceed 100 BCV for one calendar year (\$2,700).”
- 2) Regulation # 527 states that an NCO does not need permission from the registration authority to receive funds and property from external sources “when funds and property are allocated to representative offices and branches of international and foreign non-governmental non-profit organizations by their parent organizations to cover administrative expenses. Meanwhile, Regulation # 858 stated that it was not necessary to register funds and other property with the registering authority if: “assets and property [are] provided to representative offices and branches of international and foreign non-profit organizations by their head offices.” Compared to Regulation # 858, this new requirement of Regulation # 527 may limit exempt funds from registration to only “administrative expenses” and not funding for program activities. This rule will be a problem and a negative factor for foreign NCOs operating in Uzbekistan if funds received for grants and/or contacts to local entities cannot be considered “administrative expenses.”

REQUIREMENTS FOR NCOS TO HAVE A “STATE ORGANIZATION” AS A PARTNER. DIFFERENCE FROM A “NATIONAL PARTNER”

Unlike the requirement to have a “national partner” under Regulation # 328, Regulation # 527 requires NCOs to have a “state organization” that provides them with “organizational and methodological support.”

Such a “state organization” is assigned to each NCO by the registration authority for the purpose of participating in and supporting the NCO in the implementation of a foreign grant if the value of the foreign grant received exceeds 1,000 BCV, which is equivalent to approximately \$27,000. The NCO may submit its proposal to the registration authority as to which governmental entity may be designated as its partner “governmental organization.” It is our understanding that if the value of the foreign grant is less than 1,000 BCV, the NCO may decide for itself whether it will have a partner “state organization.” If the NCO decides to partner with a “state organization,” the choice of such “state organization” is left to its discretion.

Regulation # 527 defines the competence of a “state organization” as a partner of an NCO recipient of a foreign grant as follows: “providing organizational and methodological support to the project, provides assistance to the non-governmental non-profit organization in the following forms:

- organizing meetings, negotiations and other events within the framework of the project;
- attracting specialized experts and specialists to participate in the project;
- exchange of necessary statistical and analytical data to ensure the effectiveness of the project, with the exception of information constituting a state or other secret protected by law
- exchange of necessary statistical and analytical data to ensure the effectiveness of the project, except for information constituting a state or other secret protected by law, damaging the rights, freedoms and legitimate interests of individuals and legal entities, the interests of society and the state;
- give practical suggestions and recommendations aimed at solving problems that have arisen in the course of project implementation.”

While the powers set out in Regulation # 527 remain excessive, it does provide for limitations compared to Regulation # 328, by prohibiting “state organizations” from:

- “hindering the activities of a non-governmental non-profit organization in accordance with its charter;
- giving instructions and assignments to a non-governmental non-profit organization, set tasks and demand additional information from it that is not

related to the project;

- making amendments and additions to the approved project documentation (estimate, plan, etc.);
- requesting financial incentives for participation in the project.”

In Regulation # 328, which introduced the concept of a “national partner” there were no such restrictions on the powers of the “national partner” (analogous to a “state body”) to interfere in the activities of an NCO-recipient of a foreign grant.

As mentioned earlier, Regulation # 527 excessively restricts the access of NCOs to sources of funding, which is reflected in the preservation of the approval procedure. This procedure requires NCOs to obtain authorization from the state to receive funds from foreign sources.

This conclusion stems from the right of justice-registering bodies to deny NCOs the right to receive funds from foreign sources on a wide range of grounds, including such grounds as:

- “The activities of an external source, as well as the use of the funds and property received, may lead to an immediate change in the constitutional order of the [RUz], damage its sovereignty, integrity and security, as well as violate the constitutional rights and freedoms of citizens, are aimed at infringement of health and morality, propaganda of war, social, national, racial and religious enmity, legalization of proceeds of crime and financing of terrorism;
- if the external source is included in the list of persons involved or suspected of involvement in terrorist activities or proliferation of weapons of mass destruction, according to legal documents, and the organizations and persons associated with them are judicially recognized as extremist and terrorist;
- If the external source is the parent organization located outside the [RUz] or its founders, forcibly liquidated by a court in the territory of the [RUz];
- If the purpose of receiving funds and property contradicts the requirements of the regulatory documents and the charter (statute) of the non-governmental non-profit organization;
- If the application and the documents attached to it contain false information;
- if the application is submitted in violation of the procedure and terms established by these Regulations;
- if the non-governmental non-profit organization fails to provide the registration authority with additional information requested in connection

with the application within the specified period of time.”²⁶¹

The justice authorities may also request additional documents from an NCO and, if such documents are not submitted within the established timeframe, forbid NCOs to receive funds and property from foreign sources.

An NCO is obliged to use funds and property received from external sources in accordance “with its constituent documents, charter (regulation) of the NCO, as well as the goals and methods specified in the submitted documents.”²⁶² If this requirement is violated, the head of the NCO or a person authorized by him/her is liable.

NCOs are obliged to provide information and documents “on the use of funds and property received from external sources on the basis of a request from the registration authority.”²⁶³

In case of violation of the procedure for coordinating with the registration authority on the receipt of funds from external sources, administrative liability is also envisaged. Thus, for receiving funds and property from foreign states, international and foreign organizations, citizens of foreign states, or on their behalf from other persons, NCOs receiving funds and property from foreign sources without the approval of the registration authority are fined from 15 to 30 BCV (from \$402 to \$804).

After the adoption of Regulation # 527, an independent group of NCOs and civil activists in Uzbekistan started public monitoring of the process of implementation of this Regulation by collecting cases of NCOs in Uzbekistan that have encountered problems in working with Regulation # 527. Representatives of NCOs can fill out a questionnaire (information can be provided anonymously).

3. INCOME FROM LOCAL NON-GOVERNMENTAL SOURCES

ADMISSION AND MEMBERSHIP FEES

There exists no definition of “admission and membership fees” in the Uzbek legislation.

In practice, membership and admission fees are a source of funding in such organizational-legal forms of NCOs that provide for membership. Membership organizations in the RUz are public associations, religious organizations, associations (unions), and political parties. According to Article 29 of the Law on NCOs, membership and admission fees are recognized as sources of formation of an NCO’s property “if they are stipulated by the charter,” which make it necessary to amend the charter. The charter may also stipulate the terms, amounts, and procedure for making membership fees. The charter, executive body, or general meeting of members of an

²⁶¹ Par 18 of the Regulation #527

²⁶² Par 32 of the Regulation #527

²⁶³ Par 33 of the Regulation #527

NCO may provide for the payment of membership fees either in cash or in-kind property. If transferred as a contribution, property belongs to the NCO, and, as such, NCO members lose title to the property transferred as membership or admission fees.

DONATIONS

Donation is defined by Article 511 of the Civil Code of the RUz as a gift for generally useful purposes. A donation contract is understood as a gratuitous transfer of or obligation to transfer a thing or a property claim to oneself or a third party for the benefit of another party, or a release of another party from a property obligation to oneself or to a third party.²⁶⁴ This means that it is possible to donate a thing or a right, but not money.

The Article further states that donations may be made to citizens, medical, educational institutions, social protection institutions and other similar institutions, charitable, scientific and educational institutions, foundations, museums and other cultural institutions, public associations and religious organizations, as well as to the government and other subjects of civil law. The acceptance of a donation does not require anyone's permission or consent.

Donation of property to a citizen must be, and donation of property to legal entities may be, conditioned by the donor on the use of the property for a certain purpose. Absent this condition, donation of property to an individual is considered an ordinary gift, and in all other cases, the donee may use donated property in accordance with its purpose.²⁶⁵

A legal entity accepting a donation for the use of which a specific purpose has been established must keep separate records of all operations in which it is used.²⁶⁶

The use of donated property not in accordance with the purpose specified by the donor or the change of this purpose in violation of the rules stipulated by law shall entitle the donor, his heirs, or other legal successor to demand cancellation of the donation.²⁶⁷

There is no limit on sources of donations, i.e., they can be accepted from any legal entity and individual. The donee is also entitled to refuse a donation. When making a donation to an NCO, the donor may specify the purpose and procedure for its use, but donations may also be made for general statutory purposes.

²⁶⁴ Art. 502 of the Civil Code of the RUz (CC RUz) (special section): "Under a donation agreement, one party (the donor) gratuitously transfers or undertakes to transfer to the other party (the donee) a thing in ownership or transfers or undertakes to transfer to it a property right (claim) to itself or to a third party, or releases or undertakes to release it from a property obligation to itself or to a third party."

²⁶⁵ Article 511 of the CC RUz (Part 2).

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

CHARITY

Charity is defined by the Law of the RUz on Charity (hereinafter the Law on Charity) as

*“voluntary disinterested assistance (activity) of legal entities and individuals, expressed in the transfer (gratuitous or on favorable terms) to other legal entities or individuals of property, including money, or in the performance of work for them, provision of services, and other support for charitable purposes.”*²⁶⁸

Therefore, both individuals and legal entities, including NCOs, may engage in charity in the RUz. At the same time, the Law on Charity specifies that providing monetary and other material resources or rendering assistance in other forms to commercial organizations, political parties, and movements does not constitute charity.²⁶⁹

In addition, the Law on Charity defines a charitable organization as “a non-governmental non-commercial organization established to carry out charitable activities in the interests of society or certain categories of legal entities and individuals” and lists the specific aspects of forming the property of such organizations.²⁷⁰ Unlike other forms of NCOs, for example, charitable organizations have the right to raise funds through campaigns to attract benefactors and volunteers, including the organization of entertainment, culture, sports and other mass events for the purpose of collecting charitable donations; as well as to receive income derived from lotteries and auctions in accordance with the procedure established by law.²⁷¹

The legislator has established a number of requirements for charitable organizations.

First, a charitable organization is entitled to make not more than 20% of its total expenditures over a fiscal year for its general operations (including all expenses related to its activities). This restriction does not extend to remuneration for persons involved in the implementation of charitable programs.²⁷² A charitable organization may reimburse volunteers for expenses related to their work (travel, transportation, etc.). Charitable donations given to charitable organizations are used only for charitable purposes and cannot be used for their upkeep. The property of a charitable organization may not be sold or transferred to its founders or members on more favorable terms than to other persons.²⁷³

In order to ensure oversight of the activities of charitable organizations, the Law On Charity provides for the following norms:

²⁶⁸ Law #ZRU-96 of the RUz on Charity of May 2, 2007.

²⁶⁹ Article 4 of the Law on Charity.

²⁷⁰ *Ibid.* Article 3.

²⁷¹ *Ibid.* Article 10.

²⁷² *Ibid.* Article 9.

²⁷³ *Ibid.*

- Within their competence, justice authorities shall monitor a charitable organization's compliance with its charter.
- Tax authorities shall exercise oversight of the sources of funding and income, payment of taxes, and other obligatory payments of a charitable organization in accordance with the legislation.
- A charitable organization shall submit a report on its activities to justice and tax authorities in the manner prescribed by the legislation.
- Philanthropists who donate money and property to a charitable organization shall have the right to demand that it report on their intended uses.
- A charitable organization shall make its annual reports accessible.
- Information on the amount and structure of a charitable organization's income and expenditures, property, number of employees, their remuneration, and the involvement of volunteers shall not be a commercial secret.
- Justice authorities have the right to send their representatives to participate in events held by the charitable organization and to receive explanations from members of the organization and other individuals on matters related to compliance with the charter of the charitable organization.²⁷⁴

It should be noted that in practice NCOs are rarely established in the form of charitable organizations. This is due to a lack of benefits for charitable organizations and their donors that would justify existing restrictions on activities and special requirements for reporting and internal management.

4. INCOME FROM ENTREPRENEURIAL ACTIVITY

Entrepreneurial activity is defined in Article 3 of the Law of the RUz On Guarantees of Freedom of Entrepreneurial Activity as

*“initiative activity conducted by subjects of entrepreneurial activity in accordance with the legislation and aimed at generating income (profit) at their own risk and under their own property responsibility.”*²⁷⁵

The Law refers to subjects of entrepreneurial activity as *“legal entities and individuals who have passed state registration in accordance with the established procedure and are engaged in entrepreneurial activity.”*²⁷⁶

Legislation gives NCOs the right to engage in entrepreneurial activity.²⁷⁷ However, there are certain conditions that must be taken into account. According to Article 31 of the Law on NCOs, an NCO has the right to engage in entrepreneurial activity within the limits of its statutory objectives. In our opinion, this provision can be interpreted

²⁷⁴ *Ibid.* Article 16.

²⁷⁵ Law #69-II On Guarantees of Freedom of Entrepreneurial Activity of May 25, 2000.

²⁷⁶ Article 4 of the Law on Guarantees of Freedom of Entrepreneurial Activity.

²⁷⁷ Article 31 of the Law on NNOs.

to mean that an NCO may engage in any type of entrepreneurial activity that does not contradict the NCO's statutory objectives and that income from such activities goes entirely to fulfill its statutory objectives and cannot be distributed among its founders, participants, and members. This is confirmed by Article 29 of the Law on NNOs, which specifies, among the sources of an NCO's property, "income (profit) received from entrepreneurial activities used only for the fulfillment of statutory objectives". This is also confirmed by Article 17 of the Law of the RUz On Public Associations of the RUz, which defines entrepreneurial activities as follows:

"Public associations, in the manner prescribed by law, carry out production and other entrepreneurial activity. They form, only for the goal of fulfilling statutory objectives, enterprises and self-financing organizations with the rights of a legal entity.

Income from the production and other entrepreneurial activities of public associations may not be redistributed among members (participants) of these associations and shall be used only for the fulfillment of statutory objectives. Public associations may use their resources for charitable purposes, even if this activity is not indicated in their charters."

The Law on NNOs defines an NCO as an organization which does not distribute obtained income (profit) among its participants (members).²⁷⁸

5. TAXATION OF NCOs AND THEIR DONORS

PROFIT TAX AND TAX BENEFITS FOR NCOS

Profit tax rates are defined in Article 337 of the TC RUz. The general tax rate for all organizations, including NCOs, is 15%. The profit tax rate is equal to 0% for: taxpayers operating in the social sphere; those whose only participants are public associations of persons with disabilities; those in which persons with disabilities account for at least 50% of the workforce; and those in which persons with disabilities account for at least 50% of the wage fund.

TAX REGIMES APPLIED BY NCOS AND SOME SPECIAL ASPECTS OF THEIR APPLICATION

TAX REGIME I

This is the basic regime applied by all NCOs and which arises automatically from the moment an NCO obtains its state registration. The TC RUz provides the following definition of an NCO for tax purposes:

²⁷⁸ Ibid. Article 2.

“A legal entity registered in the form prescribed by law for a non-commercial organization, which meets the following conditions:

it does not aim at making profit; and

*it does not distribute income or property among its participants (members).”*²⁷⁹

Theoretically, if an NCO distributes income or property among its participants/members, it would lose its preferential tax treatment.

According to Articles 318 and 304 of the TC RUz, the following incomes of an NCO are not considered as taxable income and, therefore, are not subject to profit tax:

- 1) designated revenues for the NCO’s general operations and statutory activities as provided for by Article 48 of the Tax Code;
- 2) excess of the amount of positive exchange rate difference over the amount of negative exchange rate difference; and
- 3) income from the sale of goods intended for religious use by the population.²⁸⁰

NCOs are obliged to keep separate records of expenditures made with funds from these three types of income and expenditures made with funds from all other incomes taxed in accordance with the generally established procedure.

Should it fail to keep separate accounting and/or use income specified in Article 318 of the Tax Code (except for budgetary funds) for other than intended purposes, an NCO shall have its designated revenues included in its total income and taxed in accordance with the generally established procedure. Budget legislation norms shall be applied to budget funds used for other than intended purposes. These rules do not extend to NCOs operating in the social sphere.

TAX EXEMPTIONS IN RESPECT OF GRANTS, HUMANITARIAN AID AND DESIGNATED REVENUES

Designated revenues are included in the concept of “designated funds.” According to Article 48 of the TC RUz, “designated funds” are *“property received by a taxpayer for its use for a purpose determined by the person who is the source of the designated funds, or by applicable legislation. Earmarked funds shall include, in particular:*

- 1) budget allocations and budget subsidies;*
- 2) grants and humanitarian aid; and*
- 3) designated revenues.”*

²⁷⁹ TC RUz, Article 58.

²⁸⁰ Article 304 TC RUz (Revenues Not Taken into Account in Taxation):

“Revenues which are not taken into account in taxation include: ... 9) grants, humanitarian aid, and designated revenues, provided that the requirements stipulated in Article 48 of this Code are complied with.”

The definition of “budget allocations and subsidies” is contained in the Budget Code. NCOs may be recipients of budget funds, including in the form of allocations or subsidies.²⁸¹ The Budget Code explains that

“Grants for taxation purposes are recognized as property provided on a gratuitous basis in the order determined by the CM of the RUz:

1) by states, governments of states, international or foreign governmental or non-governmental organizations of the RUz;

2) by foreign citizens and persons without Uzbek citizenship.”²⁸²

Therefore, from the point of view of the TC RUz, grants received by NCOs and individuals are not considered as grants for taxation purposes. Nevertheless, a number of normative acts issued by the President and the CM of the RUz after the new edition of the TC RUz provide for the NCO’s right to receive grants from foreign sources. The Budget Code provides for the right of NCOs and individuals to be recipients of technical assistance funds, including grants.²⁸³ In addition, there is an article in the TC RUz that discusses benefits for individuals receiving grants from NCOs, international and foreign organizations, and foundations.²⁸⁴

For taxation purposes, humanitarian aid is goal-oriented gratuitous assistance of the RUz for rendering medical and/or social assistance to socially vulnerable population groups, providing support to institutions of the social sphere and preventing and eliminating consequences of natural disasters, accidents and catastrophes, epidemics, epizootics and other emergency situations, that is distributed by the CM of RUz through organizations authorized by it.²⁸⁵

It follows from this definition that the recipient of humanitarian aid is the RUz, and further, such humanitarian aid is distributed by the CM of RUz. At the same time, the Budget Code retains complicated reporting requirements for recipients of

²⁸¹ Articles 3 and 5 of the Budget Code of the RUz.

²⁸² Article 48 TC RUz.

²⁸³ Article 64 of the Budget Code of the RUz reads: “Gratuitous assistance is provided in the form of humanitarian aid and technical assistance... Technical assistance is provided in the form of grants in kind and in cash for the purchase of equipment and technologies, for carrying out research and development work, scientific or other research, medical treatment, training, advanced training and retraining of personnel, provision of consulting services and other purposes in accordance with the legislation. Recipients of ... technical assistance may be the Republic of Uzbekistan, the Government of the Republic of Uzbekistan, non-governmental non-commercial organizations, self-governing bodies of citizens, as well as legal entities and individuals whose activities are not aimed at profit-making. Recipients of ... technical assistance funds shall be determined on the basis of agreements with relevant donors or in accordance with applicable legislation.”

²⁸⁴ According to Article 378 of the TC RUz, “the following types of income of individuals are not subject to taxation: 14) the amount of a grant received from non-governmental non-commercial organizations, international and foreign organizations and funds, as well as within the framework of international treaties of the Republic of Uzbekistan in the field of scientific and technical cooperation – directly by taxpayer from grantor and with the approval of an authorized body.”

²⁸⁵ Article 48 TC RUz.

humanitarian aid and technical assistance funds (which includes grants), naming NCOs among the recipients.²⁸⁶

Finally,

*“designated revenues include gratuitous revenues (except in the form of excisable goods) for the general operations of NCOs and their statutory activities, received by decision of a government authority, as well as revenues from other legal entities and (or) individuals, used by designated recipients for intended purposes.”*²⁸⁷

Earmarked revenues for the general operations and statutory activities of NCOs include:

- 1) contributions made by founders, participants, and members in accordance with the legislation on NCOs, as well as donations recognized as such in accordance with the civil legislation;
- 2) income in the form of services received by NCOs free of charge and rendered under relevant agreements;
- 3) deductions made by members of a homeowners’ association or a housing, horticultural, gardening, horticultural, garage-building, housing construction or other specialized consumer cooperative for the formation of a reserve for maintenance and capital repair of common property in accordance with the procedure established by this Code;
- 4) property transferred to NCOs under a will by way of inheritance;
- 5) budget funds provided for the implementation of NCO’s statutory activities;
- 6) funds and other property received for charitable activities;
- 7) funds received by trade union organizations in accordance with collective bargaining agreements (contracts) for the conduct by trade union organizations of social, cultural, and other activities provided for by their statutory documents;
- 8) funds received free of charge by NCOs from their duly established taxpaying structural subdivisions for statutory activities not related to entrepreneurial activity;
- 9) property received by religious organizations for their statutory activities; and
- 10) property rights in the form of the right to gratuitous use of public property transferred to NCOs by decision of a state authority for their statutory activity.

It is noteworthy that these ten items do not include grants received by NCOs from foreign sources. As mentioned above, such grants are not included in the concept of

²⁸⁶ Articles 64-67 of the Budget Code of the RUz.

²⁸⁷ Article 48 TC RUz.

“grants” as provided for in Article 48 of the TC RUz; therefore, their tax status is not clearly defined and is not known.

TAX REGIME II

SOME DISTINCTIVE ASPECTS OF TAXATION OF NCOS OPERATING IN THE SOCIAL SPHERE

Article 59 of the TC RUz provides tax exemptions for legal entities operating in the social sphere.

If the conditions established by Article 59 of the TC RUz are complied with, organizations operating in the social sphere, including NPOs, shall apply a 0% profit tax rate to all their incomes.²⁸⁸ These conditions are as follows:

- 1) the NCO shall operate in one of the fields provided for in Paragraph 1, Article 59 of the TC RUz;²⁸⁹
- 2) income from relevant types of activities, including in the form of property received free of charge, shall constitute at least 90% of the NCO's aggregate annual income.²⁹⁰

If a taxpayer carrying out activities in the social sphere fails to comply with the criteria established by Article 59 of the TC RUz, a tax rate of 15% is applied from the beginning of the tax period in which there was a failure to comply with these conditions, with the submission of updated tax returns for previous reporting periods.²⁹¹

²⁸⁸ Article 337 TC RUz.

²⁸⁹ “Article 59. Legal Entities Conducting Activities in the Social Sphere

For the purposes of this Code, legal entities conducting activities in the social sphere shall include legal entities operating in the following areas:

1) medical services (except for cosmetology services) provided by medical organizations on the basis of a relevant license.

Medical services for the purposes of application of this paragraph shall include, in particular, medical assistance and sanitary services:

a) diagnostic, preventive and treatment services;

b) dental services, including dental prosthetics;

2) educational services, including the organization of testing and examinations;

3) research (including scientific research, use, including implementation, by the author of scientific intellectual property), conducted by subjects of scientific and (or) scientific-technical activity and accredited by the authorized body in the field of science;

4) services in the sphere of physical culture and sports. Such services include:

a) conducting sports sessions in sports facilities, schools, health clubs physical training and sports in training groups and teams by sports, as well as general physical training services;

b) services for holding sports competitions or fetes, sports and entertainment events, as well as leasing of sports facilities for preparation and holding of such events;

c) services on provision of sports and technical equipment, fitness equipment and gear, sports uniforms;

5) services in the sphere of social protection and social security of children, elderly people and persons with disabilities.”

²⁹⁰ Paragraph 2, Article 59 of the TC RUz.

²⁹¹ Article 337 of the TC RUz.

TAX REGIME III

The TC RUz also provides for benefits for legal entities the only participants of which are public associations of persons with disabilities and where persons with disabilities account for at least 50% of the workforce and the total payroll (hereinafter organizations of persons with disabilities). The income of such organizations is exempt from profits tax.

BENEFITS FOR RECIPIENTS OF GRATUITOUS ASSISTANCE

If the recipient of gratuitous aid is a legal entity or an individual entrepreneur, then, according to Article 304 of the TC RUz, the following is not recognized as income and, therefore, is not subject to income tax:

- property and services received free of charge by decision of the President of the RUz or the CM of the RUz, as well as in accordance with international treaties of the RUz; and
- grants, humanitarian aid, and designated revenues, provided that the recipient complies with the requirements in Article 48 of the TC RUz.

If the recipient of gratuitous aid is an individual, then, according to Article 378 of the TC of RUz, the following is not subject to taxation:

- the amount of a grant received from NCOs, international and foreign organizations and funds, as well as under international agreements of the RUz in the field of scientific and technical cooperation – directly by the taxpayer from a grantor and with the approval of an authorized body; and
- subsidies and other types of assistance in the form of money provided to individuals by self-governing bodies of citizens, trade unions, charitable and environmental funds, but not exceeding 15 million soms over the tax period.

BENEFITS FOR INDIVIDUAL DONORS

Exempt from tax are the following types of income of individuals:²⁹²

- wages and other income of an individual subject to taxation allocated as “art patronage support, but not more than 50% of the tax base”;²⁹³ and
- wages and other income of a taxpayer in the amount of up to eight times the amount of the BCU, expended during the tax period to pay membership fees to

²⁹² Article 378 TC RUz.

²⁹³ “Art patronage (activity) – charitable activities conducted by individuals and legal entities in the field of culture and art, as well as science, education, enlightenment and other activities related to the development of culture and art; art patron – an individual or legal entity engaged in art patronage activities; recipient of art patronage support – an individual or legal entity that carries out activities related to the preservation and development of culture and art at the expense of art patronage support; art patronage support – property transferred to the recipients of art patronage support, as well as works performed for them, services rendered and other types of support by art patrons within the framework of art patronage activities on a gratuitous basis or on favorable terms.” (Law #ZRU-571 on Art Patronage of October 16, 2019).

an international organization, provided there is a document proving the payment of such fees by the taxpayer as a member of the relevant international organization.

BENEFITS FOR CORPORATE DONORS

The TC RUz does not contain privileges for legal entities providing donations to NCOs. They cannot reduce their taxable base by the amount of such assistance. However, the Tax Code provides benefits for legal entities engaged in art patronage activities. In part, such persons may deduct funds allocated for art patronage support, material assistance to educational institutions, or orphans and children without parental care, as well as funds donated to the Public Fund for Children Support (Article 317 of the TC RUz), from their taxable base. In addition, such persons may apply a turnover tax benefit under

“Article 243. Turnover of tax-exempt goods and services

Unless otherwise provided for by Article 260 of this Code, the following shall be exempt from tax:

** * **

26) goods (services) transferred (rendered) as art patronage support.”

VAT FOR NCOS

An NCO is obliged to register as a VAT payer in accordance with the procedure established by the Regulation on the Procedure of Special Registration of VAT Payers with Tax Authorities if it sells goods or services and/or conducts entrepreneurial activity in the RUz.²⁹⁴ It shall pay VAT only on its income from entrepreneurial activity.²⁹⁵

The object of taxation is:

- 1) turnover on realization of goods (services) sold in the RUz; and
- 2) import of goods into the territory of the RUz.

The tax base is determined as

“the cost of sold goods (services) based on the price (tariff) applied by the parties to the transaction, determined taking into account the requirements of Article 176²⁹⁶ of the Tax Code of the RUz, including excise tax (for excisable goods,

²⁹⁴ Article 462 TC RUz.

²⁹⁵ Articles 48, 304, 318 TC RUz.

²⁹⁶ Article 176. General Provisions on Transfer Pricing.

“Transfer price for the purposes of this Code shall mean a price that is formed in transactions between interrelated parties and (or) differs from the objectively formed price that would be applied in comparable economic conditions in transactions between independent persons.

*services) and without it. A taxpayer providing discounts (other commercial bonuses) to buyers on the date of sales turnover shall determine the tax base on the basis of the price (tariff) less such discounts (commercial bonuses)."*²⁹⁷

"The tax base is determined on the basis of the market value of goods (services) determined in accordance with the procedure approved by the CM of the RUz, when:

- 1) goods (services) are exchanged for other goods (services);*
- 2) goods (services) are transferred on a gratuitous basis...; and*
- 3) property of a legal entity is used for personal purposes..."*²⁹⁸

Exempt from VAT are a number of goods and services that are particularly relevant for some NCOs²⁹⁹:

"6) their own goods and services sold by legal entities whose sole participants are public associations of persons with disabilities, in which persons with disabilities account for at least 50% of the workforce and the wage fund."

"14) sanatorium-health resort and health-building services, as well as physical culture and sports services provided by budgetary organizations. For the purposes of this paragraph,

a) sanatorium-health resort and health-building services include services rendered by sanatoriums, health resorts, preventive clinics, resorts, boarding houses, rest homes and recreation areas, children's recreation camps and other recreational facilities within the framework of their core activities and formalized by relevant vouchers, regardless of whether such services are rendered by legal entities or their structural subdivisions;

b) physical culture and sports services rendered by budgetary organizations include but are not limited to physical culture and sports sessions in athletic facilities, schools, fitness clubs in training groups and teams organized by sporting event; general physical fitness services; and services for holding sports

Transfer pricing for the purposes of this Code shall mean the formation of commercial and (or) financial conditions and (or) results of activities of interrelated parties that differ from the conditions and results which would be obtained in comparable economic conditions by independent persons.

Any income that could have been received by one of the parties to a transaction, but was not received by it as a result of transfer pricing, for taxation purposes in the cases and in accordance with the procedure established by this section shall be recognized for that party to the transaction."

²⁹⁷ Article 248 TC RUz.

²⁹⁸ Article 248 TC RUz.

²⁹⁹ Article 243 TC RUz.

competitions or festivals, sports and entertainment events, as well as leasing of sports facilities for the preparation and holding of the said events;”

“23) goods (services) purchased with loans from international financial institutions and international loans from governmental organizations, if their exemption from tax is provided for by law;”

“26) goods (services) transferred (rendered) as art patronage support.”

In addition, the following imports are exempt from VAT:

“Article 246. Tax-exempt import of goods into the territory of the RUz

Exempt from tax is the import into the RUz of:

* * *

2) goods imported as humanitarian aid according to the procedure determined by the CM of the RUz;

3) goods imported for purposes of charitable assistance, including technical assistance (grants), through states, governments, international organizations, as well as other organizations and persons, in cases stipulated by decisions of the CM of RUz;

* * *

9) goods imported at the expense of loans made by international financial institutions and international loans made by governmental organizations, if their exemption upon importation is provided for by law;

* * *

II) medicines, veterinary medicines, medical and veterinary products, as well as raw materials imported according to a list provided for by applicable legislation for the production of medicines, veterinary medicines, and medical and veterinary products. This norm does not apply to the import of finished medicines, veterinary medicines, medical and veterinary products, which are also produced in the RUz, according to a list approved by the [CM] of RUz.”

The VAT rate is 12%.³⁰⁰

³⁰⁰ Article 258 TC RUz.

LAND, PROPERTY AND OTHER TAXES AND OBLIGATORY PAYMENTS RELEVANT FOR NCOs

Articles 442, 411, 426, 295, 312, 316, and 325-1 of the TC RUz exempt NCOs from paying the following taxes in the framework of non-commercial activities:

- tax for the use of water resources (Article 442);
- tax on property of legal entities (Article 411); and
- land tax for legal entities (Article 426).

However, if NCOs are engaged in entrepreneurial activities, they must pay all generally established taxes, and the above-mentioned benefits no longer apply.

In addition to the above-mentioned taxes, Law #ZRU-600 on State Duty of Jan 6, 2020 exempts NCOs from paying state duty in the following cases:

- 1) *“The following shall be exempted from paying state duty in civil courts: 15) NCOs – when appealing to the court against unlawful decisions of government bodies or actions (inaction) of officials that violate their rights and legitimate interests;”*³⁰¹
- 2) *“The following shall be exempted from paying state duty in administrative courts: 3) NCOs – when appealing to court against unlawful decisions of government bodies or actions (inaction) of officials violating their rights and legitimate interests.”*³⁰²

At the same time, there exists a number of problems regarding the taxes and obligatory payments relevant for NCOs.

As discussed, NCOs have the right to engage in entrepreneurial activities (Article 31 of the Law on NNOs) and to use profit from entrepreneurial activities for statutory purposes (Article 29 of the Law on NNOs). However, when carrying out entrepreneurial activities, NCOs are obliged to pay general taxes and submit reporting developed for large companies even if the NCOs employ only three or five workers, receive income from their entrepreneurial activities once or twice a year, and use the income exclusively on their statutory not-for-profit activities.

Every year, however, the CM of the RUz introduces new measures of support and incentives for business entities, including tax incentives. In 2023, a new classification for business entities by their annual turnover was introduced.³⁰³

1. SMALL BUSINESS

- *individual entrepreneurs;*
- *micro-firms* – business entities whose founders (participants) are individuals with an aggregate annual income up to 1 billion soms (~\$88,214); and

³⁰¹ Article 8 of the Law on State Duty.

³⁰² *Ibid.* Article 10.

³⁰³ Decree #up-21 of the President of the RUz on measures to further improve the criteria for categorizing business entities, tax policy, and tax administration of Feb 10, 2023

- *small enterprises* – business entities with an aggregate annual income of 1 billion to 10 billion soms (~\$882,145).

2. MEDIUM-SIZE COMPANIES

- business entities with an aggregate annual income of 10 billion to 100 billion soms (~\$8,821,453);

3. LARGE COMPANIES

- business entities with an aggregate annual income of 100 billion soms (~\$8,821,453) or more.

From January 1, 2023, small businesses (Uzbek legal entities whose aggregate income in the tax period does not exceed 1 billion soms, and individual entrepreneurs whose income from the sale of goods/services in the tax period exceeds 100 million soms, but not more than 1 billion soms) instead of paying VAT and profit tax have the right to choose a special tax regime that provides for payment of **turnover tax**. The object of taxation is aggregate income.³⁰⁴ The turnover tax rate is 4%. At the same time, the existing rates of 1% and 2% for entrepreneurs in remote areas and certain other categories remain in effect. A zero-rate turnover tax is provided to taxpayers the only participants of which are associations of persons with disabilities, such as the Nuroniy Fund and the association Chernobyl Veterans of Uzbekistan, where persons with disabilities and war and home front veterans of 1941-1945 account for at least 50% of the workforce and the wage fund. Also, the Tax Code provides an option of paying a fixed amount of tax of about 20-30 million soms per year.³⁰⁵

Presidential Decree #UP-60 of January 28, 2022 requires that all mandatory requirements in the sphere of entrepreneurship be collected in a unified electronic register of mandatory requirements. Duplicative and irrelevant requirements with respect to the regulation of entrepreneurial activity are being revised and the number of such requirements reduced. The Unified Register is expected to launch on July 1, 2025. As a result, financial, statistical, and tax reporting will be significantly simplified.

“From January 1, 2023,

- *businesses that have grown from small to medium-sized business category will pay only 50% of income tax for a period of two years;*
- *50% of property insurance costs will be reimbursed by the government;*
- and*

³⁰⁴ Article 463 TC RUz.

³⁰⁵ Article 467, 470¹ TC RUz.

- *a 20% government procurement quota is set and a 50% advance will be paid on all SSP orders.*³⁰⁶

This situation puts NCOs and commercial legal entities on an unequal footing. When an NCO conducts entrepreneurial activities, it effectively acts as a small business entity, since its total annual income more often than not does not exceed 1 billion soms. Yet, it cannot take advantage of the right to apply for a special preferential tax regime providing for payment of turnover tax.³⁰⁷ Article 461 of the TC RUz directly points out that turnover tax does not apply to NCOs, regardless of the amount of their aggregate annual income. Improvements in reporting and administration of taxpayers, which will take place for most of 2023, do not pertain to NCOs, and concern only business entities.

As a result of this approach, NCOs, as opposed to small businesses, pay all generally established taxes and submit reports and calculations in the generally established order, i.e., on a monthly and quarterly basis. This increases NCOs' burden of taxation and reporting severalfold, even though NCOs use the income they receive from their commercial operations to support their statutory activities (e.g., rent, obligatory payments, and office equipment).

6. LEGAL REGULATION OF VOLUNTEERS

Although volunteer activities were not legally regulated in Uzbekistan until December 2019, the Law on Charity has been in effect since 2007. The Russian version of the Law on Charity contains the term *dobrovoltsy*, which also translates as “volunteers” and is defined in the law as “*individuals who engage in charity in the form of gratuitous performance of work, provision of services in the interest of a beneficiary or a charitable organization.*”³⁰⁸ In other words, the law categorized volunteering as a charitable activity and made it subject to all guarantees and restrictions provided for charity.

The Law of the RUz on Volunteer Activity, adopted on December 2, 2019 (hereinafter the Law on Volunteer Activity), defined the legal status of volunteers (*volontyory*), their rights and obligations, and requirements for their activities. According to this law, volunteering is understood as “*voluntary activities by citizens, their groups or volunteer organizations in the interest of individuals and (or) legal entities.*”³⁰⁹ It also defines such concepts as “volunteer,” “volunteer group,” “volunteer action,” “volunteer organization,” and others. The definition of the term *volontyor* and *volontyorstvo* (volunteering) is much broader than the older *dobrovolets* and its derivatives. With the adoption of the Law on Volunteer Activity, the norms regulating the activity of

³⁰⁶ “Президент анонсировал новую классификацию бизнеса по его обороту,” *Gazeta.uz*, August 22, 2022, at <https://www.gazeta.uz/ru/2022/08/22/micro-business/>.

³⁰⁷ Article 461 TC RUz.

³⁰⁸ Article 3 of the Law on Charity.

³⁰⁹ Article 3 of the Law of the RUz on Volunteer Activity of Dec 2, 2019.

dobrovoltsy in the Law on Charity were neither canceled nor changed; therefore, questions remain about the possibility or impossibility of applying the benefits, rights, and obligations provided for volunteers to *dobrovoltsy*. Also, it is unclear whether we should categorize gratuitous service or work as charitable or volunteer activity.

Individuals of 18 years of age and older may engage in volunteer activities. Individuals between 16 and 18 years of age are allowed to engage in volunteer activities if this does not harm their health and moral development and does not disrupt their education process.

The Law on Volunteer Activity sets out the procedure for formalizing volunteer relations. There are guarantees and mechanisms to protect the rights of the volunteer. For example, if a volunteer is engaged in a volunteer activity for more than 20 hours per month, the activity organizer must conclude a volunteer agreement with them. The agreement specifies the hours and days of work, the rights and obligations of the parties, the benefits provided, and more. It is forbidden to conclude a volunteer agreement in order to avoid concluding an individual labor contract or a civil law contract for the provision of services or any other such contract. The law allows for the possibility of compensation of certain expenses related to volunteer work and the right of volunteers to receive insurance from the organizer of volunteer activities.

The Law provides for the obligation of participants in volunteer activities to notify the Ministry of Justice of their work. For example, Article 8 of the Law on Volunteer Activity provides for the registration of volunteer activities in accordance with the procedure of “voluntary notification” established by the CM of the RUz.

On April 11, 2022, the CM of the RUz issued its Decree #169 on Measures for Further Support of Volunteer Activities, in which it approved rules of effective use of volunteering in the implementation of various government functions and tasks. The decree provides for the beginning of operation from June 1, 2022 of a volunteering electronic platform created on the basis of the Youth Portal of Uzbekistan to keep records of volunteers’ participation in socially significant events, projects and actions, among other things.

An online platform that keeps track of volunteers, volunteer groups, and organizations in Uzbekistan and constantly highlights their activities, volontyor.uz, also has tutorials and video lessons to prepare young people for volunteering.³¹⁰

Government bodies engage volunteers in their activities and register them in the following order:

- the heads of government bodies approve a list of areas of volunteer engagement and relevant internal instructions;

³¹⁰ Find the online volunteer platform at <https://volontyor.uz/>.

- volunteer groups are set up to help government bodies implement their programs, and volunteers for the groups are selected based on the results of a competition;
- volunteers included in a volunteer group are registered by the human resources department of the appropriate government body through the volunteer e-platform;
- activists of volunteer groups organized by government bodies are provided incentives using extra-budgetary funds of government bodies and other sources not prohibited by law; and
- the most active representatives of public organizations are elected to community councils working under all government bodies.
- a volunteer's work in their volunteer group is shown on the e-platform at all times, making it possible for them to download a certificate with a QR code about their activity with the group at any time.



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