



# Assessment Report on the Fiscal Framework of Civil Society in Albania

This Report aims to give an overview of the key issues concerning the fiscal environment for non-governmental organizations (NGOs) in Albania, and provide suggestions on how these issues could be solved. Each issue is organized by:

- Describing the current situation in Albania with regard to the issue;
- Providing examples of what are the European standards and best practices with regard to the issue outlined;
- Providing possible solutions to the issue.

This Report commissioned by the Open Society Foundation for Albania (OSFA) is based on a review of legislation, a study visit held in the period 8-11 November and meetings with different stakeholders. Luben Panov and Nilda Bullain from the European Center for Not-for-Profit Law (ECNL) prepared the report. The European Center for Not-for-Profit Law (ECNL) is a public benefit organization registered in Hungary, which aims to promote the strengthening of a supportive legal environment for civil society in Europe by developing expertise and building capacity on legal issues affecting non-governmental organizations (NGOs) and public participation. To accomplish its goal, ECNL convenes key stakeholders, facilitates cross-sectoral and cross-border dialogue, and provides professional assistance on legal issues affecting civil society. ECNL's methodology of work emphasizes participation, transparency and local ownership. The core activities of ECNL support the analysis, drafting and implementation of civil society legislation, empower local partners to carry on legal reform and advocacy activities, make available resources, information, and cutting-edge research, and promote the sharing of comparative expertise.

ECNL, with its affiliate, the International Center for Not-for-Profit Law (ICNL) has assisted the development and reform of the legal and policy frameworks affecting NGOs in over 15 countries of Central and Eastern Europe, including the new EU member states.

## I. Introduction

In 2001 Albania undertook a serious revision of its legal system affecting non-for-profit organizations<sup>1</sup>. The Law on Non-for-Profit Organizations (Law No. 8788 from 7 May 2001) and the Law on the Registration of Non-for-profit Organizations (Law No. 8789 from 7 May 2001) were adopted in 2001. In addition, the basic forms of NGOs are defined in the Civil Code adopted in 1994 but amended in May 2001 as well (Law No. 8781 for Some Additions and Amendments to the Civil Code). This framework allows for a relatively straightforward process of registration and operation, in line with international standards. The law defines the possibility for NGOs to carry out economic activity.

Another important recent development is the creation of the Civil Society Support Agency (created under Law No. 10093 on the Organization and Functioning of the Civil Society Support Agency approved by Parliament in March 9<sup>th</sup> 2009). The Agency is a public law entity managed by a Supervisory Board and will distribute grants to NGOs. The Board is composed of 9 members of whom 5 are representatives of civil society. The first Board and the executive director were appointed in 2010. The civil society representatives in the Board were selected after a public campaign. The announcement was published in the media for 1 month and 54 nominations arrived (each nominee had to be supported by 5 NGOs). Out of these nominees the Council of Ministers selected 5 people. Apart from the Board, the agency has currently 12 employees. The Council of Ministers has provided the Agency with its own premises.

The funds for the grants come from the state budget. In 2010, the fund was USD 800 000 (initially the budget foresaw to commit USD 1 mln., but because of the economic downturn all the expenses were cut by 20 % affecting the budget of the Agency as well). The first call for applications was already announced and more than 130 organizations applied. Out of them, 110 passed the administrative check and 52 were selected to receive the funding for 2010 (800 000 USD). The grant-making regulation allows for multi-year grant, considering it a good practice. However, there are technical issues related to the multi-year grants – all funding for 2010 has to be spent in this calendar year, so the Agency might have to transfer the whole funding to the NGO in advance (which creates concerns with regard to the control over how the money is to be spent) or return the money to the state treasury.

Besides the Civil Society Support Agency, the Albanian Government is in the process of approving a Civil Society Charter. The Charter will, among other things, support the development of a supportive legal and fiscal framework for NGOs. In addition, *“the Government is committed to improve the legal framework defining the relations between the civil society organizations and the state as such that allow fiscal and tax relief and define the type and extent of taxes to be charged on the civil society organizations<sup>2</sup>.”*

The Charter has been drafted by a joint working group composed of civil society representatives and representatives of the government. It has already been supported in principle by both civil society and the government. However, the document is a consensual document adopted in Parliament by all political parties (and not just the ruling party).

---

<sup>1</sup> The terms non-for-profit organizations, nongovernmental organizations and NGOs are used interchangeably in the text. They all cover the three main forms of legal entities with non-for-profit purposes in Albania – associations (membership based) and foundations and centers (non-membership organizations).

<sup>2</sup> Charter of Civil Society, No. III, para. 4

Because of the current political situation in Albania (where the main opposition party has refused to partake in any voting in Parliament), the introduction of the Charter of Civil Society in the Parliament will probably happen next year.

Despite these positive developments, there have been some issues that raise concerns. These issues are related especially to the fiscal framework for NGOs in Albania. Below we have listed the most important ones.

## II. Non-for-profit and economic activities

### Context in Albania

There are 3 main types of NGOs in Albania – associations, foundations and centers:

- According to the Civil Code of Albania, as amended by Law No. 8781 on 3 May 2001, “*an association is a juridical person established with the free choice of five or more physical persons or not less than two juridical persons that follow a specific lawful purpose, to the good and interest of the public or its members*”<sup>3</sup>.
- A foundation is a “*juridical person without membership having the object of achieving a lawful purpose by using its property for the good and in the interest of the public*”<sup>4</sup>.
- A center is a “*juridical person, without membership, that has the object of its activity the performance of services and the realization of projects for purposes in the good and interest of the public, with funds and income secured according to law*”<sup>5</sup>.

The NGO Law<sup>6</sup> provides that “*non-for-profit organizations have the right to exercise any kind of lawful activity*”<sup>7</sup>. According to the Civil Code, however, “*it is not permitted for an association to perform profit-making activities*” (art. 39/1). Foundations face the same limitations (art. 56/1). Centers are also not permitted to perform profit-making activity<sup>8</sup>. **There seems to be a general misunderstanding as to what profit-making activity means.** This is obviously a different term from the term economic or commercial activities, because NGOs are clearly allowed to engage in economic activities directly and not just through subsidiary companies<sup>9</sup>. NGOs in Albania are also allowed to engage in passive investments<sup>10</sup> - both foundations and associations are allowed to “*own movable and immovable assets, to generate incomes through the management of these assets.*”<sup>11</sup>

Moreover, the article 36 of NGO Law contains an explanation of how the profits of economic activity are to be used: “*If a non-profit organization realizes profits through the exercise of economic activity, it shall be used to accomplish the purposes specified in the*

---

<sup>3</sup> Art. 39 of the Civil Code.

<sup>4</sup> Art. 54 of the Civil Code.

<sup>5</sup> Art. 11 of the Law on Non-Profit Organizations (Law No. 8788).

<sup>6</sup> In the text below we will use this abbreviation for the Law on Non-for-Profit Organizations.

<sup>7</sup> Art. 34 of the NGO Law.

<sup>8</sup> Art. 11 of the NGO Law.

<sup>9</sup> Art. 36 of the NGO Law.

<sup>10</sup> Passive investment includes interest, dividends, capital gains and other income from investing the organization’s property.

<sup>11</sup> Art. 39/1 and 56/1 from the Civil Code for associations and foundations respectively.

*charter and the establishment act*<sup>12</sup>.” So, making a profit is possible. It is more likely that profit-making refers to profit distribution, rather than to engaging in activities that might be profitable. Art. 35 of the NGO Law says,

*“No form of profit distribution, or financial and material advantage benefit from the incomes and profits of the non-for-profit organization is permitted to the persons that are subjects of the charter or establishment act, except for obligations in the form of salary, wages, payments, remunerations and compensations that derives from an employment contract or another contracts similar to it, or to cover expenses performed on the order and for the account of the non-for-profit organization”*<sup>13</sup>.”

The term “profit-making activity” has to be interpreted in conjunction with art. 2, point 4 of the NGO Law which says that ““non-profit activity” means any economic or non-economic activity on the condition that the incomes or properties of the non-for-profit organizations, if there are any, are used only for the fulfillment of the purposes specified in the charter of the organization”<sup>14</sup>. As it stems from this definition, “profit-making” is the opposite of “non-profit”, as used by the legislator. On the other hand, this definition leads to additional **confusion because the economic activity (under certain conditions) is considered as non-for-profit activity.**

The differentiation between economic and non-economic activity is important, especially because it is also related to the different tax treatment of these two activities (the next section will deal with the taxation of the economic activity). In Albania, NGOs were obliged to have a separate tax registration for their economic activity. This was changed in 2008 and now the two activities are in one report, which also confirms the general confusion as to what economic and what non-for-profit activities are.

### **The European Practice**

In Europe, it is a common practice to allow NGOs to carry out economic activity. The Former Yugoslav Republic of Macedonia was one of the last countries that had an express prohibition for NGOs to directly engage in business activities, and recently has amended its NGO law to remedy this problem. There may be some limitation (i.e. Albania), ) but in most cases, conducting an economic activity is a legitimate way to achieve the purposes of an NGO, non-for-profit. This is also provided in the Council of Europe Recommendations on the Legal Status of NGOs in Europe, para. 14:

*“NGOs should be free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities without any special authorisation being required, but subject to any licensing or regulatory requirements generally applicable to the activities concerned”*<sup>15</sup>.”

---

<sup>12</sup> Art.36, NGO Law

<sup>13</sup> Art 35, NGO Law

<sup>14</sup> Art 2, NGO Law

<sup>15</sup> Council of Europe, Recommendations on the Legal Status of NGOs in Europe, para. 14:

In most countries, there is a separation between non-for-profit and economic activity. Traditionally, **nonfor-profit activity is equal to non-economic or non-business activity**. These are all the activities that are funded through grants, membership fees, donations, volunteer labor, etc.

On the other hand, **economic or business activity is an activity organized with the purpose of receiving monetary values in exchange of services or goods provided**. Economic activity usually excludes income received at fundraising events (e.g. sales of paintings at a charitable auction). In most countries, there is a separate treatment of passive investment (the investment of NGO funds with the aim to preserve or increase their value and use the investment income for the purposes of the organization).

Further differentiation is often made in terms of economic or business activities that are related to the overall mission of the NGO (e.g. selling artifacts made by people with disabilities or charging entrance fees for a special exhibit where one can try out how blind people live) and those that are not related to the mission and statutory purposes (e.g. selling imported artifacts or running a buffet next to the exhibition). This differentiation is used primarily for tax purposes, but in some cases it can also be the basis of allowing or disallowing economic activities for NGOs (i.e. NGOs or public benefit NGOs<sup>16</sup> will be allowed to conduct related economic activities without limitation, but they will be limited in their ability to engage in unrelated economic activities).<sup>17</sup>

For accounting purposes, economic and non-for-profit activities<sup>18</sup> are most often separated in the accounting books of the NGOs. Below are given the practical examples of how this may happen:

#### Bulgaria

In Bulgaria, there is a separate accounting standard for NGOs. All NGO incomes are differentiated based on whether they come from economic or non-for-profit activity. The separation of the incomes is carried out by the organizations, which have the obligation to maintain accounting records. For example, tax authorities may audit the records of NGOs and argue that certain incomes were incorrectly accounted as non-for-profit.

In addition to incomes, NGOs differentiate also their expenditures between economic and non-for-profit activities. For expenses that cannot be clearly differentiated between the two activities (e.g. the rent of the office where NGOs carry out both economic and non-for-profit activities), NGOs are obliged to use a special coefficient – the expense is multiplied by the ratio between the incomes from economic activity divided by the total incomes of the NGO.

The purpose of this differentiation is to clarify what is the income and what is the expenditure for economic activity of the organization. The positive result (profit) is then taxed. For the purposes of tax authorities/statistics, after registration every NGO is assigned with a unique number used by tax and statistics authorities to identify the organization (there is one number for both non-for-profit and business activities). If the

---

<sup>16</sup> For an explanation of public benefit see Section IV.

<sup>17</sup> More information about economic activities of NGOs can be found in the Survey of the Treatment of Economic Activities of Non-Profit Organizations in Europe, developed by ECNL and ICNL, [http://www.ecnl.org/dindocuments/185\\_Economic%20Activities%20Paper%202007.pdf](http://www.ecnl.org/dindocuments/185_Economic%20Activities%20Paper%202007.pdf)

<sup>18</sup> For the purpose of clarity, we will use the term non-profit activity as excluding economic activity.

organization is registered also as a VAT taxpayer (this will be discussed in more detail in the VAT section), the term “BG” is added to this number. .

### Hungary

In Hungary, NGOs can have three types of their own incomes<sup>19</sup>: income from statutory activities, income from public benefit activities and income from business activities. Income from statutory and public benefit activities are essentially economic activities related to the mission and statutory purposes of the NGO (an NGO can generate incomes from public benefit activities, only if it is a public benefit organization). Income from business activity means income from unrelated economic activity. There is a separate accounting form developed for NGOs reporting purposes, including PBOs, which is called “reporting form for other organizations” and it applies also to churches, trade unions, academic institutions etc. Under this reporting form, statutory and public benefit activities qualify as part of the non-taxable income from non-for-profit activity, while business activities have to be reported on separately. Like in Bulgaria, expenses for the business activity have to be maintained and reported separately. Nevertheless, , in Hungary not all economic activities are included in this reporting form, only truly entrepreneurial business activities. On the other hand, challenges are encountered in defining whether a certain economic activity is related or not to the mission of the NGO. Tax authorities have great discretion in determining about this issue.

### Recommendations

In Albania there is confusion between non-for-profit profit-making and economic activity. These terms should be clearly defined in the law. The terminology used in the law should make clear differentiation between economic and non-for-profit activities and to what extent NGOs are allowed to engage in economic activity. This may require a **revision of the relevant provisions of the Civil Code and the NGO law**.

In addition, it would be a good idea to prepare **a manual for tax inspectors and for NGOs** on which activities can be carried out by NGOs, what are the basic differences between economic and non-economic activity and how should those be differentiated in practice. Such an implementation tool would help in making sure that the law is clear to all stakeholders and is applied accordingly. From an accounting/reporting ground, it would be good to **design clear forms for NGO reporting** that will allow for a clear differentiation between the two activities.

## **III. NGO Income Taxation**

### Context in Albania

The non-economic/non-for-profit and the economic activity of NGOs are treated differently from a tax perspective in Albania. While the non-for-profit activity is not subject to income tax, the **economic activity** is subject to a 10 % tax on the profit (similar to companies taxed with the same rate for their profits). In practice, as it is difficult to differentiate between economic and non-for-profit activities, most NGOs are not really aware on what taxes they should pay on their income. Some NGOs were concerned that there might be a

---

<sup>19</sup> By own incomes we mean incomes generated by the NGO through economic activities, i.e. not given by someone else (private donor or government).

tax on the funds from the non-for-profit activity, which are not spent at the end of the calendar year. This shows again how important it is to have clear legislation on what economic activity is and what is not, as well as how each activity is taxed.

With regard to passive investments and especially **interest from bank deposits**, these seem to be taxed at the rate of 10% (like the individuals who pay tax on interest at the rate of 10%), such tax withheld by the banks<sup>20</sup>.

One potential confusion is related to grants. The NGO Law (in art. 40) defines that tax and customs obligations are set by law (meaning probably the respective laws). The same article says:

*“Regardless of the organization form, the purpose they follow and the activity they exercise, non-for-profit organizations are exempt from tax on revenues realized from donations and membership fees<sup>21</sup>.”*

This text somehow has excluded the **income from grants**. At the same time art. 35 of the same law defines grants as one of the sources of NGOs incomes<sup>22</sup>. This omission in art. 40 – to exempt income from grants expressly from tax on revenues, may lead to incorrect interpretations by different state authorities. Grants are one of the most important sources of NGOs incomes in Albania and as such, their tax treatment should be absolutely clear.

With regard to the tax treatment of the donors of NGOs, art. 40 of the NGO Law also states,

*“Natural and juridical persons who give assistance by donations to non-for-profit organizations are entitled to obtain relief from income tax according to law<sup>23</sup>.”*

Albania has adopted a separate Sponsorship Law, which regulates the benefits for sponsors. According to Art. 3 of the Sponsorship Law (Law No. 7892 from 21.12.1994), as amended, sponsors are *“only those subjects having the quality of merchant, being physical or juridical persons, local or foreign or joint ventures<sup>24</sup>.”* There are several different types of benefits depending on the sponsor and the recipient of the donation:

- deduction of up to 4 % of the profit;
- deduction of up to 1 % of the income for small businesses;  
deduction of up to 10 % of the profit<sup>25</sup> for press publishers and for publications in literature, science, encyclopedia as well as for cultural, artistic and sportive events.

In addition, the Government of Albania can exempt taxes with regard to grants according to the ratified bilateral agreements with different countries or international organizations.

Recipients of such donations are *“institutions, associations and bodies legally recognized and registered as juridical subjects<sup>26</sup>.”* Even though foundations and centers are not

---

<sup>20</sup> There is no expressed exemption provided by the existing tax legislation.

<sup>21</sup> Art 40, NGO Law

<sup>22</sup> Art 35, NGO Law

<sup>23</sup> Art 40, NGO Law

<sup>24</sup> Art 3, Sponsorship Law, Law No. 7892

<sup>25</sup> This information needs to be confirmed as the translations of the law did not give a clear understanding whether the percentage is charged on the income or only on the profit.

explicitly mentioned the law should cover them too. In addition, sponsorship having the aim of economic profit by the sponsor is prohibited.

All of these benefits apply only to those business companies and individuals that have the “quality of merchant”. The definition excludes normal employees that receive salaries, including all state officials. Therefore, it does not reflect the aim of the legislator under Art. 40 of the NGO law.

In 2012, individual taxpayers will be obliged to file individual tax declaration for their personal incomes, other than those that are subject to tax withholdings at the source (e.g. salaries are subject to a withholding tax, so the employees do not have the obligation to pay any additional tax).

In order to stimulate taxpayers to submit tax declarations, the Ministry of Finance intends to make the declaration as simple as possible by not complicating it with many deductions, etc. This is a legitimate interest. On the other hand, deduction on sponsorship may be given as an opportunity for individuals to use if they want to. In addition, such a possibility could be given to the institutions that withhold the tax from salaries and they can be the ones that deduct the donations made.

### **The European Practice**

Below is given a brief description of the taxation of the main forms of NGO incomes:

#### **1. Taxation of non-for-profit activity**

The European practice is that incomes from non-for-profit activity is not taxed. There may be some nuances as to what is non-for-profit activity, but traditionally includes membership fees, donations and grants.

#### **2. Taxation of economic activities**

There are different practices with regard to taxation of the economic activities of NGOs, in the EU. In some countries, all profits from economic activity are taxed in full.. Bulgaria is one example of this category. Most of the countries in Central and Eastern Europe (CEE) provide some sort of tax exemption for the profit generated by the economic activity. In some other countries (such as Lithuania) all NGOs that carry out economic activity are exempt from tax while in others (such as Latvia) only the incomes generated from the related business activity is exempt, while all non-related economic activity is taxed in full. In Poland, there is another approach – all incomes generated from economic activity used for public benefit activities are exempt from taxation.

Most of the other countries use a mixture of the different types of taxation mechanisms. In the Czech Republic there is a threshold below which, all income from economic activities is exempt from tax. In Hungary, NGOs can generate income from economic activity that is not taxed, if it counts up to 10 % of the overall income of the organization, but not more than EUR 35 000 (15 % for prominent public benefit organizations). In Romania, the limit is 10 %, but not more than EUR 15 000.

#### **3. Taxation of passive investment**

---

<sup>26</sup> Art. 2 of the Sponsorship Law.



NGOs are allowed to engage in passive investment in all CEE countries. The tax treatment of such investments varies between the countries and the different types of investment income.

There are countries that tax in full all investment income (Slovenia). There are other countries, which do not tax the investment income for certain categories of organizations, such as endowments (special type of foundations) e.g. Czech Republic and Slovakia . Some other countries tax only the investment income related to their economic activity (Romania and Bulgaria). In Hungary, the income from deposits and certain types of securities is exempt for public benefit organizations whenever this is related to the public benefit activities of the organizations.

#### 4. Tax treatment of donors

In most countries of Europe donors of NGOs enjoy some form of tax benefits. Sometimes these benefits are limited only to public benefit organizations (the public benefit status will be described in more detail in the next section). The predominant form used in the countries of Central and Eastern Europe is **tax deduction** – the donor has the right to account as an expense all or part of the donation and decrease the amount on which the income/profit tax is levied. The deduction is allowable up to a certain limit, which is usually a percentage of the income or profit of the individual or entity. In most European countries the maximum deduction is around 10% of the taxable income. The UK is one of the only countries in which there is no limit on the deductions for donations. In Hungary, donations to prominent public benefit organizations can be deducted up to an amount of 15 % of the donation (up to 20 % of the pre-tax income).

An alternative possibility is to use a **tax credit** – the donation is deducted from the amount of the tax owed. Latvia is currently the only country in the region that allows individuals to claim a tax credit for up to 85 % of the donation made (and up to 20 % of the tax liability). Hungary used to allow for a tax credit of 30 % when the donation amount made up to EUR 350, if the donation was made for prominent public benefit organizations (this tax benefit was abolished as part of a restrictions package during the financial crisis).

In addition, there are differences between the possibility of companies and individuals to use tax benefits for donations made. Most of the countries in Central and Eastern Europe allow **tax deductions for corporate taxpayers**. One of the exceptions is Slovakia, which has a flat tax (and terminates all sorts of existing benefits or decreases of the tax base). To redress this problem, Slovakia introduced the 2 % mechanism, (see below) which applies to business companies as well. In Bulgaria, however, despite the introduction of the flat tax, remained the right of business companies to deduct from the donations made, up to 10 % of their profit.

As individuals are concerned, most of the CEE countries provide for **tax benefits for individual donors**. Bosnia and Serbia are exceptions. In Romania, there was no tax exemption for individual donors and the government decided to introduce a 2 % mechanism (see below). Examples of amounts that can be deducted from the annual income are, 20 % in Latvia, 10 % in Czech Republic, 6 % in Poland, 5 % in Bulgaria), etc.

As mentioned above, some countries in CEE have introduced the so called **1% or 2% legislation**. This is the case in Hungary, Poland, Slovakia, Lithuania and Romania. The mechanism means that the taxpayers can designate a qualified NGO that can receive 1 % of the taxes individuals pay. After the collection of all designations, the government

transfers the accumulated amounts to the selected organizations. This is not a traditional donation as taxpayers do not give their money, but rather determine how 1 or 2 % of their taxes will be used. This mechanism applies mainly to individuals. Slovakia is an exception as companies can use the mechanism as well.

Different systems are used in regard to mechanisms that individuals claim tax benefits. Bulgaria is an interesting example. . In Bulgaria, tax declarations are filed by taxpayers only if the taxpayers have received income other than their employment remuneration. In the case of employment, the employer has the obligation to withhold the income tax and transfer it to the tax authorities. When the right to deduct a percentage of the income was introduced, the individual had the right to claim the tax declaration.. However, most people did not file any tax declarations because they received only employment income. In order to change that, the law was amended and allowed also for the individuals to claim deductions for the donations made through their employer.

### **Recommendations**

There are several issues related to the tax treatment of NGO income in Albania. There is a need to include a clear and expressive **exemption from income tax for grants in the NGO law** (as well as in any tax laws that deal with NGO income taxation). This will terminate the possibility for different interpretations of whether grants are part of the non-for-profit activity of NGOs or not, and whether such grants are taxed or not. In addition, there is a need to make sure that the non-for-profit activity is not taxed with the income tax in any way, including by levying a tax on the positive result at the end of the year.

Currently, all passive investments are treated in the same way as business activities and are respectively taxed in Albania. The working group<sup>27</sup> should consider differentiating between passive investment, non-for-profit activity and business activity, and as a first step **exempt the income tax from the bank deposit interests with funds generated by the non-for-profit activity** (in such case is levied or should be levied by law). This is important because all NGOs, regardless of whether they engage in economic activity or not, use banks to keep their money, and may lead to charge interests. If an organization is engaged in no other form of economic activity and has to pay tax only on the interest, this will be an unnecessary burden. Moreover, NGOs should be given the opportunity to manage their funds in the best possible way and to invest them by generating additional income to further their purposes. In the future, additional exemptions to other types of investments should be considered.

With regard to the tax treatment of donors, the working group should consider to create the **possibility for all individuals to deduct the donations** they make (not only for individual traders as currently phrased). This would be in line with the intention of lawmakers to support associations and other civil society organizations through sponsorship by all those who care for them. There seems to be no clear policy reason to discriminate support from employees. Such a tax benefit will not make the tax declaration more complicated and could be used only by those people who want to claim deductions. In addition, the right to deduct donations could also be used through the employers, which would ensure participation of employees who would otherwise not take the burden of reporting on donations.

---

<sup>27</sup> A working groups is established with representatives of civil society and Albanian Government to review the fiscal legislation for NGOs

## **IV. Public benefit status**

### **Context in Albania**

The NGO Law in Albania does not provide for the creation of a special status for NGOs, such as public benefit status. However, in October 2008, the Parliament adopted some amendments to the Value Added Tax (VAT) Law (Law No. 10003 from 6.10.2008). These amendments included a provision stating that the supplies made by non-for-profit organizations at a reduced price are exempt from VAT, if they are made by public benefit organizations<sup>28</sup>, whose status is granted by the Ministry of Finance. The Council of Ministers adopted a decision about the criteria and procedures for acquiring public benefit status (Decision No. 1679 from 24.12.2008). According to this Decision of the Council of Ministers, public benefit status is given to organizations carrying activities in the fields of education and health. In addition, economic development<sup>29</sup> is also considered as public benefit activity. These organizations need to provide their services at a price as low as 50 % of the market price (and the incomes from the sale of goods and services cannot cover more than 50 % of the costs for providing them).

This status could be acquired immediately after registration, so there is no requirement for an organization to have any track record. The authorization given by Ministry of Finance is valid for 3 years and can be renewed after this period.

This procedure is relatively new and is difficult to judge whether the process of giving the public benefit status is easy or burdensome (currently organizations need to provide more than 10 documents to the Ministry of Finance). However, the creation of this status only with regard to the VAT law is not common practice in Europe. Rather, public benefit status should be seen as a recognition of the importance of NGOs sector in addressing social needs, and therefore eligible for a range of tax and fiscal benefits.

### **The European Practice**

The purpose of creating a special status for a segment of the NGO sector speaks for the desire of the state to support organizations that work in the public benefit. The state provides special privileges to such organizations while in return demands greater accountability and thus, exercises greater control over these organizations. They usually have to be more transparent towards the general public as well. In addition, the state will usually try to create incentives for private donors to support such organizations (by giving tax benefits to donors of public benefit organizations).

The public benefit status can be defined in the NGO Law (Bulgaria) or in a separate law (Hungary, Poland). It can also be defined in the tax laws (Estonia), since the primary purpose of the status is actually to provide specific tax incentives for certain categories of organizations. However, the definition, criteria and conditions to this status are always defined in a law as they confer rights and obligations onto the NGOs, which should be enshrined in law rather than in secondary legislation.

---

<sup>28</sup> The Value Added Tax Law, 2008

<sup>29</sup> The term “economic development” probably refers to changing the difficult economic situation of people, i.e. poverty reduction, rather than developing the economy as such, though this is unclear.

An NGO must carry out activities in specifically defined areas to qualify as a public benefit organization. The different laws include a list of such areas or activities. In Poland, the list includes 24 activities and in Hungary 22. The most typical public benefit activities<sup>30</sup> include:

- (a) Amateur athletics
- (b) Arts
- (c) Assistance or protection for people with disabilities (d) Assistance to refugees (e) Charity (f) Civil or human rights
- (g) Consumer protection
- (h) Culture
- (i) Democracy
- (j) Ecology or the protection of environment (k) Education, training (l) Elimination of discrimination based on race, ethnicity, religion, or any other legally proscribed form of discrimination
- (m) Elimination of poverty
- (n) Health or physical well-being (o) Historical preservation (p) Humanitarian or disaster relief (q) Medical care
- (r) Protection of children, youth, and disadvantaged individuals (s) Protection or care of injured or vulnerable animals (t) Relieving burdens of government
- (u) Religion
- (v) Science (w) Social cohesion (x) Social or economic development
- (y) Social welfare.

Some legislations include also a “catch all” provision e.g. “other activities considered to be of public benefit” in addition to the listed activities.

Public benefit organizations are usually subjects to stricter requirements in terms of reporting and governance, which may concern the structure and policies of the NGO. For example, in Bulgaria a Public Benefit Organization needs to have a collective supreme body and there are limitations on how should spend its property (a decision with a 2/3 majority of the supreme body needs to be taken, if property is given to a related person). A strengthened governance structure, regulations on the conflict of interests, and the submission of an annual public benefit report are the most common requirements for increased accountability that should go along with the public benefit status.

Different institutions are entitled to confer the public benefit status. In some countries the court confers the status (Hungary), in others is a Ministry (Bulgaria) or the tax authorities (Germany). In England and Moldova, a separate independent commission has been established to provide the status. In some countries, such as Latvia and Estonia, the tax authorities/Ministry of Finance give the status, based on the advice of an independent commission (in Latvia a special Public Benefit Commission is created, which consists of equal number of representatives from the government and from NGOs).

The registration process should be quick and easy and there should be clear rules when can n be denied. The denial decision should be subject to appeal. In addition, the loss of status should not automatically mean termination of the legal entity.

---

<sup>30</sup> The list is taken from “A Comparative Overview of Public Benefit Status in Europe” prepared by ECNL, 2007.

In Bulgaria, the NGO declares the public benefit status before the district court, where it is registered. The Public Benefit Organization (PBO) needs to register with the Central Registry of the Ministry of Justice (a specialized administration dealing with public benefit status) to complete the process. Only after this registration, an NGO is able to use the benefits of the status. The Central Registry is supposed to maintain a public registry of all organizations, together with their annual reports and to check the activities of public benefit organizations. The registration in the Ministry of Justice is supposed to be quick (14 days) and initially not that burdensome (in exchange for post-registration control and reporting requirements). In practice, there are a number of issues that include slow registration, lack of updated information on the website and lack of strict control.

In exchange for the tightened control and greater transparency, PBOs are provided with different benefits. Besides to the general exemption of grants, subsidies, membership fees and other income from non-for-profit activity, PBOs may receive special treatment such as exemption from gift and inheritance taxes, preferential treatment for their donors, exemption from real estate taxes, etc., PBOs may also receive state funding (in Bulgaria only PBOs are allowed to take part in the annual competition for state grants) or preferential opportunities to use state or municipal property (sometimes this can be provided at a lower rent or free of charge).

With regard to VAT, the leading document is the “6<sup>th</sup> Directive” of the European Commission<sup>31</sup>, the implementation of which is mandatory for the EU member states and is therefore part of the approximation process for countries aspiring for the EU membership. A key principle of the 6<sup>th</sup> Directive is that VAT exemptions are limited to a list of narrowly defined activities, whereby the basis of exemption is the nature of the activity rather than the legal form of the organization undertaking it. However, the EU law does refer to “organizations recognized as charitable” in enlisting exemptions “in the public interest” (e.g., Art.13.1A. g. and h.), and allows for member states to provide further exemptions under limited conditions. (Art. 13.1.2 and Annex H, point 14).

### **Recommendations**

Several issues need revision in Albania as it appears by the comparative analysis of the Albanian context and European practice.

- A law should define the criteria and conditions for the public benefit status. This may be the NGO Law, or a separate law. But the basic definitions and criteria should be provided in a law, so that NGOs awarded with the public benefit status know that the requirements will not change with political changes (of the Minister of Finance) and that the public benefit status is not associated with tax benefits only<sup>32</sup>.
- Currently the Albanian public benefit status covers only 3 areas. These areas do not include activities such as provision of social services, culture, promotion of democracy, civil society development, environment protection, etc., all of which are without doubt benefiting the state and the people in Albania. Thus **the definition for the public benefit activities should be re-considered.**

---

<sup>31</sup> Council Directive [77/388/EEC](#) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment

- It may be worth reconsidering whether the public benefit status should remain directly linked to the VAT treatment or **extended to include other tax and fiscal benefits**. As pointed above, it is more typical for the 6<sup>th</sup> Directive to exempt specific activities or activities (i.e. specific supplies) carried out by specific organizations, rather than specific types of organizations. (More on the issue of the VAT treatment of NGOs will be provided in the next section.) At the same time, the public benefit status generally entitles NGOs to a broad range of exemptions and benefits to promote their role in addressing pressing social needs, mostly those in line with state policies.

In case the working group decides that there is a need to revise the principles of the public benefit status in Albania, there are several questions which should be discussed and answered to process and to achieve its purposes:

- What are the criteria for granting public benefit status?
- Which are the the working areas of organizations to get PB status?
- Who should grant the public benefit status?
- What is the procedure for granting public benefit status?
- What are the benefits (not necessarily only tax benefits) and obligations for public benefit organizations? How will these benefits be different from those for other NGOs?
- Which will be the agency that will monitor PBOs and to what extent?

These are basic issues that should be discussed when the PBO status is considered. An additional issue is to combine state control with public oversight. That may happen by uploading all the information on public benefit organizations in the Internet. In Bulgaria, the aim of uploading the register of PBOs in the Internet is to allow the general public to have access to the information about the activities PBOs undertake.

## V. Value Added Tax

### Context in Albania

According to Art. 1, point 2 of the Law on Value Added Tax (Law No. 7928 from 27 April 1995), value added tax is payable for “*all taxable supply of goods and services performed **against payment** by a taxpayer...*”<sup>33</sup>. Taxpayers are required to register if their turnover is above a certain threshold, which is currently 2 million ALL (some specific taxpayers providing services). There is a possibility for voluntary VAT registration. After their registration, taxpayers are required to submit monthly VAT tax returns to the tax authorities about the amount of VAT charged/collected. This occurs online.

The VAT law provides (under art. 24) for a special exemption for non-for-profit organizations, which make supplies against a reduced price. Initially, the law included the following areas to provide exempted supplies:

- supply of goods or services for medical or dental treatment;*
- supply of services for the protection or care of children or old people;*
- supply of educational, cultural, or sport services;*

---

<sup>33</sup> Art 1, The Law of Value Added Tax, point 2

d) *supply of services by religious or philosophical organizations for the purpose of spiritual welfare.*

An amendment of December 2007 (Law No. 9856 from 26.12.2007), kept only point d, while the other three areas were excluded from the exemption<sup>34</sup>. Another amendment (Law No. 10003 from 06.10.2008) added to the list of exempted non-for-profit organizations, the public benefit organizations (as defined by the Ministry of Finance – see the section above for details on how are such organizations defined).

The legislative amendments described above led to several instructions of the Ministry of Finance clarifying the scope of the amendments made. The most important one that has created a number of concerns among NGOs is a circular letter from the Ministry of Finance to tax inspectors issued in July 2008. The document has not been officially published (although NGOs managed to get hold of it) but creates a specific burden for NGOs with regard to VAT. It refers to Guide No. 17 of 13.05.2008 (which clarifies the amendments adopted in December 2007). Based on the above-mentioned amendments, the Ministry of Finance says, “*the supply made by an NGO in exchange of the fund or grant value is the same as any other taxable supply. On the other hand the circular says, “...funds, grants, sponsorship, membership dues and similar incomes should be used according to the charter”. Otherwise, “these funds will be considered as supply against a payment”. These unclear interpretations have also led to confusion among NGOs and donors. There were cases of donors that have added the VAT to the grants they provide to NGOs.*

As a result of the following amendments to the VAT Law and to the definition of public benefit organizations, the Ministry of Finance issued an Instruction (Instruction 17/4 of 26.12.2008) defining that a person obliged to register is any subject “*carrying out an economic activity*” (see item 1.1 the obligation to require registration). Under item 4 of the Instruction, point I, the Instruction also defines:

- i. *in the case of gained or donated sums, when donors have carried out a donation that does not condition the profit (supply) of any service or good from the NPO, then this donation of money, goods or services is not considered a taxed supply and none of the tax steps are applied. Such donations are considered the ones that,*
  - a) *are based on dedicated programs or funds of the donor to support the development of civil society, be it a support for an institutional strengthening of an NPO or its performance, be it a support for activities and services of the public interests in general or of certain social groups in particular, and*
  - b) *dedication of such funds by donors is based on the internal rules of that donor and/or becomes public from the donor prior to the donation or simultaneously with it.*
  - c) *Potential beneficiaries of these funds are only the NPOs*

This text clarifies that grants are not taxable supplies if the 3 conditions listed above are fulfilled.

---

<sup>34</sup> The Law on VAT Tax

There are several issues related to VAT that create concerns. The first one is related to the **predictability of the law**. Because of the unclear (and sometimes contradictory) interpretations of the amendments made, NGOs are not certain what are their obligations under the law. A worrying sign is the way in which these amendments have been introduced, i.e. that there has been **no civil society participation in their discussions**. Additionally, the amendments are complemented by confidential (not available for the general public) documents that sometimes provide substantial supplementary requirements to NGOs. Most of these documents are usually adopted several months after the VAT law amendments have been introduced. This leads to fear of retroactivity – NGOs are afraid that if for example an Instruction of the Ministry of Finance makes changes with regard to VAT, NGOs would be aware of it, only after the Instruction becomes a fact. As it will address changes to the law made prior to the Instruction, the obligations of NGOs would arise from the moment the law has been amended.

An equally important actuality is that **essential issues are defined in instructions, some of which are not even public**. This does not represent a good practice, as the most important provisions related to NGOs taxation should be within the law. The fact that the Ministry of Finance issues documents that may change the interpretation of the law significantly shows that there is a need for clarification. of it.

Another important issue is related to the **requirement for NGOs to report under the VAT system**,<sup>35</sup> although they formally do not have the necessary turnover from economic activity and even in the case that they do not perform any economic activity. There is a requirement for turnover threshold and only the entities that provide supplies (as defined by the law) and that pass the threshold are subjects to VAT registration from the beginning of the coming calendar year. This leads to a strange situation where most NGOs submit such declarations by writing zero VAT charged, which makes the whole system not useful. Even though the turnover threshold will be lowered to only 2 million ALL, there are a number of NGOs that do not have any economic activity, thus there is no sense for them to file monthly VAT tax returns.

### **The European Practice**

The EU 6<sup>th</sup> Directive is the basic document related to VAT in the EU. Its basic principle regulates the economic activity<sup>36</sup>. Therefore, all activities that are not considered economic fall outside of the VAT system. All the EU member states have to transfer the provisions of the directive onto their national laws. The Bulgarian VAT Law confirms that subject to VAT is any person that “*carries out independent economic activity*”. Independent economic activity, in addition to several expressly enlisted types of activities, is defined as “*any activity carried out regularly or by trait against remuneration*”<sup>37</sup>. The European Court of Justice has also declared in its judgments<sup>38</sup> that in order for a supply to be considered taxable, there should be a clear connection between the services delivered and the payment received.

---

<sup>35</sup> Art. 37 of the VAT Law requires all taxpayers to report. The requirement for NGOs to report is not in the law but was mentioned in a number of interviews so it needs to be verified what is the exact provision which is used by the Ministry of Finance to require the NGO reports.

<sup>36</sup> Art. 4, para 1 of the Directive.

<sup>37</sup> Art. 3 of the Bulgarian VAT Law.

<sup>38</sup> In cases such as 102/86 Apple and Pear Development Council and 16/93 Tolsma.



That is why all incomes received by the NGO without a return remuneration is considered outside of the VAT scope. Typical examples are donations and grants. Grants are part of the non-economic activity of an NGO. Even though, donors put specific conditions for spending the money received, the NGO does not provide a service to the donor, but to the general audience or to specific groups (listed in the project proposal). Furthermore, products developed with donor funding (e.g. publications, surveys, etc.) remain the property of the grantee.

In addition, the 6<sup>th</sup> Directive provides under Art. 13 several specific exemptions. An exempted supply means that the services or goods provided are not taxed with VAT and the turnover from exempt supplies does not count as part of the taxable turnover. As described in the previous section, the 6<sup>th</sup> Directive does not exempt types of organizations, but rather specific activities when they are provided by certain organizations. There are some activities which are closely linked with the nature of NGOs that are exempted from VAT. Two specific exemptions covering membership fees and fundraising activities are:

*(Art 13) (l) **supply of services and goods closely linked thereto for the benefit of their members in return for a subscription** fixed in accordance with their rules by non-profit-making organizations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;*

*(o) the supply of services and goods by organizations whose activities are exempt under the provisions of subparagraphs (b), (g), (h), (i), (l), (m) and (n) above in connection with **fund-raising events organized exclusively for their own benefit** provided that exemption is not likely to cause distortion of competition. Member States may introduce any necessary restrictions in particular as regards the number of events or the amount of receipts which give entitlement to exemption;*

The 6<sup>th</sup> Directive exempts activities even when there is something provided in return to an NGO (in the case of membership fees these are some membership services, while in the case of fundraising these may be ticket for a charitable concert). Therefore, NGOs fall outside of the scope of VAT when they do not have economic activities and are exempted from VAT for the membership fees that they collect and might be exempt from the income tax of fundraising events.

In general NGOs fall in 3 types of relations with regard to VAT:

- They perform non-for-profit activity that is not subject to VAT and they cannot claim any VAT refund for the purchases they have made with regard to that activity;
- They perform economic activity and they can claim VAT reimbursement for the “input” VAT;
- They provide exempt services and they cannot claim VAT refund for the “input” VAT.

NGOs in some member states have tried to make a step ahead by advocating for reimbursement of the “input” VAT that they pay even if their activities are outside of the scope of VAT. In Denmark, the government has created a special scheme for compensation of the VAT paid by certain NGOs.

## **Recommendations**

The Albanian legislation provides very limited exemptions for supplies provided by NGOs. For example, two typical NGOs activities are exempted under Art. 13 of the 6<sup>th</sup> Directive, but are not exempted under the Albanian Law:

- (g) the supply of services and of goods closely linked to welfare and social security work*
- (h) the supply of services and of goods closely linked to the protection of children and young persons*

There is a **need to consider additional types of exempt NGOs supplies related to the social area, youth and especially related to the fundraising of NGOs**. Such additional exemptions may be related to the public benefit status, but the whole status should be reconsidered in light of our comments of the previous sections.

Furthermore, there is confusion about the activities/incomes that fall within the scope of the VAT law. The amendment in the article related to exempted supplies leads to an interpretation affecting the general scope of the law (e.g. whether grants are within or outside the scope of the VAT law). There is a need to **consider the introduction of a clearer text in the VAT law to state that non-for-profit activity falls outside of the VAT scope**.

**NGOs that do not fall within the scope of the VAT law should not be subject to registration and reporting under the VAT law**. They should be treated as small businesses (for the purposes of the registration threshold) and not as big businesses as they are actually treated.

## **VI. Other**

### **1. Reporting and Financial Inspection**

Another law that will affect civil society organization is the Law on Public Financial Inspection (Law No. 10294 from 1 July 2010). It is not yet in force, but its future implementation will affect NGOs. As such, its provisions should be extremely clear as to the scope of the powers of the Public Financial Inspection with regard to NGOs. Currently Art. 3 of the law says that non-for-profit organizations financed by a unit of the government are subject to inspection only "*for the public funds they use*". Among the powers of the public financial inspection are:

- Unrestricted entry to information related to the inspection, including the electronic forms,
- Asking for original documents, information,
- Asking employees for bank accounts;
- Seeking information from third parties.

An important differentiation is made in the text of the law between inspection of government units and other entities/individuals (see Art. 16 of the law). With regard to government units, the public financial inspection has also the right to,

- Unrestricted entry to the unit premises
- Access prohibition for the responsible individuals to safes, warehouses and other articles that are the objects of the inspection, sealing them in the presence of an official from the unit.

Based on the results of the inspection, the Minister of Finance can “*block the bank accounts of the public units related to the funds where irregularities are discovered*”.<sup>39</sup>

It is important **this differentiation between independent organizations and units of the government is closely maintained** when the law is implemented. This is especially true because there may be a possibility to deem those two distinct types of entities (owned or controlled by the government and independent entities financed by the government) in the same category. Such confusion might be created by Art. 18 (Obligations of the units or individuals who are objects of the inspection), where point 1b says that the objects of inspection have the obligation “*to offer the financial inspectors the right of unrestricted use of the premises they will work*”<sup>40</sup>.

However, NGOs should be able to be acquainted with the results of the inspection. The acquaintance of the NGO with the results of the inspection is provided in Art. 17, point 2 of the Inspection Law, under the obligations of the public financial inspector – “*at the end of the activity of inspection, the financial inspector delivers a final report to the inspected subject and to the head of the respective unit*”. In Bulgaria, for example, before the report is final, the inspected object receives the inspection report and has the right to provide comments to the conclusions in the report within 14 days<sup>41</sup>. Afterwards, the audit office discusses the report together with the comments and a final version is prepared. **It is important for the NGO that is subject to financial inspection to be aware of the conclusions and be able to provide its own explanations before the report is final.**

The most important issues, apart from what was already underlined in the previous paragraphs is:

- To make sure the law clearly describes the cases when independent entities such as NGOs would be subject to financial inspection;
- To make sure that the financial inspection follows strict standards and is not used to abuse NGOs;
- To have a clear timeline as to what is the time limit of the inspection and the preparation of the inspection report;
- To train the future employees of the public financial Inspection that deal with control over NGO activity about the way NGOs operate. Ideally, there should be separate employees dealing with NGOs, as this way a unified approach and practice of NGO financial inspection will be created;
- To have the possibility to appeal any decision that will affect the NGOs that have been subject of public financial inspection.

## **2. NGO Transparency**

An issue raised during the meeting with the Ministry of Finance in Albania was related to the recommendations of MONEYVAL<sup>42</sup> concerning non-for-profit organizations (Albania is considered as non-compliant in that respect). One of MONEYVAL’s recommendations is related to devising “*a policy for the control and supervision over NGOs/NPOs taking into*

---

<sup>39</sup> Art. 18, point e of the Law on Public Financial Inspection

<sup>40</sup> Art 18, Law on Public Financial Inspection

<sup>41</sup> Art. 39, para. 5 of the Bulgarian Law on State Audit Office.

<sup>42</sup> Committee of Experts on the Evaluation of Anti Money Laundering Measures and the Financing of Terrorism, Council of Europe

*account ML/FT considerations*<sup>43</sup>. Another recommendation is related to reviewing “as appropriate, the legal and financial regime applicable to NGOs in order to avoid common illegal practices such as dual bookkeeping, and therefore to increase transparency and the reliability of information available”.<sup>44</sup>

The issue of transparency of the NGO sector has also been raised by a number of NGOs. They believe that the NGO sector should be more open and show their activities and funding sources. Of course, the requirements for transparency and reporting should take into account the size of the organizations as well. The Financial Action Task Force<sup>45</sup> in its Best Practice Paper highlights the “*importance of risk and size based proportionality in setting the appropriate level of rules and oversight in this area*”.

Currently organizations in Albania are obliged to submit an annual report to tax authorities. In addition, every month NGOs report online to the tax authorities on the VAT they charge. There are additional reports related to employer-employee relations. This system is considered by many as not good enough. One of the recommendations in the report from the Civil Society Index in Albania towards the state was to “*improve the current tax and financial reporting-related legislation through a separate framework for the third sector*”<sup>46</sup>. The same report also points out that NGOs themselves need to “*increase internal transparency, accountability and democratic decision-making*”.

In general, a good reporting system for NGOs would include:

- A. Providing at least annual report to the agency responsible for NGO supervision, from the NGOs that receive more than minimal benefits from the state or engaged in public fundraising.<sup>47</sup> Such NGOs might also be obliged to publish or make available to the general public information about their activities.
- B. Filing separate tax reports depending on the different taxes to which an NGO is subject. Tax authorities should generally be involved only in the case when there are tax issues of concern.
- C. NGOs operating in areas where there are special licensing or reporting requirements should be subject to the same reporting requirements as any other legal entity.
- D. Small organizations should be subject to simpler reporting.

There is no special treatment of NGOs under the ML/FT regulation in Albania. They usually follow the general requirements to which other legal entities are subject. This is consistent with Principle C above. However, especially with regard to accounting regulations, **it is a good idea to introduce specific standards for NGO accounting** that

---

<sup>43</sup> ML/FT stands for Money Laundering and Financing of Terrorism. Examples of actions to be included in such a policy are dissemination of FT list to the registers, awareness raising actions of the register, tax and other administrative services dealing with the sector etc.

<sup>44</sup> See p.84 of the report on Albania, MONEYVAL(2009)18 REV1, [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL\(2009\)18-ProgRep2ALB\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Progress%20reports%20y/MONEYVAL(2009)18-ProgRep2ALB_en.pdf)

<sup>45</sup> <http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF> and <http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf>

<sup>46</sup> Civil Society Index for Albania. In Search of Citizens and Impact, Institute for Democracy and Mediation, 2010, page 31

<sup>47</sup> The elements of the reporting system have been adapted from Guidelines for Laws Affecting Civic Organizations by Leon Irish, Rob Kushen and Karla Simon, 2004

would be more in line with how NGOs manage their activities on one hand, and and would provide better information to tax authorities and the general public about the sources of income and how the income was spent on the other.

### 3. Social Contracting

Art. 18 of the Law on Social Assistance and Services (Law No. 9355 from 10.03.2005) provides that “*the public social services that are funded by the central or local budget shall be procured by the local government units from private providers under the legislation in force on public procurement.*” The social contracting mechanism is a very important tool for developing a good social service system. It is also an important source of funding for the work of organizations that provide such services. It is crucial to promote this mechanism both among NGOs and local authorities. Moreover, when using the public procurement mechanism, it should be taken into account that social services are a specific type of activity. Very often local government units budget certain amount of money and they are prepared to spend it. Therefore, in the tender competition they look for offers providing the services to more people or providing a better quality of services to the target group (as opposed to offering a lower price). This should be taken into consideration when designing the contracting procedure. ECNL can provide additional assistance on this specific topic as it is an important element of the fiscal framework for NGOs, although has not been the focus of this specific assessment<sup>48</sup>.

### 4. Social security registration

Another problematic issue is the requirement under social security legislation that each registered NGO should have at least one employee for whom social insurance is paid<sup>49</sup>. This is obviously a burdensome requirement for small organizations. A number of NGOs are composed of volunteers who do not receive any payment for their efforts. Moreover, there are a number of organizations that do not carry out constant activity and they do not have personnel on a regular basis. These cases show that such a requirement does not take into account the goal of an NGO. In contrast to the business companies where the primary purpose is profit, NGOs aim to achieve non-for-profit purposes. For a business it may be reasonable to require having one person constantly paid, because eventually this is part of the cost for doing a business and a potential profit will cover such costs. In the

---

<sup>48</sup> ECNL is working on a Handbook on Non-State Social Service Delivery Models, as well as Guidelines for Municipalities on Cooperation and Contracting with NGOs. These will be published shortly and will be available on the ECNL website as well.

<sup>49</sup> The authors have not been able to check the specific text in the law because it was not available to us but the issue was raised in several interviews. There needs to be a reference to the exact article that requires NGOs to have at least one paid employee.

Instruction of the Minister of Finance no.26 dated 16.04.2009 “*On collection of the social security and health insurance contributions*”, as amended, provides that no legal entity (i.e. including NGO-s) can exist without having a minimum of at least one employee and for such employee the entity ought to pay the mandatory contributions for social security and health insurances and personal income tax. This Instruction provides for an exemption from the above obligation, but such exemption is interpreted to be applicable to Saving Credit Unions only. The wording of the above ought to be amended in order to ensure the applicability of such exemption even to membership NGO-s whose members provide work on voluntary basis.

case of non-for-profit organizations such costs create problems because there are organizations that achieve their purposes even without financial income and it is important that they are allowed to do so.

## 5. Consultation with NGOs

Two of the latest legal developments affecting civil society organizations have not been consulted with them – the amendments in the VAT law (and its consequent interpretations including the introduction of a public benefit status) and the adoption of the Law on Public Financial Inspection. In general, NGOs in Albania share their dissatisfaction with the way the consultation process is organized by the government (if any consultation is organized at all). In the Civil Society Index for Albania, one of the weaknesses identified by the authors is,

*“state - civil society dialogue and consultations are often treated as a pro-forma instrument by governmental actors”.*

Among the recommendations of the report is also mentioned that the state should “*adopt mechanisms that absorb inputs from the civil society in the policy shaping stage*”<sup>50</sup>.

The current joint working group between the government and representatives of civil society, set up after an order of the Prime Minister, is an example of a good partnership in the process of preparing legislation. It shows how laws and policies can be consulted with civil society prior to their adoption. This is especially important with regard to laws that affect CSOs and their operation.

The EU itself has adopted General Principles and Minimum Standards for Consultations by the Commission (COM 202 (704) on 11.12.2002). The minimum consultation standards require the Commission to make sure that all people affected by a policy are consulted, during the policy crafting process. Furthermore, without excluding all other possibilities for consultations, the consulted document should be published on the Internet. This principle has been confirmed in the Lisbon Treaty in Art. 8B, “*the institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society*”<sup>51</sup>.

Consultation methods include organization of joint working groups, public hearings, expert input from independent groups, etc. But the most important aspect of consultation is the need to have a mechanism and clear regulations how the consultation will take place. Consultation should not be a process that depends on the good will of one or another government agency. It should be mandatory under certain circumstances. Even though, there might be provisions in different laws or Regulations affirming that the draft laws or policies should be consulted, these requirements need to be enforced, so a set of procedures should be developed. A good practice approach taken by governments is to adopt consultation standards (UK, Estonia). As an annex, we are providing a suggested **Regulation on Consultation of draft laws and policies**. It was developed under a GTZ-funded project and it may serve as a good starting point for setting up a consultation mechanism in Albania.

---

<sup>50</sup> Civil Society Index for Albania. In Search of Citizens and Impact, Institute for Democracy and Mediation, 2010 pages 30 and 31 respectively

<sup>51</sup> Treaty of Lisbon, Art 8

## CONCLUSION

This Assessment Report on the Fiscal Framework for NGOs gives an outline of the most important issues that currently affect NGOs in Albania. There are several general steps needed to be made as a basis for the detailed recommendations provided in each section (listed separately below):

- There is a need to **revise the basic differentiation between non-for-profit and economic activity of NGOs** and make sure the definitions are clear enough, to avoid problems for NGOs, such as the threat to tax with VAT the income from grants;
- **All important issues (especially rights and obligations) affecting the activities of NGOs should be part of the law** and not Instructions, Orders or other bylaws coming from Ministries
- **There is a need to discuss the creation of a special public benefit status** in Albania and make sure it encompasses a broad range of public benefit purposes linked to a number of different benefits and not just for the benefit of one law;
- **There is a need to discuss the possibility of setting up standards for consultation with NGOs** concerning different laws and government strategies. This is especially important when such laws or strategies affect the NGO sector;
- It is a good idea to **introduce specific standards for NGO accounting**, which should be in line with the NGOs management activities.

### *Specific recommendations*

#### **Differentiation between economic and non-for-profit activity:**

- Revise the definitions in the Civil Code and the NGO Law;
- Prepare a manual for tax inspectors and for NGOs about the activities that can be carried out by NGOs, what are the basic differences between economic and non-economic activity and how should those be differentiated in practice;
- Design clear forms for NGO reporting, which allow for a clear differentiation between the two activities;
- Include a clear exemption from income tax for grants in the NGO law (as well as in any tax laws that deal with NGO income taxation);
- Exempt interest on bank deposits for the funds of the non-for-profit activity in regard to income tax (in case such is levied or should be levied by law);
- Allow individuals to deduct the donations they make. There should be a possibility to use the benefit through the employers, so that individuals who receive only employment income do not have to file tax declarations .

#### **Public Benefit Status:**

- The public benefit status should be defined by a law. This may be the NGO Law, or a separate law. But the basic definitions and criteria should be provided in a law rather than secondary legislation;
- The definition of which activities are of public benefit should be re-considered;

- There are several questions to be discussed and answered when deciding about the relevance of the public benefit status in Albania:
  - a) What are the criteria for granting public benefit status?
  - b) Which are the areas in which organizations should work to get PB status?
  - c) Who should grant the public benefit status?
  - d) What is the procedure for granting public benefit status?
  - e) What are the benefits and obligations for public benefit organizations? How will these be different from the benefits for other NGOs?
  - f) Which will be the agency that will monitor PBOs and to what extent?

**VAT Legislation:**

- Introduce a clearer text in the VAT law as defining that the non-for-profit activity falls outside of the VAT scope.
- There is a need to consider adding additional types of exempt supplies by NGOs related to the social area, youth and especially related to fundraising of NGOs;
- NGOs that do not fall within the scope of the VAT law should not be subject to registration and reporting under the VAT law.

**Other:**

- The financial inspection should follow strict standards and should not allow for the possibility of abuse;
- The differentiation between independent organizations and government units should be taken into account by the public financial inspection when implementing the law;
- NGOs subject to financial inspection should be aware of the results and conclusions of the inspectors and should be given a chance to provide their own comments before the final report;
- Terminate the requirement under social insurance legislation that each registered NGO should have at least one employee for whom social insurance is paid.