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The non-governmental sector in BH has some special expectations from the LEA/LINK project in the part pertaining to the bringing of fiscal regulations, the present inadequacy of which is a separate limiting factor for the non-governmental sector development. The Law Group has accepted the suggestions of the International Advisory Team in terms of the fact that fiscal regulations have no place in the integral text of the Draft, both for practical and for legal reasons.

Therefore, the Law Group has prepared separate suggestions (potential provisions) for the changes in the fiscal regulations, as follows:

CUSTOMS AND FISCAL TREATMENT OF NGO'S

THE CUSTOMS POLICY LAW

Article

Non-governmental organizations shall be exempted from payment of the customs duty on imported equipment they need to implement their program objectives.

In case of transfer or the right of property on the equipment from the previous paragraph on a third person, customs duty shall be paid according to the general regulations the organization was exempted from in acquisition.

THE LAW ON EXCISES AND SALES TAX

Article

Non-governmental organizations are exempted from payment of tax on equipment (fixed assets and inventory) they need to implement their program objectives.

In case of transfer of the right of property on the equipment from the previous paragraph, the tax shall be charged based on the general regulations.

Article

The sales tax for products shall not be paid on things imported as humanitarian assistance through or by means of a non-governmental organization, as well as on things obtained free of charge by those organizations inland as humanitarian assistance.

Article

The sales tax for services shall not be paid for the services offered by a non-governmental organization in accomplishing the objectives for which it has been founded.

Article

The sales tax shall not be paid on donations granted to non-governmental organizations.

Article

Any form of placing private property in the function of a public purpose shall not be deemed sales in terms of the provisions of this law and shall be exempted from payment of tax.

THE LAW ON INCOME TAX FOR ENTERPRISES

Article

A non-governmental organization is exempted from payment of tax on income used for implementation of its programmatic objectives.

THE LAW ON SALES TAX FOR REAL ESTATE

Article

Non-governmental organizations acquiring the right of property on real estate they need to implement their programmatic objectives shall be exempted from payment sales tax for real estate.

In case of transfer of the right of property over real estate from the previous paragraph on third persons, the tax shall also be paid from which the organization was exempted in acquiring the real estate.

Any ceding of real estate for a public purpose, by a legal transaction between the living or in the case of death, shall be exempted from payment of the tax.

THE LAW ON THE TAX FOR RECONSTRUCTION AND REHABILITATION OF RS

Article

Point 3 in Article 6, paragraph 1, shall be deleted / or / Paragraph 1, point 3 of Article 6 shall be deleted (*this was not clear from the original - note by the translator*)

EXPLANATION OF THE PROPOSED PROVISIONS

A) The Bosnia and Herzegovina Level

In relation to the financial aspects of non-governmental organization's work, based on the competencies established in the BH Constitution, the need is imposed from the governmental level to regulate the relations in the part pertaining to the customs and monetary policy.

The first issue from the competency of the Bosnia and Herzegovina institutions as to the consequences on the NGO sector in BH is the domain of the customs policy. Namely, according to the Constitution of BH, the relations in the domain of customs policy fall in the competency of the BH institutions (provision of Article III, paragraph 1, point c) of the Constitution of BH).

In amending the Customs Policy Law of BH, it would be useful to envisage that non-governmental organizations are exempted from payment of customs duty on the equipment and inventory imported for their needs. The technical tools for this benefit would be the system of certificates or permits. The provision of paragraph 2 of the proposed option provides for an obstacle to potential misuses.

B) The Entity Level

In principle, the conclusion may be that in both entities, with minor specific qualities, the general fiscal regulations are applied to the work of non-governmental organizations.

In terms of the monetary approach in the legislation of the financial and fiscal relations in the non-governmental and non-profit sector, there are two possibilities available:

The first one is to have all these issues be regulated in those domestic laws and other regulations which otherwise regulate the corresponding relations, as is the case with the present legislation.

The second possibility is to have all the financial and fiscal relations pertaining to non-governmental organizations be regulated in the mother law on non-governmental organizations.

The latter method of legislating would in principle be more adequate for the non-governmental sector, although it is less consistent in terms of the legal system. This method would particularly facilitate the monitoring of the legal framework in the NGO sector in the future, because all the legislated relations would be focused in one (or two for the most) law,

without being scattered in the huge number of laws, whose monitoring would be difficult. The comparative legislation mainly accepts the former nomotechnical approach.

In appreciation of the recommendations of the International Advisory Team, particularly in the letter dated March 11, 1998, the LEA Project Law Group has decided that the issues of tax treatment of non-governmental organizations are integrated into the corresponding tax laws, rather than into the mother law on non-governmental organizations. This alternative requires cooperation from a number of the government sectors.

TAXATION OF THE COMMERCIAL NGO ACTIVITIES

The basic issue in taxation of the NGO commercial activities, regardless of whether they are in sales or business in the concrete sense of the word, under the conditions determined by the mother law on NGOs, is the establishment of the necessary balance between two counterpoised requirements facing the government: the need for promotion of various tax stimulators for the NGO development, on the one hand, and the requirement for elimination of unfair competition which may be imposed by the non-profit sector (particularly the major NGO's) on the profitable competition, on the other hand.

The legislation is faced with several alternatives:

- tax all the income by the general regulations,
- tax only a part of income not related with promotion of non-profit objectives of NGOs (the so-called destinations of income),
- tax only the part of the income exceeding a certain determined limit expressed in absolute amounts (the so-called mechanical testing),
- exempt all the income from taxation.

On the first glance, it is clear that the last alternative is the most favorable, and the first alternative is the least favorable for NGOs. Therefore, it seems that the resolution should be sought in the second one (which is very subtle and it is often hard in the practice to differentiate between the so-called related and unrelated commercial activities) or in the third alternative, or in their combination.

However, no other approach is precluded. Exemptions or benefits may be granted to a determined list of NGOs depending on the primary target of their activities (for instance, education, health care, culture, human rights and other organizations of the so-called public benefit). Therefore, it is not the principles but the lists which are in question.

As for the method of exercise of benefits, the tax systems practice the principle of voluntariness rather than the one of automaticity: in order to exercise the right to one or more than one tax benefits, this has to be requested by the fiscal authorities (by an application or the like).

As for the value added tax, NGOs are entered into the VAT system in an optimum manner provided that they are ranked zero. However, this is rare in practice, so NGOs (mainly only the NGOs of public benefit) are envisaged to have more favorable VAT rates than the general rate level is.

TAXES AND CONTRIBUTIONS ON SALARIES AND OTHER PERSONAL RECEIPTS

When we speak about the future legislation, we need to mention that there is a general consensus that no NGOs should have benefits per the general regulations pertaining to payment of taxes and contributions related to employment. This means that all the employees would pay taxes and contributions related to employment just as the employees from other sectors. This is particularly in the interest of the employees.

What is missing now is a certain legislation on the tax base (amount of salaries) to be used for application of the general tax and contribution rates. It is acceptable that this base should be determined in the amount of an average salary paid in the entity according to the Statistics Institute data. An alternative solution may be to determine various bases depending on the complexity of jobs.

Aiming at developing the non-governmental sector, an NGO may grant scholarships to a certain number of activists for specialization in the NGO sector. The amount of scholarship may not exceed 50% of the average salary in BH for the previous month. Scholarships are not subject to charging of taxes.

On the other hand, it is not ungrounded to set up an appropriate provision to include the option of exemption from taxes deriving from employment of foreign personnel in international NGOs active in BH. This privilege may be provided through a separately concluded agreement. It would not pertain to domestic citizens employed with them.

SPECIAL TAX FOR DOMESTIC CITIZENS EMPLOYED WITH INTERNATIONAL ORGANIZATIONS

According to the provisions of the Law on Tax for Reconstruction and Rehabilitation of RS, the employees with international organizations receiving salaries in foreign currency pay special tax for reconstruction and rehabilitation of RS in the monthly flat rate amount of 100 DM. The formulation used includes both governmental and non-governmental international organizations.

Such a provision may not be justified provided that the domestic citizens employed with international NGOs regularly pay the prescribed taxes and contribution normally deriving from employment. The selected criterion is particularly inconsistent - receiving salaries in a foreign currency. Practically, a salary in the domestic currency may be much higher, and still be exempted from payment of this tax. Therefore, it would be best if this provision is deleted.

TAXES ON GIFTS (DONATIONS), MEMBERSHIP FEES, INTEREST, AND THE LIKE:

As for the NGOs as beneficiaries, the simplest approach is to have the funds from donations, membership fees, interest and potential dividends on the NGO investments be not considered income for the purpose of taxation. Another approach is to have the mentioned NGO revenues be considered income, but to exempt them from taxation.

It is crucial to determine an unambiguous definition of the donor's fiscal position, not distinguishing between domestic and foreign ones. The Donor has to have the right to deduction from taxes for his personal or business income tax. This is a focus on the donations to NGOs of public benefit, but in the present BH reality they are to pertain to the overall NGO sector. Two options are possible:

- tax credit, and
- tax deduction.

In the first case, the amount of tax is reduced, and in the second case, only the amount of the taxable income is reduced. These differences are particularly significant within the tax system with the progressive rate structure. The tax credit provides for a higher degree of equality (equal benefit for the equal amount for all). However, the majority of the progressive rate countries practice tax deductions, and limited ones, more.

It is also necessary to examine the need to differentiate between the classic donorship, as an instance of a generous money transfer, and the sponsorship, as the money transfer in expectancy of publicity and promotion.

Specific methods of obtaining revenue need to be kept in mind too, such as lottery or other kind of chance games, gambles, and various one-time charity drives of non-commercial nature.

REAL ESTATE SALES TAX

Exemption from tax payment has been envisaged in case of acquiring the right of property on the real estate in favor of an NGO regardless of the basis of this acquisition (purchase, donation, legacy, will, or the like).

May 27, 1998

The Law Group