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Abridged Report on the Legal Framework in the Republic of Tajikistan Relevant to Social Entrepreneurship

Conclusions and Recommendations

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Acronyms

ChO	Charitable Organization
CO	Commercial Organization
GoT	Government of Tajikistan
IMF	International Monetary Fund
LLC	Limited Liability Company
MoE	Ministry of Economic Development and Trade
MoJ	Ministry of Justice
NCO	Non-Commercial Organization
PA	Public Association
PGO	Prosecutor General's Office
PPP	Public Private Partnership
PWD	Person with Disabilities
RT	Republic of Tajikistan
SE	Social Entrepreneurship
SME	Small- and Medium-Sized Business
SSP	State Social Procurement
TJS	Tajikistan Somoni
USAID	U.S. Agency for International Development
VAT	Value Added Tax
WG	Working Group

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Introduction

For purposes of this Report, “social enterprise” is defined as “an operator in the social economy whose main objective is to have a social impact rather than make a profit for their owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities.”¹

According to the International Monetary Fund (IMF), the Republic of Tajikistan’s (“RT” or “Tajikistan”) Gross Domestic Product per capita is the lowest in Central Asia.² As such, the Government of Tajikistan (“GoT”) faces challenges in delivering many needed social services and benefits to the population. The level of unemployment is high, with high levels of labor migration of the workforce due to a lack of opportunity within the country. This drain of skilled workers also contributes to the poverty of those who remain in the RT. Moreover, vulnerable groups in Tajikistan who are most in need of services and assistance face numerous challenges and unfulfilled needs – including access to education, health care, and employment.

Non-commercial organizations (NCOs³), which provide needed services and support to scores of Tajikistan’s most vulnerable citizens, are largely dependent on funds from foreign donors and struggle to become financially sustainable. Entrepreneurial activities implemented by commercial organizations (COs), individuals, and NCOs present an opportunity to solve these problems, but for a variety of reasons, this potential has not been realized in Tajikistan. Creating incentives for organizations and individuals to engage in socially beneficial economic activities could help address the unmet needs of vulnerable persons and help NCOs become more sustainable.

Both the National Development Strategy of the RT for the Period up to 2030 (hereinafter the “National Development Strategy”⁴) and the Human Rights Action Plan of the RT identify as priorities providing services to and integrating persons with

¹ The definition of the “social enterprise” is provided by the European Commission. See “Social enterprises,” European Commission, at https://single-market-economy.ec.europa.eu/sectors/proximity-and-social-economy/social-economy-eu/social-enterprises_en#:~:text=A%20social%20enterprise%20is%20an,for%20their%20owners%20or%20shareholders (accessed December 7, 2023).

² “Tajikistan: GDP per capita, current prices (MAP (2024)),” IMG, upd. 2024, at <https://www.imf.org/external/datamapper/NGDPDPC@WEO/KAZ/UZB/KGZ/TKM/TJK> (accessed January 22, 2024).

³ The terms civil society organization (“CSO”) and non-commercial organization (“NCO”) are used interchangeably throughout the text of the research, and mean non-commercial non-governmental legal entities, as defined in the Civil Code and other relevant laws of Tajikistan.

⁴ “National Development Strategy of the Republic of Tajikistan for the Period up to 2030” (hereinafter referred to as “the National Development Strategy”), Government of the Republic of Tajikistan, 2016, at https://nafaka.tj/images/zakoni/new/strategiya_2030_en.pdf.

disabilities (PWDs) into the labor force as well as advancing gender equality and empowering women.⁵ The National Development Strategy identifies social entrepreneurship (SE) as one of the tools to advance Tajikistan’s ultimate goal of “improv[ing] the standards of living of the population based on sustainable economic development.” As stated in the National Development Strategy, the GoT aims to “[s]upport and develop small and medium-sized businesses in urban and rural areas as an effective way of increasing the number of jobs and solving social problems.”

To support the GoT to achieve its goal of improving the standard of living of the population, and to support the work of organizations and individuals providing needed services and support to Tajikistan’s most vulnerable citizens, the USAID Legal Support Activity, implemented by ICNL in Tajikistan, prepared a comprehensive report of the legal framework for SE in Tajikistan. This abridged version of the report (“Abridged Report”⁶) presents current opportunities to stimulate individuals and organizations, both commercial and non-commercial, in entrepreneurial activities with the potential to address societal problems.⁷ As this Abridged Report demonstrates, SE opportunities exist in Tajikistan. However, to engage actors in SE in a meaningful way that begins to address social problems and positively impact society, it is necessary to implement comprehensive reforms of the legal framework and implementation of laws governing various sectors, as well as to introduce administrative measures stimulating SE. As such, this Abridged Report identifies the key issues and impediments to large-scale, effective engagement of individuals and organizations in SE. This Abridged Report also presents several recommendations relating to legislation and policy administrative measures that will help stimulate and expand opportunities for SE in the RT.

This Abridged Report seeks to serve as a resource for the working group (WG) established to develop proposals to improve the legal and regulatory environment for SE, as well as a resource for legislators, experts, NCOs, and COs interested in SE to enable them to begin creating more fruitful and positive conditions for SE to flourish in Tajikistan.⁸

⁵ Human Rights Action Plan of the RT (hereinafter the “human rights action plan”), Government of the Republic of Tajikistan, August 5, 2023, at http://www.adlia.tj/show_doc.fwx?Rgn=145874.

⁶ The full report available in Russian includes a presentation and discussion of all relevant Tajik laws that impact SE.

⁷ The authors used the unofficial translation of the referenced legislation from Tajik and/or Russian into English and bring our apologies for any discrepancies in interpretation of the provisions of the referenced legislation caused by inaccurate transliteration and/or translation.

⁸ The WG was created on the basis on the Resolution #1835 of the Majlisi Namoyandagon of the Parliament of the RT, dated October 2, 2023.

Conclusions

IMPEDIMENTS TO SE

The research of the regulatory environment identified multiple impediments to SE activities. If not eliminated or mitigated, the referenced impediments will not allow for successful development of SE in Tajikistan. However, the authors recognize that to address these impediments, political will for a comprehensive law reform with engagement of relevant GoT bodies and stakeholders is required and may entail a lengthy process.

KEY ISSUES

The identified issues include, but are not limited to, the following:

- While public associations (PAs) as a legal form are already being used to implement SE activities, interest in establishing a PA is minimal, and existing PAs may lack incentive to engage in SE due to the complex registration process for new organizations, complex reporting requirements, intense government supervision over activities, and disadvantages in engaging in entrepreneurial activities compared to businesses.
- The government's overly broad authority to perform inspections of the activities of all entities, COs, and NCOs is disruptive and can be perceived as a basis for corruption and government harassment, discouraging individuals from engaging in any entrepreneurial activity.

Due to the aforementioned issues, implementing relevant law reforms are necessary.

To facilitate the development of SE, the adoption of the Law on Social Enterprise/Social Entrepreneurship presents one option. However, this legislation does not eliminate the need to amend other important laws to ensure the viability of SE in practice. Tax incentives, impediments to participation in the state procurement process, and other SE-related issues must be addressed in special laws, such as the Tax Code and/or the Law on State Procurement.

While it is useful to have a legal definition of SE and of “social enterprise”, such definitions on their own will not support the development of SE in practice. For example, while the Tajik Law on Charity defines charitable organizations (ChOs), there is no clear procedure on assigning or recognizing the status of a ChO; therefore, there are no ChOs in Tajikistan, and no entity is eligible to use the tax benefits assigned to ChOs in the Tax Code.

DEFINING “SOCIAL ENTERPRISE”

Conceptually, there are various ways in organizing legislation relating to SE.⁹ In the former Soviet bloc, several countries differ in their legal definition of “social enterprise”: some countries define “social enterprise” as a legal term specific only to COs (e.g., Russia¹⁰); others include both businesses and NCOs in the definition of a “social enterprise” (e.g., Kazakhstan).¹¹ Meanwhile, countries like Moldova define and regulate only NCOs (specifically, limited liability companies (LLCs) established by NCOs) as social enterprises.

While the definition of “social enterprise” may be defined in law in different ways, it is important that both NCOs and COs are encouraged to engage in SE, since the main goal of SE is to resolve the social and economic needs of the citizenry through implementing entrepreneurial activities. Entities might be incentivized to engage in SE even without being called “social enterprise”. For example, in Russia, only business entities are recognized as “social enterprises”. However, Russian legislation provides separate incentives for NCOs to engage in SE-type activities. There are several types of NCOs which qualify for various packages of tax and other incentives: socially oriented NCOs¹²; socially oriented NCO-providers of public benefit services¹³; and NCO- and business entity-providers of social services.¹⁴

Self-sustainability – when an entity (a CO or an NCO) can generate enough income to support its own non-entrepreneurial activity – is at the core of SE. Profits generation and distribution of profits among shareholders/participants often play a factor in attracting persons and entities in SE, thereby making their engagement more sustainable. Therefore, meaningful SE development requires that profits generation and even profit distribution of a portion of profits among shareholders/participants shall not be prohibited (albeit often limited by law). To achieve economic impact, engaging COs in SE is especially important in countries where NCOs’ capacity to provide services is limited and requires significant development.

⁹ The authors specifically reviewed legislation in the former Soviet Union, plus Bulgaria, which, to our opinion, is similar and more applicable to the situation in Tajikistan. In the former Soviet Union region, special legislation on SE exists in Kazakhstan, Russia, and Moldova only. However, SE as an activity in some form exists in all former Soviet countries.

¹⁰ Federal Law on Development of Small and Middle Size Entrepreneurship in the Russian Federation (RF) dated July 24, 2007 (Russian Law on Development of SMEs).

¹¹ Law of the Republic of Kazakhstan on Introducing Amendments and Additions to the Legislative Acts of the Republic of Kazakhstan on Issues of Entrepreneurship, Social Entrepreneurship, and Mandatory Social medical Insurance, dated June 24, 2021.

¹² Decree of the Government of the RF on Registry of Socially Oriented Non-Commercial Organizations (SONCOs) (together with Regulation of Procedure of Maintaining the Registry of SONCOs) dated July 30, 2021.

¹³ Decree of the Government of the RF On Registry of NCO-providers of public benefit services (jointly with Rules on Decision Making on Recognition of SONCOs as provider of public benefit services, and Rules on Maintaining the Registry of NCOs- provider of public benefit services) dated January 26, 2017.

¹⁴ Federal Law on Basics of Social Services for Citizens of the Russian Federation dated December 28, 2013.

CONTENT OF THE LAW ON SOCIAL ENTREPRENEURSHIP

Based on the findings of the desktop research, the authors propose two options: (1) draft a standalone law on SE; or (2) create a separate section in the Law on State Protection and Support for Entrepreneurship specific to SE.

The latter option seems more viable as the Law on State Protection and Support for Entrepreneurship already establishes a basis for various mechanisms of financial support under the Law, including state grants for the organization and the implementation of socially significant projects in economic sectors, implementation of investment programs, and providing partial guarantees of loans to business entities at the expense of the State Entrepreneurship Support Fund.¹⁵ Presently, however, the Law does not regulate NCOs. The Law defines business entities subject to this Law as individuals and legal entities engaged in entrepreneurship.¹⁶ When sub-listing the potential forms of business entities, the Law only refers to COs. If the second option is chosen, the Law must be amended to include NCOs engaged in entrepreneurial activity as business entities for the purpose of this Law.

Whether a separate law or a section in the Law on State Protection and Support for Entrepreneurship, the text must include a definition of “social enterprise” and/or “social entrepreneurial activity.” “Social enterprise” and “social entrepreneurial activity” must be defined in direct connection with the GoT’s priorities set for SE.

As noted above, it is important to incentivize COs, NCOs, and individual entrepreneurs to engage in SE, and these incentives must be detailed in the separate law or section in existing law. For example, in Russia, the qualifying criteria and eligibility for incentives for a “social enterprise” are the following¹⁷:

- small- and medium-sized enterprises (SMEs) which provide employment to specified groups of persons (such as PWDs, single parents, pensioners, orphans graduated from orphanages, refugees, etc.);
- an individual entrepreneur who is a PWD and who provides services without employing other persons;
- sell goods and services produced by PWDs, others from specified groups of persons (see examples in 1)), when the share of such sales in the total revenue in the past year is no less than 50%, and the share of profit (if any) received in the previous year is at least 50% reinvested in such activity;

¹⁵ Article 19 of the Law on State Protection and Support for Entrepreneurship. In 2020, the State Entrepreneurship Support Fund was transformed into *Sanoatsodirotkbank* (a state-owned bank).

¹⁶ Article 5(1) of The Law on State Protection and Support for Entrepreneurship.

¹⁷ Article 24.1 of the Russian Law on Development of SMEs.

- produce goods and services designated specifically for persons from specified groups, for the purpose of creating conditions for their lives which would help them to overcome limitations in their livelihood, under the condition that the share of income from such activity is at least 50% of the revenue in the previous year, and the share of the profit (if any) in the previous year spent on such an activity is at least 50%;
- carry public benefit activities which are designated to achieve public benefit goals, under the condition that the share of income from such activities for the previous year is no less than 50% from the revenue, and that at least 50% of profit (if any) from the previous year is reinvested into such activities.

Of course, the list of criteria and/or eligibility can be broadened or shortened, depending on the government's priorities and the administrative capacity to supervise the use of incentives. The less specific the definition, the fewer tax incentives will be possible. The more burdensome the registration process, the more incentives are required to incentivize people to register as social enterprises. Therefore, it is important to keep in mind which specific incentives will be granted to social enterprises. *See the tax incentive-specific recommendations below.*

Assuming that specific incentives will be granted to social enterprises, there must be a mechanism to determine the eligibility of such incentives and to assign "social enterprise" status. There are various models for such a mechanism: for example, a participatory government-social enterprise commission (e.g., Moldova¹⁸) or a registry of social enterprises (e.g., Russia¹⁹). Considering the risks and/or perception of corruption, the mechanism must be collegial, transparent, and all decisions must be subject to appeal to the Ombudsman (if established) and/or to the courts.

In addition to including definitions of the terms, it is important to identify a government body in charge of policies and implementation of SE legislation, such as the Ministry of Economic Development and Trade ("MoE").

It may be beneficial to appoint a collegial body, for example, an Ombudsman for SE under the Office of the President of Tajikistan, to consider appeals from social enterprises, give authorization for unscheduled inspections, and provide consultative and other informational support to social enterprises to mitigate issues with broader Tajik legislation affecting COs and NCOs (such as inspections and GoT interference in the activities of social enterprises). Placing such an office under the highest executive authority in the country would contribute to high status of the office itself, as well as of

¹⁸ Resolution of the Government of the Republic of Moldova #1165 dated November 28, 2018 on Approving Regulation on Organizing Operation of National Commission on Issues of Social Entrepreneurship.

¹⁹ Decree of the Ministry of the Economic Development of the RF dated November 29, 2019 N 773 on Approving the Regulation on Recognition of Subjects of Small and Medium Size Entrepreneurship as a Social Enterprise and the Regulation on Compiling the List of Subjects of Small and Medium Size Entrepreneurship as Social Enterprise.

understanding of the importance of SE in Tajikistan. If the drafters accept this idea and are interested in international best practices, ICNL is prepared to provide examples of regulations of such offices and other technical assistance with drafting relevant provisions.

Another important provision would be to establish a moratorium on inspections of all social enterprises for a period of two years or longer, similar to the two-year moratorium on inspections of SMEs, as well as a moratorium extension upon the completion of an inspection of a social enterprise without findings.

PROPOSED OUTLINE FOR REFORM

Even the most detailed standalone SE law will not include all necessary provisions required to make the law implementable in an effective manner. As discussed herein, changes in other laws will be required.

In practice, comprehensive reform may be difficult to accomplish in the immediate term, as each amendment(s) will require substantial work, including economic justification and coordination between authorized government agencies. Therefore, the authors propose to initiate a framework law on amending laws of the RT to develop SE in Tajikistan, and include into the package, for example, amendments to the Law on State Protection and Support for Entrepreneurship, the Tax Code, and the Law on State Procurement, among others.

Another option would be to propose a concept or a state program to develop and support SE, to be approved by the GoT. Such legislation would envision the development of relevant legislation by assigning authorized government bodies, setting timelines, and defining a process for their development (in consultation with relevant stakeholders). A concept or a state program may contain specific assignments to various government bodies with the specified funding amounts, for example, for the allocation of microcredits, a grants fund for social enterprises, establishing business incubators specializing on SE, etc. These mechanisms are already set in the Law on State Protection and Support for Entrepreneurship, but are not utilized in practice.

EFFECTIVE INCENTIVES FOR SOCIAL ENTERPRISES

Creating tax incentives and limiting government inspections – thereby limiting the opportunities for corruption and harassment, as highlighted by several stakeholders in Tajikistan – are the two priority sets of incentives, followed by financial support and informational/technical support (i.e., advising on registering as a social enterprise, reporting, creating a website, developing a business plan, researching the services market, among others).

The substantive package of incentives, from the perspective of potential social enterprise owners, is a pre-requisite for success regarding reform to facilitate SE. Any

new registration requirements for social enterprises without adequate incentives will result in failure.

The most effective tax benefit proposed in this analysis is the exemption from income tax of all profits generated by the business activities of NCOs engaged in social entrepreneurship. The proposed tax benefit will not have a significant impact on the state budget as a whole. This measure has minimal impact on state budget losses and is unlikely to lead to observable tax evasion.²⁰

ATTRACTIVE TAX AND OTHER INCENTIVES

The substantive package of incentives may include:

- A reduced rate for simplified tax. For example, in Russia, many regions established a lower rate of 1%, rather than 6%, for simplified tax on income with no deductions;²¹
- A reduced rate for simplified tax on income (minus deductions) of social enterprises in the registry for social enterprises. For example, in Russia, a number of regions established a lower tax rate of 5% instead of 15%;²²
- A reduced social insurance payment due on salaries;
- State grants for social enterprises;
- No (or low) interest microloans;
- Reduced penalty for missing the deadlines for paying taxes; and
- Free-of-charge (or reduced) rent on municipal property.

Recommendations

General recommendations provided under this Abridged Report are not specific to SE but are of critical importance as they provide the basic regulatory environment for entrepreneurs, COs, NCOs, and potential social enterprises to engage in SE.

POTENTIAL LEGAL FORMS FOR SOCIAL ENTERPRISE IN THE TAJIK LEGISLATION

Although Tajik law does not require the establishment of a new legal form for a social enterprise or to enable SE, to encourage more COs and NCOs to engage in SE, it would require:

²⁰ Assertion based on experience rather than statistics, taking into consideration that very few NCOs are engaged in entrepreneurial activities. In Georgia, for example, according to the 2021 Tax Code, NCOs are exempt from paying income tax on income from any entrepreneurial activity. Since enactment of this provision, no tax evasions have been recorded in Georgia.

²¹ For example, Buryatia, Dagestan, Komi, Crimea, Tatarstan, Tiva, etc. Complete list is available upon request.

²² For example, Buryatia, Dagestan, Komi, Crimea, Tatarstan, Tiva, etc. Complete list is available upon request.

1. Simplification of the registration and reporting requirements for PAs to allow them to register through “one-stop shops”, similar to COs or other NCOs, or for the Ministry of Justice (MoJ) to simplify the registration requirements for PAs.
2. Proper implementation of existing legislation to allow registration of institutions and foundations as legal forms of NCOs.
3. Integrating into the implementing regulations the obligation of the registration bodies to provide evidence of the receipt of the application (and documents annexed to it) for the registration of a legal entity.

INCOME FROM ENTREPRENEURIAL ACTIVITIES

To enable NCOs and COs in all legal forms to generate income from entrepreneurial activities, without impediments:

1. The GoT should clarify the meaning of the phrases “the extent necessary for their statutory purposes”, “serving the implementation of the statutory goals and tasks”, and “serving and corresponding to the goals of creation”, and define the actual limits of the relevant limitations of entrepreneurial activities for NCOs (including PAs and foundations).
2. The legislation should allow all legal entities to engage in entrepreneurial activities, both directly and indirectly. Amendments to the Civil Code and the Law on PAs may be required to achieve this objective.
3. Create additional guarantees for PAs by issuing an official clarification that PAs can reinvest the income generated through entrepreneurial activities or dividends received from subsidiary entity.

ASSETS, SERVICES, AND FUNDS RECEIVED BY NCOS, COS AND INDIVIDUAL ENTREPRENEURS FREE OF CHARGE

To improve access to assets, services, and funding received free of charge:

1. Envision in the Law a provision of free-of-charge services as tax exempt income for NCOs, either through (a) a revised definition of a “donation” in the Civil Code, or (b) inclusion of such services into the list of incomes exempt from income tax for NCOs in the Tax Code.
2. Gratuitous transfers, assets, and grants received on a gratuitous basis shall be exempt from income tax when an NCO is using it for the purpose of entrepreneurial activities (not only non-commercial activity).²³

²³ Article 189(2)(2) of the Tax Code.



3. Clarify in the Tax Code that donations, as tax exempt income, can be used for entrepreneurial activities by NCOs.
4. Expand the list of incomes and instances when COs and individual entrepreneurs are exempt from paying income tax on assets, funds, and services received free of charge.
5. Expand the definition of a grant in the Tax Code to allow individuals, Tajik state bodies, local COs, and/or NCOs to provide grants to individuals, COs, or NCOs.
6. Conduct field research to identify the practice of taxation of grants received by women entrepreneurs. The Tax Code does not provide any specific exemptions for such grants and, as such, must be amended to provide exemptions from income tax for CO- and individual entrepreneur-grant recipients.
7. Amendments to the Law on State Finances and the Law on State Protection and Support of Entrepreneurship should be introduced and other implementing regulations shall be adopted to establish clear rules for state bodies on how to allocate subsidies, subventions, and state budget loans to NCOs, COs, and individual entrepreneurs. Such regulations are also needed for providing funding from state targeted funds.
8. Amend the Tax Code to exempt from income tax subsidies, subventions, state budget loans, and assistance from state targeted funds. Some articles of the Tax Code already provide such exemptions for state bodies, and NCOs and COs should be included in the relevant list.

STATE SOCIAL PROCUREMENT

1. Amend the Law on State Social Procurement and the relevant Model Regulation to enable local government bodies to engage in state social procurements (SSPs). The Law should state that funds necessary for SSP should be included in local budgets, not only the state budget. The amendments should provide a detailed procedure on how local governments plan, develop, and conduct SSP.
2. Introduce amendments to paragraph 13 of the Model Regulation to clarify that COs and individual entrepreneurs are eligible to participate in competitions related to SSP.
3. Include more inclusive and transparent procedures for defining priority areas for SSPs for the next year in the Law on State Social Procurement and in the Model Regulation. International financial institutions and donor organizations should be invited to participate in this process.



4. The legislation should allow state bodies to unite resources with such donor organizations and develop joint social projects and programs that will be implemented through SSPs.
5. The Law on State Social Procurement and the Model Regulation should provide detailed procedures on how to ensure the participation of NCOs, COs, and individual entrepreneurs in the process of defining the SSP priority areas.
6. Simplify the application procedure for participating in the competitions related to SSP, such as by shortening the list of mandatory documents, and by amending paragraph 16 of the Model Regulation. In this process, the limited financial resources of social service provider organizations should be taken into account (e.g., not all providers are able to prepare and submit a copy of the balance sheet certified by the territorial bodies of the tax service).
7. State social procurers should provide consultations and training for potential applicants who are willing to engage in SSP. This training is important for small-scale service providers and SMEs without sufficient resources to develop comprehensive project proposals /or comply with the extensive list of pre-determined criteria.

STATE PROCUREMENT

1. Modify Articles 25 and 35 of the Law on State Procurements to allow state bodies to consider the added social value that NCOs and organizations engaged in SE create by implementing state procurement contracts.
2. Expand the list of potential non-price criteria that are used to determine the most advantageous tender offer to include social dimensions related to the work of NCOs and other entities carrying entrepreneurial activities for attaining public-benefit goals.
3. The Law on State Procurements should allow state bodies to reserve state procurement procedures for certain types of organizations established by or serving vulnerable groups.
4. By adopting new implementing regulations, the government should define specific procedures on how state bodies can initiate, develop, and carry out sustainable procurements. Such regulations must address the barriers faced by NCOs and other entities carrying out entrepreneurial activities for attaining social goals.
5. The GoT should carry out measures to promote the practice of sustainable procurement and engage donor organizations, NCOs, COs, and individual entrepreneurs in this process. One of the major dimensions for sustainable



procurement can be the promotion of SE that provides solutions to versatile problems for sustainable development.

6. For advancing sustainable procurement practices, it is vitally important to equip state bodies with practical mechanisms and authorities to decide on the matters of procurement not only based on the price and technical characteristics of the needed goods and services, but also through the evaluation of the criteria related to sustainable development goals and social implications that can be achieved through the procurement.

PRIVATE-PUBLIC PARTNERSHIP

The Law on Private-Public Partnership (the “Law on PPP”) provides opportunities for all NCOs, COs, or individual entrepreneurs to carry out social services and infrastructure projects in partnership with state bodies. Private-public partnership (PPP) presents an effective mechanism if current impediments to its implementation are eliminated. Below are issues identified with the implementation of PPP:

1. Revise the definition of PPP to clarify that PPP can be used not only to support existing services to be outsourced by state bodies, but also to support the development or operation of new structures (or services) which were not previously administered by a particular state body.
2. Consider amendments to the Law on PPP and/or adopt implementing regulations in order to clarify and simplify the procedures for the initiation and approval of PPP projects. Suggested amendments and/or implementing regulations should aim to ensure transparency in the evaluation and selection processes of proposed PPP projects.
3. Involve the representatives of NCOs, COs, and donor organizations to increase the transparency of the PPP project selection process, facilitate cooperation between different sectors, and provide opportunities to unite resources for the solution of different social problems.
4. The Center for the Implementation of PPP projects (hereinafter referred to as “the Center”²⁴) and the PPP Council (hereinafter referred to as the “Council”²⁵) should also provide consultations and training for potential parties of PPP to help them understand how to initiate various PPP projects in the field of their interest and competencies. The training will also raise awareness about PPP and the opportunities it provides for different stakeholders.

²⁴ See the official webpage of the Center at <http://ppp.tj/istorija/>.

²⁵ The official website of the PPP Council can be found here: <http://ppp.tj/sovet-po-gchp/>.

5. The GoT should consider introducing amendments to the Law on PPP in order to change the definition of a “social services project”. The spheres of social services should be broad enough to cover wide-ranging social services.
6. Conduct field research on possible practical barriers that hinder state and private partners, including local government bodies, NCOs, COs, and individual entrepreneurs, in initiating PPP projects and engaging in PPP in general.

THE RIGHT TO HOST VOLUNTEERS

1. Amend the Law on Volunteerism to enable COs and individual entrepreneurs to host volunteers. The Law should allow at least certain types of businesses involved in social services, education, and healthcare to actively attract volunteers.
2. Conduct field research on how Article 14 (which requires the implementation of different measures to support volunteerism) is applied in practice.
3. Introduce amendments to the Tax Code to exempt the remuneration of volunteer expenses from income and social taxes.
4. Conduct field research and focus groups to identify the possible support measures needed for the development of volunteerism.

STATE SUPERVISION AND REPORTING REQUIREMENTS

SUPERVISION AND REPORTING FOR PAs:

To improve the regulation of PAs, the authors recommend:

1. Simplifying the reporting of PAs (which is in addition to reporting applicable to COs and other NCOs), specifically, by eliminating or simplifying requirements for finance reports, posting annual activity reports on the websites, and/or the notification requirement about receipt of assets from “foreign sources” and reporting on their use.
2. Removing the provisions which enable the Prosecutor General’s Office (PGO) to conduct special supervision over PAs. The PGO carries supervision over the legality of activities of all legal entities and persons, and there is no rationale for singling out PAs.
3. Limiting the authority of the MoJ to control the activities of a PA. At present, the MoJ may verify that the activities of a PA are in compliance with the PA’s charter. This unusual provision, which does not exist in laws of most other countries, puts unreasonable burden on the MoJ as well as on PAs. The general law requirement of compliance of the activities of a PA with the law, similar to

requirements for other legal entities, is sufficient. Eliminating this authority will simplify the burden of reporting and enduring inspections by PAs, making them a more attractive form for persons deciding to establish a social enterprise.

4. At a minimum:
 - a. specify the grounds allowing the MoJ and the PGO to inspect PAs. These grounds should be as specific as possible, predictable, and correspond to the legitimate aim of ensuring the compliance of PAs' activities with the law;
 - b. if an inspection is conducted based on information provided by a third party, state bodies should be required to check the reliability of the information provided in such applications; and
 - c. the implementing regulation should establish a clear procedure for conducting an inspection by the MoJ or PGOs, similar to the procedure under the Law on State Inspections.
5. The Law on PAs shall detail the bases for the suspension of the activities of PAs and their liquidation. Such sanctions should not be applied to PAs for the violation of their own charters or for modest violations of the legislation.
6. The decision to suspend the activities of a PA or to liquidate a PA should enter into force only after the final verdict is made by the court.

SUPERVISION AND REPORTING FOR ALL COS AND NCOS:

1. Determine if the Department within the Ombudsman's Office that is responsible for entrepreneurs and users of financial services has the capacity to protect the interests of business entities, and collect and consider complaints related to inspections by government bodies.
2. Assuming a social enterprise register is introduced, prepare relevant procedures for the registry of social enterprises, or prepare procedures for an authorized body to grant the status of a social enterprise and to consider applications and complaints about refusal/delay in granting such status. The decisions of such authorized body must be binding on GoT inspection bodies or bodies granting status.²⁶

²⁶ On December 11th, as reported by the Government of Tajikistan publication "Narodnaya Gazeta", in the Republic of Tajikistan, the Office of the Commissioner for Human Rights in Tajikistan, created the position of Commissioner for the rights of users of financial services and the rights of entrepreneurs was created to protect the economic interests of citizens. (<https://kvedomosti.ru/?p=1149424>). The regulatory legal act itself, establishing the powers of the above-mentioned authorized person, was not available to its authors at the time of completion of the analysis.



3. Under the “Law on State Inspections” and relevant implementing regulations, develop a clear procedure and criteria for risk assessment among business entities. Each inspection body must have such a procedure, which must be a public document. Interested stakeholders, NCOs, COs, and business associations shall have the right to participate in the development of such procedures. Information on the classification of risk ratings for a particular entity must be provided by the relevant inspection body to a business entity, at least, on its own risk rating.
4. Information about scheduled inspections must be posted on relevant sites of inspection bodies by November 1st of the year prior to the inspection’s year, in implementation of the Law on State Inspections.
5. No more than a certain number of inspections per year must be permitted; inspections by different state bodies cannot be consecutive or overlapping (to be coordinated by the Council on Coordination of Activities of Inspection Bodies). The Law should provide a minimum period that should be passed between the inspections by different state bodies.
6. Unscheduled inspections must be conducted only in extreme cases, when there is documented evidence of a possible crime or an offence, and only when illegal activities might cause significant harm to human life or health, the environment, or national security. It is important to provide detailed regulation on the causes of unscheduled inspections to limit the inspection bodies’ discretion to the maximum extent possible.
7. The basis for conducting inspections in the period of moratoria should be specified in the Law “On the Moratorium on Inspections of the Activities of Business Entities,” and should be as detailed as possible to minimize/eliminate state bodies’ discretion on whether to conduct an inspection during the moratorium.
8. Perhaps assign an authority (either the President or the Office of Business Ombudsman, if the latter body is introduced) to approve decisions on whether to hold such inspections.
9. The Law on State Inspections should clearly define that the decision of inspection bodies to use sanctions is suspended until the final decision on the relevant complaint enters into force.
10. Taxpayers should not be required to submit the extensive evidentiary documents annexed to their tax reports.
11. The government may consider introducing consultative services training regarding the completion of tax and finance reports required for all COs and

NCOs (or at least social enterprises, if a special status is introduced). Individual ongoing support and mentoring might be envisioned for those who are interested in establishing social enterprises and for newly established social enterprises.

TAX TREATMENT

PROPOSED INCENTIVES ON INCOME TAX FOR NCOS:

1. Consider exempting income from entrepreneurial activities by NCOs from corporate income tax.
2. Consider a full exemption from income tax for NCOs if the NCO qualifies as a social enterprise. The law already limits NCOs in how they can distribute profits, as well as imposes extensive reporting requirements to minimize abuse of such incentive. A full exemption will eliminate a need for NCOs for a complex double accounting of taxable and tax-exempt incomes and related expenses. Based on the experience of Georgia and Estonia, where all income from entrepreneurial activities is income-tax exempt for NCOs, there are no known abuses. Economic analysis should show that state budget revenue from income tax generated on income from entrepreneurial activities of NCOs is minimal.

At a minimum:

1. Amend the Tax Code to reduce corporate income tax from 13% to 5-6% as long as an NCO is certified (registered in the registry) as a social enterprise under amended law.²⁷
2. Amend the Tax Code to list lectures, exhibitions, lotteries, auctions, sports, and other events, (identified in the Law on PAs as non-entrepreneurial activities), so that these activities for NCOs are clearly not included in the “entrepreneurial activity” definition in article 15 of the Tax Code.
3. Exempt gratuitous transfers, assets, and grants received by NCOs on a gratuitous basis and used for entrepreneurial activity from the corporate income tax. Presently they are exempt from income tax, only if used for non-commercial purposes.²⁸
4. Include services received free of charge into a definition of “donation” (either by introducing a new definition in the Tax Code, which is currently missing, or to revise the existing definition of a “donation” in the Civil Code). Presently, donations are exempt from income tax for NCO-recipients.²⁹ However, the

²⁷ Section 4 of Article 183 of the Tax Code.

²⁸ Article 27(1) of the Law on PAs.

²⁹ Article 189(2)(2) of the Tax Code.



definition of a “donation” under the Civil Code, applicable to Tax Code rules, does not include free-of-charge services.³⁰

5. Provide a definition of “membership fees” in the Tax Code to easily distinguish between membership fees (as income tax exempt income for NCOs), and instances when a “person [an NCO] receiving assistance accepts monetary or non-monetary obligations ... before the person, who provided such type of assistance,” in which case the cost of such assistance shall be considered taxable income for an NCO.³¹
6. Consider an exemption of certain gratuitous incomes received by COs (such as grants and donations), when used, for example, for designated socially beneficial activities or for entrepreneurial activities, qualified as “social entrepreneurial” from income tax.
7. Exempt from income tax the reimbursement of volunteer expenses received by volunteers. Consequently, abolish the obligation of host organizations to withhold individual income tax from such reimbursements.
8. Deduct from the total taxable income the cost of fixed assets used by NCOs for income generation derived from entrepreneurial activities. NCOs, unlike COs, cannot deduct the cost of amortization of fixed assets, including those used for income generation.³² Consequently, this increases the value of the taxation base according to which income tax is calculated and puts NCOs in a disadvantaged position compared to commercial organizations operating on the market.

PROPOSED INCENTIVES ON INCOME TAX FOR COS:

- I. Reduce corporate income tax from 13% to 5-6% as long as a CO is certified (registered in the registry) as a social enterprise under amended law.³³

PROPOSED INCENTIVES FOR NCOS, COS, AND INDIVIDUAL ENTREPRENEURS UNDER SIMPLIFIED TAX REGIMES:

- I. Reduce the simplified tax rate for small businesses (applicable to COs, individual entrepreneurs carrying out activities based on a certificate, and NCOs) under the Tax Code’s simplified regime from 6% of a gross income to 1-3%, as long as the small business is certified (registered in the registry) as a social enterprise, under amended law.³⁴

³⁰ Article 642(1) of the Civil Code.

³¹ Article 15(4) of the Tax Code.

³² Paragraph 5 of Article 198(4) of the Tax Code.

³³ Section 4 of Article 183 of the Tax Code.

³⁴ Article 380 1) of the Tax Code.



2. Reduce the patent fee for individual entrepreneurs carrying out activities based on a patent, by paying 50% of the cost of the patent for a qualified type of entrepreneurial activity.³⁵

PROPOSED INCENTIVES ON SOCIAL TAX FOR COS, NCOS, AND INDIVIDUAL ENTREPRENEURS:

1. Reduce the tax rate paid by employers for their employees for social protection from 20% to 10% for COs and NCOs as long as they are certified (registered in the registry) as social enterprises, under amended law.³⁶
2. Exempt individual entrepreneurs carrying out activities based on a patent or a certificate from paying the above social tax as long as they are certified (registered in the registry) as social enterprises, under amended law.³⁷

PROPOSED INCENTIVES FOR COS, NCOS, AND INDIVIDUAL ENTREPRENEURS ON VAT:

1. The threshold of one million Tajikistan Somoni (TJS), related to the requirement to register for value added tax (VAT), should be calculated only to include the prices of transactions carried out during entrepreneurial activities. Also, VAT-free transactions should not be included in this threshold. The relevant amendments can be introduced to Article 245 or other articles of the Tax Code.
2. The Tax Code should clearly define that transactions (delivery of goods/provision of services) that are not carried out in the course of entrepreneurial activities are not subject to VAT. At a minimum, this rule should be applied to NCOs.
3. Conduct additional field research to define specific issues with VAT that are faced by social service providers in the RT. According to the results of the field research, the GoT should consider establishing additional exemptions for NCOs, COs, and individual entrepreneurs if they deliver paid (or GoT-funded) social services for different vulnerable groups (e.g., for PWDs, the elderly, people with chronic medical conditions, etc.), with amendments to article 251 of the Tax Code.
4. Import of goods transferred to NCOs as humanitarian aid, with the purpose to liquidate consequences of natural disaster, must be VAT-exempt. (Presently, it is only exempt if recipients of such goods are non-existent ChOs under paragraph 3 of Section 4 of Article 251 of the Tax Code.)

³⁵ Possibly, amend Article 368 of the Tax Code.

³⁶ Section 1 of Article 332 of the tax Code.

³⁷ The tax rate is presently set at 0.1% from the amount of taxable income.

5. COs and individual entrepreneurs should be exempt from VAT when they donate goods and services for charitable causes.
6. The exemption from VAT under Article 25I(2)(7) for the gratuitous transfer of goods in favor of the state (or performance of works and/or provision of services) should be applied to donors (COs and individual entrepreneurs) when the recipient of donations are NCOs.
7. The exemption from VAT provided in Article 25I(2)(6) should be applied to NCOs, COs, and individual entrepreneurs when they provide educational services funded through the state budget.
8. In order to bring the VAT rules in line with international standards, it is also necessary to exempt from VAT the import of goods purchased at the expense of grants. Such exemption should at least apply to grants provided by international financial institutions and organizations.
9. NCOs should also be entitled to purchase goods and services without VAT at the expense of grants received from international organizations and foreign donors.
10. NCOs, COs, and individual entrepreneurs should not be required to pay VAT if the goods or results of the services purchased in the framework of investment projects remain at their disposal. In order to achieve this objective, the Procedure for the Exemption from VAT for Investment Projects should be amended, and additional reforms implemented.
11. The right to purchase goods and/or services without VAT in the framework of investment (grant) projects should also apply to legal entities and individual entrepreneurs not registered for VAT.
12. Additional field research is needed to identify specific problems related to the certification, sequential numbering, and accounting contracts for the supply of goods (works, services) purchased at the expense of credit (grant) agreements (in the framework of state investment projects).

AVAILABLE GOVERNMENT STIMULUS FOR SE

The work of the Grant Commission and other aspects of implementation of the Rules for Allocating Grants to Women Entrepreneurs would be a valuable learning experience for the government in organizing support for other vulnerable priority peoples.

- I. The GoT should develop an overarching government policy that supports SE endorsed by key stakeholders and includes relevant state bodies with defined authority and adequate resources to support and advance SE initiatives.



2. The concept and policies should be developed in close collaboration with the representatives of COs, NCOs, and vulnerable groups of the population, to address existing social challenges as well as impediments that hinder the development of SE in the country.
3. The GoT should define a state body responsible for the development of sectorial policies supporting SE. Such state bodies should be entitled by the legislation to carry out specific measures in support of SE.