

NONPROFIT LAW IN ROMANIA

Current as of December 2020 | Download print version (in PDF)

This section describes the legal framework of nonprofit organizations (also known as non-governmental organizations or NGOs) in Romania, and includes translations of legislative provisions relevant for a foundation or advisor undertaking an equivalency determination of a foreign grantee under IRS Revenue Procedure 92-94.

A. TYPES OF ORGANIZATIONS

Romania is a civil law country, and as such has two traditional, civil law forms for nongovernmental, not-for-profit organizations (NPOs): the association and the foundation. In addition, two or more associations or foundations may join together to form a federation. These three entities are commonly referred to as "not-for-profit organizations" in Romanian legislation. The terms "nongovernmental organizations" or "civil society organizations" are synonymous with NPOs for purposes of this Country Note.

NPOs are defined in Article 7 of the Fiscal Code, Law 227/2015. The principal regulations governing NPOs appear in Governmental Ordinance 26/2000, which was substantially amended by Law 246/2005.

This Note does not discuss forms of Romanian NPOs that have little interaction with foreign grantmakers, including trade unions (governed by Law 54/2003), householders' associations (Law 114/1996), political parties (Law 14/2003), employers' syndicates (Law 356/2001), and informal organizations that lack the status of legal entities (Governmental Ordinance 26/2000).

B. TAX LAWS

As detailed below, Romania exempts from corporate income tax the income of certain NPOs carrying out specific types of activities, with unrelated business income subject to tax under certain circumstances.

Romania also subjects certain sales of goods and services to a Value Added Tax (VAT), with a fairly broad range of exempt activities. The income tax law and the corporate tax law provide tax benefits for donors.

The existence of a double taxation treaty between Romania and the United States may also affect gift planning decisions of U.S. corporate grantmakers doing business in Romania.

II. APPLICABLE LAWS

Constitution of Romania

Governmental Ordinance 26/2000, amended by Law 246/2005

Fiscal Code, Law 227/2015

Law on Sponsorship, Law 32/1994

Volunteer Law, Law 78/2014

Law on National Education, Law 1/2011

Law on Encouraging the Establishment and Development of Small and Medium Enterprises, Law 346/2004, amended by Law 62/2014

Law on Social Economy, Law 219/2015

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

ASSOCIATION

An association is defined as a “subject of law constituted of three or more persons who, on the basis of an agreement, share, without being entitled to restitution, their material contribution, their knowledge and their lucrative activity, in order to accomplish activities of general interest, of collective interest, or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest” (Governmental Ordinance 26/2000 Article 4). [1] Law 246/2005 eliminated the lists of qualifying general interest and collective interest activities that appeared in earlier legislation. “General interest” and “collective interest” are discussed further in Section B. Starting in 2020, initial patrimony (in cash or in kind) for an association is at an association’s members’ discretion.

The founding members of an association must produce a statute that governs the association (Governmental Ordinance 26/2000 Article 6). An association acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters (Government Ordinance 26/2000 Articles 7 and 8). [2]

An association may establish subsidiaries which have separate legal personality and may execute legal acts with the prior approval of the association’s board of directors.

FOUNDATION

A foundation is defined as a “subject of law created by one or more persons who, on the basis of an act of will inter vivos or for cause of death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of collective interest” (Governmental Ordinance 26/2000 Article 15). Initial patrimony (in cash or in kind) for a foundation is 10 times the minimum gross salary in Romania (approximately \$3,000). Like an association, a foundation acquires the status of a legal entity upon registering with the clerk of the court where the organization has its headquarters.

Federation

Two or more foundations or associations may establish a federation. A federation acquires legal status upon registration with the clerk’s office in the jurisdiction in which it will have its headquarters. Federations are generally subject to the law regulating associations (Governmental Ordinance 26/2000 Articles 35-36). The foundations and associations that make up the membership of a federation retain their own separate legal status, as well as their patrimony (Governmental Ordinance 26/2000 Article 36(2)).

B. PUBLIC BENEFIT STATUS

NPOs that serve objectives in the “general interest” or “collective interest” are eligible to attain Public Utility Status. All foundations must serve these purposes and therefore are all eligible to apply for Public Utility Status (Government Ordinance 26/2000 Article 15). In contrast, an association or federation must

state in its governing statute whether it pursues “general interest,” “collective interest,” or “mutual benefit” objectives.

To qualify for Public Utility Status, an NPO must meet the following conditions:

It has carried out its activity for the general or collective interest;

It has operated for at least three years and achieved part of its proposed goals with proof of continuous activity through significant actions;

It has presented a report showing the development of significant prior activities through programs or projects specific to its purpose, together with balance sheets and budgets for the last three years;

It has its own patrimony, membership, and employees necessary to achieve its proposed aims;

The value of the patrimonial assets for each of the previous three years is at least equal to the value of the initial patrimony or is more than three times the value of the minimum gross salary in Romania .

It has cooperation and partnership contracts with public institutions or associations and foundations from Romania or abroad; and

It has obtained significant results in line with its proposed aims or presented letters of recommendations from competent authorities at the national or international level in order to demonstrate continuity of its activity. (Governmental Ordinance 26/2000 Article 38, as amended by Law 246/2005 and Law 145/2012).

The Government may waive the first two conditions if the applicant represents a merger of two or more associations or foundations, and each of the predecessor entities would have met the conditions (Governmental Ordinance 26/2000 Article 38(2), as amended by Law 246/2005). A federation may also gain Public Utility Status if at least two-thirds of its constituent organizations hold that status (Governmental Ordinance 26/2000 Article 45, as amended by Governmental Ordinance 37/2003 Article I Section 26).

Law 246/2005 simplifies the certification process for Public Utility Status. All applications are submitted to the General Secretariat of the Romanian Government, which must obtain recommendations from the pertinent ministries or central authorities within 60 days.

Public Utility Status confers the following rights and obligations on NPOs:

The right to obtain free public goods;

The right to publicize its Public Utility Status in all documents;

The obligation not to let its level of activity and performance fall below that set forth in its application for Public Utility Status;

The obligation to report regularly to the competent administrative authority on its activities, finances, and any modifications to its statute (these reports are available to the public); and

The obligation to publish excerpts of its activity reports and annual balance sheets in the Official Gazette of Romania, Part IV, as well as in the national registry of legal persons without patrimonial aim.

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

ASSOCIATION

Romanian law does not specifically prohibit inurement. As a general matter, a member with a personal interest in an issue on the agenda of the association’s general assembly must not take part in the discussion of the issue or vote on it (Governmental Ordinance 26/2000 Article 22(1)). The labor relationships between NPOs and their employees are governed by the Labor Code, the same rules that

apply to the business sector. Further, the Fiscal Code permits members of an NPO's Board of Directors to be paid in their capacity as members of the Board of Directors or as employees.

FOUNDATION

Inurement is not specifically prohibited. The conflict of interest rules applicable to members of an association also apply to the members of a foundation's board of directors (Governmental Ordinance 26/2000 Article 29(4)).

B. PROPRIETARY INTEREST ASSOCIATION

On the basis of an agreement, the members of an association share, inter alia, their material contributions with the organization without being entitled to restitution of their individual contributions (See Governmental Ordinance 26/2000 Article 4). As discussed below, an association may not distribute the assets remaining after liquidation to its members or to any natural persons (Governmental Ordinance 26/2000 Article 60(1)).

FOUNDATION

A foundation is created by one or more persons who establish a patrimony dedicated permanently and irrevocably to achieving a goal of general or collective interest (Governmental Ordinance 26/2000 Article 15(1)). A foundation may not distribute the assets remaining after liquidation to its founders or to any natural persons (Governmental Ordinance 26/2000 Article 60(1)).

FEDERATIONS

Associations and foundations that form a federation maintain their own legal status, including their own patrimony. If an association or foundation leaves the federation, however, it receives its share of the federation's total assets after a financial report is approved by auditors or an external financial expert.

C. DISSOLUTION

In the case of dissolution, the remaining assets of an association or foundation must be transferred to legal persons that pursue purposes identical or similar to those of the dissolving entity (See Governmental Ordinance 26/2000 Article 60(2) and (3)). [3] This transfer must be carried out in accordance with the provisions of the organization's governing documents (See Governmental Ordinance 26/2000 Article 6(3)(f) (associations) and Article 16(3)(f) (foundations)). The assets may not be distributed to natural persons (Governmental Ordinance 26/2000 Article 60(1)).

The court has the authority to distribute the assets of an association or foundation remaining after liquidation under any of the following circumstances:

If the liquidators fail to transfer the remaining assets within six months of the liquidation according to terms of Governmental Ordinance 26/2000 Article 60(2);

If the charter of the association or foundation does not stipulate a procedure for transferring the assets;
or

If the stipulation in the charter is contrary to law or the public order (Governmental Ordinance 26/2000 Article 60(3)).

When an association or foundation is dissolved by court decision, the remaining assets will be taken over by the state or, if the entity's purposes were principally local, by the municipality (Governmental Ordinance 26/2000 Article 60(4)).

FEDERATIONS

When a federation dissolves, the assets remaining after liquidation shall be transferred, in equal shares, to its member foundations and associations unless otherwise stipulated by its statute (Governmental Ordinance 26/2000 Article 37). If an association or foundation leaves the federation, it likewise receives its share of the total assets, but only after a financial report is approved by auditors or an external financial expert.

NPOS WITH PUBLIC UTILITY STATUS

NPOs with Public Utility Status must keep track of which assets and goods come from public sources and which come from private sources. When an NPO with Public Utility Status dissolves, the assets purchased with public money that remain after liquidation will be distributed, according to a government decision, to other associations or foundations pursuing similar purposes, or to public institutions. Assets that came from private sources will be distributed according to the rules stated above for associations and foundations.

D. ACTIVITIES

1. GENERAL ACTIVITIES

ASSOCIATION

An association carries out activities to pursue goals which, as stipulated in its constitutive statute, are “of general interest, or collective interest or, if such be the case, of their personal, non-patrimonial [not-for-profit] interest” (Governmental Ordinance 26/2000 Article 4).

FOUNDATION

A foundation must devote its activities to achieving the objectives of general or collective interest, as stated in its constitutive statute (Governmental Ordinance 26/2000 Article 15(1)).

2. ECONOMIC ACTIVITIES

An association or foundation may directly carry out economic activities that have an “accessory character” and are closely connected to the main purpose of the organization. Income from these related economic activities is exempt from corporate tax if the income falls below 15,000 Euros or 10 percent of the entity's total not-for-profit income, whichever is less (Fiscal Code Article 15(3)). For income exceeding those thresholds, and for all income from unrelated economic activities, the NPO pays taxes at the same rate as commercial firms. There is one exception: foundations established by legacy are exempt from paying profit tax altogether (Fiscal Code Article 13(2)(i)).

The Fiscal Code also extends a profit tax exemption to income generated by NPOs from “occasional [economic] activities” (Fiscal Code Article 15(2)(j)). The activities must be for social or professional purposes, in accordance with the organization's statute. Examples include fund-raising events with an admission fee, festivals, raffles, and conferences.

An association, foundation, or federation can establish a commercial company, provided that all dividends from the company are used to advance the purpose of the NPO or are reinvested in the company; they must not be distributed to any other shareholders (See Governmental Ordinance 26/2000 Article 47). An NPO (association, foundation, or federation, including those that have Public Utility Status) is required to pay tax on the dividends. [4]

Under Law 62/2014, associations and foundations are considered Small and Medium Enterprises (SMEs) for the purpose of their economic activities. Accordingly, they may benefit from certain advantages available to SMEs, such as access to public funds. As of 2015, additional benefits may be available to associations and foundations that conduct economic activities, which Law 219/2015 on Social Economy defines as “social economy activities.” Such activities may qualify for fiscal benefits granted by local authorities or access to state aid.

E. POLITICAL ACTIVITIES

Not-for-profit organizations may engage in political activities so long as those activities are not specifically covered by the Political Parties Law. They can contribute funds to political parties or to support electioneering (See Law 334/2006 Regarding Financial Political Parties' Activities and Electioneering Campaigns, as amended by Law 114/2015). However, foreign NPOs are not permitted to finance political parties.

F. DISCRIMINATION

The Romanian Constitution prohibits discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property, or social origin (Constitution Article 4). Further, the Law on National Education states that “The state provides Romanian citizens with equal rights of access to all levels and forms of pre-university and higher education, as well as lifetime education without any discrimination” (Law 1/2011 Article 2(4)). Educational establishments, including private institutions, must comply with this law (See Constitution Article 32(5)).

G. CONTROL OF ORGANIZATION

Foundations and associations may be established by natural or legal persons, whether domestic or foreign. Under Article 76(1) of the Governmental Ordinance 26/2000, “foreign legal persons without patrimonial aim may be recognized in Romania, under condition of reciprocity, on the basis of prior approval from the Government, by registration in the Registry of associations and foundations with the clerks’ office at the Bucharest tribunal, if they are validly established in the state whose nationality they possess, and if the purpose in their statute does not run counter to the public order in Romania.” For the procedure to be followed in this respect, see Governmental Ordinance 26/2000 Article 76(2) and (3).

It is possible that a Romanian NPO may be controlled by a for-profit entity or by an American grantor charity. In that case, the charity must specifically so provide in an affidavit).

The Sponsorship Law prohibits the sponsorship of an NPO by a sponsor who directs the activity of the beneficiary (Law on Sponsorship, Law 32/1994; see also Section V.B for additional information on sponsorships). In this respect, if a commercial firm is the sole founder of an NPO or has a position on the NPO's Board of Directors, it cannot make a legal donation to the NPO.

H. REPORTING OBLIGATIONS UNDER THE EU ANTI-MONEY LAUNDERING DIRECTIVE

Romania began implementing the new EU Anti-Money Laundering Directive in July 2019. Under the Directive, foundations and associations will need to declare additional information in their founding documents, including the following information of their members: full name, personal numeric code, the series and the identity card number for the natural persons, the name and the tax identification code of the associated legal person and, where appropriate, the domicile or residence or address of the registered office. Additionally, foundations and associations must provide the following information on their beneficiaries: date of birth, personal numeric code, series and number of identity document of

natural persons, nationality, and domicile or residence. This information must be notarized or digitally signed.

Finally, the Directive also requires that in addition to an annual declaration that is notarized or digitally signed to the Ministry of Justice of an NPO's board of directors, an NPO must submit a declaration to the MOJ each time it changes its membership structure or representation on the board of directors. If a CSO fails to meet this requirement, it may be terminated by a court.

V. TAX LAWS

A. TAX EXEMPTION

The Fiscal Code establishes the profit tax rate in Romania; exceptions are listed in Article 15.

A number of entities are exempt from paying profit tax altogether. These include Romanian foundations established as a result of legacies; religious entities (with regard to income obtained from economic activities used to support activities with a charitable purpose); and Romanian legal persons that pay tax on the income of micro-enterprises (Fiscal Code Article 15(1)).

In addition to the foregoing exempt entities, all Romanian NPOs are exempt from profit tax on certain types of revenue, including:

In general, associations and foundations are liable for profit tax on all of their business activities beyond a certain threshold. However, foundations established as a result of a legacy are exempt from all profit tax (Fiscal Code Article 13(2)(i)).

Donations, money, or goods obtained through sponsorship;
Sports taxes, visas and penalties (these are income sources that sports associations acquire as a result of participation in different sport competitions);
Dividends and interest;
Income on which tax already is paid, including income from entertainment (concerts, shows, etc.);
Cash or in-kind contributions from members or supporters;
Membership fees;
Registration fees as established under effective legislation,
Resources from the public budget or from non-reimbursable financing;
Income obtained from occasional activities—such as fundraising events with admission fees, festivals, raffles, and conferences—used for social or professional purposes, according to the organization's statute;
Exceptional income resulting from certain assignments of the organization's assets; and
Income obtained from advertising and publicity, realized by public benefit organizations (PBOs), according to the law of organization and operation, in the fields of culture, scientific research, education, sports, and health (Fiscal Code Article 15(2)).

B. DEDUCTIBILITY OF DONATIONS TO ROMANIAN NPOS BY INDIVIDUALS AND CORPORATIONS BASED IN ROMANIA

The deductibility of contributions (whether individual or corporate) to NPOs is regulated by the Law on Sponsorship, which lists the types of "sponsorship" that qualify as deductible (Law 32/1994); as well as the Fiscal Code, which imposes limits on the amount that a donor can deduct (Law 227/2015).

Under Romanian law, "sponsorship" occurs where two parties agree on the transfer of ownership of goods or financial means to support the not-for-profit activities of the beneficiary (Law 32/1994 Article

1). Under Law 204/2001, published in the Official Journal in July 2001 (approving Governmental Ordinance 36/1998), the following entities are eligible to be beneficiaries of sponsorship:

Any not-for-profit organization that undertakes activities in Romania intended to promote sports; religion; culture; art; the environment; scientific research; charity; human rights protection; economic, health, and social services or assistance; social and community development; professional interest representation; and maintenance, renovation, preservation, and valorizing of historical monuments; Any public authorities or institutions that engage in the activities listed above; Radio or TV broadcasts or books or other publications relating to the activities listed above; and Any individual living in Romania who develops activities in the areas listed above, provided that this activity is recognized by a not-for-profit organization or by a public institution engaged in the domain for which sponsorship is sought (See Law 32/1994 Article 4, as modified by Governmental Ordinance 36/1998 and by Law 204/2001).

Under the Sponsorship Law, a sponsor can be a business company or a natural person. At the time the contract with a sponsor is executed, the sponsorship beneficiary must be registered with the sponsor in a special register of entities for which tax deductions are granted.

The Fiscal Code establishes the rates governing deductions. A business company that grants sponsorships under the Sponsorship Law (or the Library Law) can deduct from the tax profit up to 0.75 percent of its turnover or 20 percent of the profit tax due, whichever is less (Fiscal Code Article 25(4)). [5] According to the Fiscal Code, only companies with turnover of more than 1 million Euros are eligible to pay profit tax and deduct sponsorships. Government Ordinance 25/2018 provides that companies with turnover under this threshold can also deduct sponsorships of NPOs, but only for NPOs that provide social services. In those situations, companies may deduct 20 percent of the profit tax due.

Companies may only deduct sponsorships granted to NPOs that are registered in a special registry of entities entitled to receive fiscal benefits (Law 30/2019). Individuals may designate 3.5 percent of their annual income tax to provide sponsorship to NPOs legally operating under Governmental Ordinance 26/2000 (See Fiscal Code Article 92(1), as modified by Governmental Ordinance 138/2004). Under this program, with the consent of their employers, taxpayers may choose to sign a sponsorship contract with an NPO, whereby the taxpayers' employers will pay a portion of the taxpayer's income directly to the NPO. This agreement is valid for a maximum of two years.

An individual receiving commercial income from independent activities (e.g., work as a lawyer or notary when the individual is not affiliated with a particular company), or from intellectual property rights, qualifies for a sponsorship deduction of up to 5 percent of the taxable base, in addition to the 2 percent of annual income tax that he or she can designate for sponsorship of a particular NPO (See Fiscal Code Article 68(5)).

C. VALUE ADDED TAX

The basic VAT rate in Romania is 19 percent (as of February 2019). A lower rate of 9 percent applies to books, medicines, food items, and certain other goods and services (Fiscal Code Article 292(2)). Entities can be exempted from paying VAT if their economic activities generate a turnover of less than 88,500 Euros for the current fiscal year. Turnover does not include revenues from not-for-profit activities (e.g., grants and member contributions).

If an NPO's income from economic activity exceeds 100,000 Euros, the NPO must register as a VAT taxpayer. Below this threshold, registration as a VAT taxpayer is optional. Romania exempts from VAT the following goods and services provided by NPOs or other private or public entities:

Medical treatment;

Goods and services closely related to social assistance or social protection performed by public institutions or other entities recognized as having a social character;

Goods and services closely related to the protection of children and youth performed by public institutions or other entities recognized as having a social character;

Goods and services furnished for the collective benefit of members, in exchange for a fixed subscription fee, by organizations without a patrimonial purpose that have an objective of a political, trade union, religious, patriotic, philosophical, philanthropic, ownership, professional or civic nature, as well as the objective of representing the interest of their members, on the condition that such exemption does not cause distortions of competition;

Cultural services, or goods closely related to such services, performed by public institutions, as well as operations that fall under the tax for performance;

Goods and services provided by persons whose operations fall in one of the above categories for exemption, in connection with events intended to raise financial support and organized for their exclusive benefit, on the condition that such exemptions do not produce distortions of competition;

Objects and apparel of religious bodies;

The import of goods received free of charge as assistance or donations intended for religious, health or sanitation, state defense or national security, artistic, or sport purposes, or for environmental protection or protection and preservation of historical and architectural monuments, under the conditions established by regulations; and

The import of goods financed by non-repayable loans granted by foreign governments, international organizations, or foreign or domestic not-for-profit organizations, under the conditions established by regulations (Fiscal Code Articles 141 and 142).

If an NPO is registered as a VAT payer, its fiscal treatment—including required submissions of VAT periodical reports, and deductibility—is similar to that of a commercial company.

Beginning on January 1, 2011, NPOs must pay the social taxes and other taxes related to labor contracts on a monthly basis, as opposed to twice yearly under the prior framework. NPOs with fewer than five employees are allowed to declare and pay taxes every three months.

D. DOUBLE TAX TREATIES

Romania has entered into a double taxation treaty with the United States, but the treaty does not specifically address the deductibility of contributions to NPOs (See <http://www.irs.gov/pub/irs-trty/romania.pdf>).

VI. KNOWLEDGEABLE CONTACTS

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FOOTNOTES

[1] English translations of Governmental Ordinance 26/2000 and the Fiscal Code most often use the phrase "community interest." According to a local expert, the phrases "community interest" and "collective / collectivity interest," which also appears in some translations, are synonymous. Initially the text of Ordinance 26/2000 used the term "community interest." In 2005 this term was changed to "collective interest" or "collectivity interest."

[2] Following adoption of a new Civil Code in 2013, the name of an NPO must contain the word "association" or "foundation," depending what type of entity it is. In addition, according to Law 34/2010, an NPO cannot legally form if its name contains words such as "academy," "council," "authority" or "agency." This restriction is designed to avoid confusion created in the past when some NPOs formed with names similar to those of public institutions. Furthermore, if an NPO decides to include in its name words such as "national" or "Romanian," or derivatives thereof, it must first obtain special approval from the General Secretary of the Government (See also Law 22/2014 amending and supplementing Government Ordinance 26/2000 on Associations and Foundations).

[3] Local experts interpret these sections of the Government Ordinance to mean that an association or foundation's patrimony could be allocated to another nonprofit organization or to a local public authority, e.g., a Local Council.

There is an exception to the distribution framework: When a Federation dissolves, its members (NPOs – legal persons) are entitled to receive a percentage of the patrimony that is proportional to the subscribed capital.

[4] Recent modifications of Law 346/2004 on stimulating the creation and development of small and medium-enterprises (SMEs) assimilates NPOs with the status of SMEs, such that they may benefit from the fiscal treatment of SMEs. These modifications recognize the economic values of NPOs.

[5] Business companies are entitled to deduct sponsorship over a period of seven years. The amount that is not deducted from income tax in a fiscal year because it exceeds the limit, will be carried over into the following seven years. These amounts may be recovered in the order in which they were registered at the time of income tax payment.