



Legal Basis for the Financial Sustainability of CSOs in Central Asia

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INTRODUCTION

In this overview, issues of legislative regulation¹ of various sources of income for non-commercial organizations (NCO)² are discussed in five countries of Central Asia: the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan. Among the sources of financial sustainability, we will consider the following: state funding and aid from private sources (local and foreign), income from internal sources of the NCO (such as membership and entrance fees, as well as income from entrepreneurial activity), favorable tax regulation of the NCOs and their donors, and volunteer activity.

The NCOs' access to various sources of income is the basis of their financial sustainability.³ In turn, this access depends on the supportiveness of the legislation enabling such access, and how well the NCOs know their rights and responsibilities and can take advantage of this access.

The authors of this overview hope that it will inform the readers about new possible sources of income, about the experience of their colleagues from other countries of Central Asia, and may lead them to take practical steps towards generating income from new sources and improving legislation that enables access to income.

The authors hope that the overview will be useful to the specialists, NCO representatives, state officials, and parliamentarians who seek to improve the legislation for NCOs in their countries. The overview provides readers with an opportunity to compare the legislation of the reader's country with the legislation of other countries, familiarize themselves with the experience of other countries, and utilize that experience in practice. In order to facilitate comparative analysis, the legislative overview of each of the five countries is built according to a unified structure.

The issue of financial sustainability is critical for many NCOs in Central Asia. Before the individual country overviews, the authors offer a short history, which helps explain the financial sustainability situation in Central Asia.

With the attainment of independence at the beginning of the 1990s, assistance from foreign donors served as the primary income for NCOs in this region. International organizations issued grants to NCOs for various projects, as well as paid significant attention to the training of NCO representatives on the necessary skills for their activity, management, and fundraising. In those times, the legislation of Central Asia, in general, encouraged and facilitated the growth of foreign funding through

¹ The normative legal material presented is current as of December 1, 2016.

² Different states in Central Asia use different terminology to define not-for-profit organizations. In this publication, each chapter provides an overview of the legislation of a certain country and authors use the term, which is utilized in the legislation of that country. Where the general practice is discussed or comparisons are made with other countries or the international experience is analyzed then a general term "non-commercial organization" (NCO) is used. It is supposed that this term includes the main forms of incorporation of non-governmental non-profit legal entities in accordance with the civil codes of the Central Asian countries, except for political parties, trade unions, religious organizations and other organizations whose forms of incorporation are regulated by special legislation. The review considers issues that are relevant for the majority of non-profits in the states of Central Asia. This review does not discuss features of legal regulations of special types of NCOs.

³ Financial sustainability implies steady surplus of income over expenditure, which enables the organization to dispose of its resources freely and thereby ensure uninterrupted activity of the organization.

favorable regulation and the absence of administrative barriers to receiving foreign aid by local organizations.

In the 1990s, aside from foreign funding, a number of large national-level organizations received direct funding from the state budget. At the beginning of the 2000s, after realizing the importance of NCO involvement in resolving social issues, several countries introduced state funding mechanisms of NCOs on a competitive basis. For instance, Kazakhstan, Kyrgyzstan, and Tajikistan adopted laws on state social contracts. In Uzbekistan, a special body was authorized to distribute grants – the Public Fund for Supporting NCOs and other Civil Society Institutes under the Oliy Majlis of Uzbekistan. Such NCO funding mechanisms anticipate a competitive selection of social service providers and executors of social projects among the NCOs. State funding became increasingly important as a source of financial sustainability for a large number of NCOs. However, both in the past and today, state funding in all countries is limited and cannot ensure financial sustainability for the NCOs on its own.

At the same time, traditional sources of income for the NCOs in other countries, such as income from entrepreneurial activity and charity from local donors, have yet to play a substantial role for the majority of NCOs in Central Asia.

Since the beginning of the 2000s, a number of Central Asian states made efforts to limit the access of NCOs to foreign funding. The majority of NCOs, for which foreign funding was their main source of income, found themselves in a financial predicament. At present, it is extremely difficult for NCOs to receive foreign grants in Uzbekistan and Turkmenistan. In Kazakhstan and Tajikistan, the government introduced requirements for mandatory notification upon the receipt of foreign aid, and the submission of reporting on using such funds. Attempts were made to adopt a similar legislation in Kyrgyzstan, which local NCOs managed to prevent. Unfortunately, the tendency to establish legislative restrictions on NCOs' access to foreign funding is continuing.

As the legislation regulating foreign aid becomes complicated, it is important for NCOs to understand their rights and obligations in accordance with such legislation, as well as to be more proactive in promoting reforms, which would simplify access to foreign aid and prevent new limitations and bans.

In addition, legislation regulating state funding is also changing rapidly. New laws were adopted in Kazakhstan, which introduced a new grant mechanism in addition to the state social contracting mechanism. In 2016, Kyrgyzstan adopted a second generation Law on State Social Procurement, which eliminated the gaps that existed in the previous law. Therefore, it is important for NCOs to monitor such changes in order to be able to take advantage of all new possibilities for receiving state funding. It is also important for NCOs to know and use the experience of the neighbouring countries in promoting reforms in their own countries.

The authors of the overview hope that it will help readers resolve all challenges in improving the legal environment, which would facilitate the financial sustainability of NCOs.

The overview was prepared by the joint efforts of ICNL legal consultants from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and partners from Uzbekistan.

KAZAKHSTAN

General overview

The main sources of funding for Kazakhstan's non-commercial organizations (hereinafter – NCOs) are state social contracts (hereinafter – SSC), grants from foreign and local donors, corporate philanthropy and sponsorship, membership fees, individual philanthropy, entrepreneurial income through provision of paid services, and state grants and awards. Unfortunately, we do not have any statistical data on what percentage each of the abovelisted sources makes up the overall income of NCOs.

SSCs are an important financial source for NCOs. Every year, approximately 6-7 billion tenge from the state budget is provided for SSCs. According to the data provided by the Ministry of Culture and Sport (hereinafter – MCS), in 2015, for example, 1,743 projects were conducted with the support of 7,373,294 tenge,⁴ including 1,233,959 tenge provided by central state bodies and 6,139,335 tenge provided by local executive bodies.⁵

Starting from 2016, state grants began to be distributed through a specially-created Operator. Based on the results of a competitive solicitation, concluded in September 2016, NCOs received 11 grants for a total amount worth over 200 million tenge.⁶ Additionally, small grants are distributed by some local foundations, which have a state share. For example, starting from 2008, the Foundation of the First President has conducted an annual Fair of Social Ideas and Projects, where any NCO can participate to test a project. This foundation annually provides support for approximately 20 NCO projects in the amount of 1 to 3 million tenge.⁷ The state foundation for the development of entrepreneurship “Damu” launched a special program called “Damu-Komek,” which provides support to entrepreneurs with limited abilities and NCOs focused on disability issues. One recent example of this foundation's activities was a project it financed implemented by the Association of Women with Disabilities “Shyrak,” which taught entrepreneurial skills to women with limited abilities.⁸

The biggest share of NCOs' income is still comprised of funds received from foreign sources, such as grants and donations. At present, 165 international and foreign organizations have a right to distribute grants in the Republic of Kazakhstan⁹ (hereinafter – RK). Those organizations which do not have the right to distribute grants can assist Kazakhstani NCOs in the form of donations or other forms, which we will discuss below. Kazakhstani NCOs are not required to get prior approval to

⁴ In 2015 the average exchange rate of US dollar to tenge varied from a minimum of 182.35 tenge to \$1 dollar to a maximum of 372.36 tenge to \$1.

⁵ Presentation of the MCS RK “Interaction with non-governmental organizations,” June 2015.

⁶ http://kazakh-tv.kz/ru/view/news_kazakhstan/page_174147_dlya-realizatsii-sotsialnykh-proektov-npo-poluchili-odinn.

⁷ <http://meta.kz/novosti/kazakhstan/977882-nazvany-pobediteli-hi-yarmarki-socialnyh-idey-i-proektov.html>.

⁸ <http://www.damu-komek.kz/3478>.

⁹ The Decree of the Government of the RK on Approval of the List of International and State Organizations, Foreign and Kazakhstani Non-Governmental Public Organizations and Foundations, Providing Grants (hereinafter – List of Donors), dated 20.03.2009 № 376 (hereinafter – Decree of the Government of the RK № 376).

receive funds from foreign sources; however, in certain cases, defined by law, they must notify state bodies about the receipt of these funds and report on their usage.

Local commercial organizations assist NCOs through distribution of grants and donations. However, in the opinion of this research's authors, the most popular form of support comes through provision of services and goods to NCO. Additionally, in recent years large corporations, such as Tengizchevroil,¹⁰ Kazkommerzbank,¹¹ and Rahat¹² increased their support to NCOs through specially-created charity foundations.

Other kinds of local funding include individual philanthropy, membership fees and contributions, and also income from entrepreneurial activity.

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

Further, we will consider the legal regulation of various sources of NCO funding in the order of their priority for most NCOs in Kazakhstan, as well as legislation on the taxation of NCOs and their donors:

1. State funding
2. Foreign funding
3. Income from local sources
4. Income from entrepreneurial activities
5. Volunteers
6. Tax benefits for NCOs and their donors

1. State funding

In Kazakhstan, the state finances NGOs' activity¹³ from the budget (central and local) through the mechanism of SSC, which is aimed at solving problems in social sphere¹⁴ and also through distribution of state grants and awards.¹⁵

1. SSC

SSCs are regulated by the Law on SSC, which stipulates the peculiarities of NGOs' participation in the process of state procurement of social services, and also by general legislation on state procurement of goods, works and services. The procurement of services through an SSC process is conducted according to the Law of the RK on State Procurement. Rules for Conducting State Procurement¹⁶ (hereinafter – Rules of State Procurement) contain necessary instructions for conducting state procurement of goods, works, and services, special conditions for procurement of certain types of

¹⁰ <http://www.tengizchevroil.com/ru/corporate-responsibility/community>.

¹¹ <http://kuszholly.kz/>.

¹² <http://www.rakhat-demeu.kz//index.php?p=aboutFoundation&outlang=1>.

¹³ The concept of NGO in the RK is used in the legislation on SSC with a purpose of excluding a possibility of state financing of certain types of NCOs: "NGO – a non-commercial organization (except for political parties, professional unions and religious associations), created by citizens and (or) non-governmental legal entities on a voluntary basis for achieving common goals in accordance with the legislation of the [RK...]" (Article 1 of the Law on SSC).

¹⁴ The Law on SSC, Article 1, Para. 2.

¹⁵ See Law of the RK on Introducing Amendments and Additions into Some Legislative Acts Concerning Issues of Activity of Non-Governmental Organizations, dated 02.12.2015 № 429-V.

¹⁶ The Order of the Minister of finance of the RK on Approval of Rules for Conducting State Procurement, dated 11.12.2015 № 648.

goods, set qualification requirements,¹⁷ and also stipulate procedures and terms of conducting state procurement.¹⁸

The procedure for conducting competitions for receiving SSCs is described in detail in ICNL's 2015 research publication *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*¹⁹ and has not changed substantially from the moment of this research's publication. Below is the general overview of the SSC mechanism.

According to the Budget Code of the RK,²⁰ SSCs are financed from the budget programs aimed at provision of state services.²¹ The budget program is developed for a planned period of time on an annual flexible basis by an administrator of budget programs and contains the amount of planned budget funds for a planned period. The budget programs are developed according to the principles of necessity and availability of funds for solving objectives, tasks and indicators, determined in a strategic plan or a program of territorial development or for execution of powers, determined in a state organ's regulation.²²

Presently, in addition to the Ministry of Religious Affairs and Civil Society of Kazakhstan,²³ (hereinafter – MRACS) which coordinates activities of state bodies on SSC implementation, over 20 other state bodies of the RK distribute SSCs at the central and local levels.

With regard to planning for SSCs, the following process applies: "Before the start of the next calendar year, all state bodies must plan into their budgets amounts for [SSCs], and after approval of the total budget must draft an annual plan of procurement of goods and services. Also the themes lots for SSCs are created beforehand, and NGOs may participate in this process, by giving their proposals at the meetings of the Council for Interaction and Collaboration with NGOs."²⁴

Only NGOs performing activity according to their statutory goals in the spheres, stipulated by law, except for political parties, professional unions, and religious associations, can be SSC suppliers.²⁵

The Law defines 15 spheres of SSC activity, including achievement of goals in the spheres of education; science; information; physical culture and sport; protection of health of citizens; promotion of a healthy lifestyle; environmental protection; and others.²⁶

2. Grants

The Law on SSC determines that grants are provided for realization of social programs and social projects, developed by NGOs, by an Operator in the sphere of grant financing of NGOs (hereinafter - Operator) in accordance with a grant agreement. The government provides grants in order to

¹⁷ Paragraph 17 of the Rules of State Procurement.

¹⁸ *Ibid*, paragraph 17, item 222.

¹⁹ <http://www.icnl.org/programs/eurasia/Comparative%20research%20CAR.pdf>.

²⁰ The Budget Code of the RK dated 4.12.2008 № 95-IV.

²¹ *Ibid*, Article 34.

²² *Ibid*, Article 32.

²³ As of 1 October 2016, authorities in the sphere of SSCs and NCOs were transferred from the MCS of the RK to the new Ministry of Religious Affairs and Civil Society.

²⁴ ICNL, *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, 36 (2015).

²⁵ Law on SSC, paragraphs 5 and 7 of Article 1, paragraph 3 of Article 6.

²⁶ *Ibid*, Article 5.

support civil initiatives, to discover the potential of members of civil society to solve actual questions of developing the social sphere.²⁷

Grants are provided on a competitive basis for NGOs. Those NGOs, which are in the process of liquidation, recognized as insolvent (bankrupt), whose property is seized, and (or) whose economic activity has been stopped, cannot participate in grant competitions. The procedure for grant distribution is stipulated in the Rules on Grants Distribution for NGOs and Monitoring their Realization (hereinafter – Rules on Grant Distribution),²⁸ which we discuss further below.

The Operator is a non-commercial legal entity created in a form of a joint stock company by the Government of the RK and which has the right to provide state and other grants in accordance with the Law on SSC.²⁹ The Decree of the Government of the RK dated 31.12.2015 created a non-commercial joint stock company “Center for the Support for Civil Initiatives” with a 100% government share in its stockholders’ capital, which was designated as the “Operator.”³⁰ The Operator has the right to distribute state grants (which were given to the Operator by an authorized state organ from the state budget) and non-governmental grants (which are given to the Operator by an individual or a legal entity on a voluntary basis) to NGOs, and also to engage experts for monitoring grants’ implementation. The Operator is obliged to monitor grants’ implementation, make proposals on improving the mechanism of grants distribution, make announcements on its website about the realization of grants, and present an annual report about the results of its activity.³¹

The procedure of conducting the competition for state grants is stipulated in the Law on SSC and in the Rules on Grant Distribution.

Grants are given under the directions set in the Law on SSC³² for financing the following types of social projects/social programs:

- 1) creation and (or) organizational support of social services;
- 2) creation and (or) organizational support of activities of centers providing rehabilitation, adaptation, and employment services;
- 3) creation and (or) administrative support of activities of centers providing 24-hour informative and (or) consultative, educational services; and
- 4) conducting complex research within the scope of the most prioritized directions of grant realization aimed at discovering a problem, monitoring its dynamics and finding the solutions.³³

Grants are provided on a competitive basis through an independent review of NGOs’ applications, conducted by an expert commission, created by the Operator and comprised of Kazakhstani and foreign experts and NGOs representatives.³⁴

²⁷ *Ibid*, paragraph 7-1 of Article 1.

²⁸ The Order of the Minister of Culture and Sport of the RK on Approval of the Rules on Grants Distribution for Non-Governmental Organizations and Monitoring their Realization, dated 25.12.2015 № 413.

²⁹ Law on SSC, Article 1, paragraph 7-4).

³⁰ Decree № 1192 on Some Issues of Grant Financing of Non-Governmental Organizations, Article 1.

³¹ Law on SSC, Article 6-2.

³² *Ibid*, Article 5.

³³ *Ibid*, paragraph 7-1.

³⁴ Rules on Grant Distribution, Article 4.

³⁴ *Ibid*, Article 7 and paragraph 5 of Article 2.

The procedure of grants distribution consists of the following stages:

- approving a plan of grants distribution and conducting a competition;
- publicizing an announcement about the competition and receipt of documents;
- considering the submitted documents and conducting an independent review of these documents;
- making a decision by the Operator; and
- signing an agreement.³⁵

The plan of grants distribution is approved by the MRACS through consultations with the public and NGOs within 20 working days from the approval date of the respective budget. It is uploaded on the website of the MRACS within five days from the approval date of the plan. The plan contains the following data:

- a list of the tasks of public importance, for which grants will be provided;
- a general description of these tasks; and
- the place of implementation of social projects/social programs and funds, allocated for their implementation.³⁶

Thereafter, within five days the announcement is uploaded on the Operator's website and/or in periodical publications. The law stipulates the obligatory content of the announcement.³⁷

An application for participation in a competition must contain the following documents, which must be presented in the format established in the legislation:

- 1) an application for receiving a grant;
- 2) an applicant questionnaire;
- 3) a passport of a social project/social program;
- 4) a project of a calendar plan of realization of the social project/social program;
- 5) a budget plan for realization of the social project/social program, including the amounts for logistical expenses, such as expenses for procurement of goods, works and services, which are not directly connected with the grant realization and aimed at developing an organization;
- 6) a copy of a document approving/electing the first director, certified by the stamp of the legal entity;
- 7) a letter of authorization, empowering a bearer with the right to submit the documents to the Operator, signing of a grant agreement and other documents, necessary for executing the said task;
- 8) copies of diplomas, certificates, letters of appreciation (if available);
- 9) a date of submission, signature.³⁸

If all documents meet necessary requirements, the Operator sends them to the expert commission. After studying all the documents, a member of the expert commission assesses them on a 10-point scale according to the following criteria:

³⁵ *Ibid*, Article 8.

³⁶ *Ibid*, Articles 9-11.

³⁷ *Ibid*, Articles 12-13.

³⁸ *Ibid*, Article 15.

- 1) if a proposed project/program is aimed at reaching specified goals with a defined result;
- 2) effectiveness of a project and availability of indicators assessing the effectiveness;
- 3) population coverage and involvement of the main target group of the project;
- 4) amount of funds for its realization;
- 5) meeting strategic objectives and tasks of the state and how proposed project activities influence their achievement; and
- 6) innovativeness and competitiveness of the proposed methods.³⁹

The expert commission consists of seven to nine members, which are NGOs' representatives, who possess at least two years of experience in the field of grant implementation. At that, 30% of all members of the expert commission are proposed by the Operator, and 70% by NGOs. The members of the commission conduct a review and give the Operator their conclusion as to whether or not providing a grant is feasible or non-feasible. After that, the Operator decides whether or not to provide grants, indicating the reasons for its decision. The decision is published on the website.⁴⁰

The final stage of the procedure of grants distribution is signing an agreement. The mandatory terms of the agreement which must be included are period of time for realization of a grant/program, order and terms of submitting reports, using funds as intended and according to budget estimates, and return of unused funds back to the Operator.⁴¹

3. Awards

Awards are given by the MRACS after receiving recommendations of the Coordination Council on Interaction with NGOs within an authorized body. They are defined as monetary reward provided at the expense of budgetary funds to non-governmental organizations for their contribution to solving social problems at the republican, sectoral, and regional levels. Applications for NGO-nominees for receiving an award are submitted by NGOs and state bodies to the aforementioned Ministry annually before September 1.⁴² The following documents should be attached to the application:

- 1) a presentation on an official letterhead of an NGO or a state organ, signed by the first head or a person acting on their behalf;
- 2) a statement about the NGO's activities, its work experience, and social contribution to the development of the civil society of a region and/or country;
- 3) a brief description of the NGO's achievements in its activities during last year; and
- 4) recommendation letters on the NGO's activities (at least two) from members of the public (other NGOs).⁴³

The same NGO cannot be nominated more than once in three consecutive years to receive an award. The same NGO cannot be nominated to receive an award in more than one category. The minimum amount of award is 2,000-times the amount of the MCI (minimum calculation index), which is set every financial year by the law on the national budget. An award nomination of one kind can be given

³⁹ *Ibid*, Article 36.

⁴⁰ *Ibid*, Articles 16-23, 26-27.

⁴¹ *Ibid*, Article 24.

⁴² Law on SSC, Article 6-3.

⁴³ The Order of the Minister of Culture and Sport of the RK on Approval of the Rules on Award Nomination for Non-Governmental Organizations, dated 22.12.2015 № 407, Article 11.

to one or several nominees simultaneously. In case of the latter, the award is divided between all nominees equally.⁴⁴

2. Foreign funding

1. Grants

The definition of a “grant” is contained in a number of laws of the RK: in the Tax Code of the RK (hereinafter – TC RK),⁴⁵ the Law on SSC, and the Law of the RK on Charity:

The main definition of a “grant” for tax purposes is given in the TC RK. Grant “is property, given free of charge for achieving certain goals (tasks)”:

- by states or state governments of other countries – to the RK, the Government of the RK, and individuals, as well as legal entities;
- by international and governmental organizations, foreign and Kazakhstani NCOs, included in the List of Donors – to the RK, the Government of the RK, individuals, and also legal entities; and
- by foreigners and stateless persons – to the RK and the Government of the RK.⁴⁶

It is worth noting that foreigners and stateless persons can serve as donors only for the RK and the Government of the RK, but not for NCOs.

In order for an NCO to enjoy tax benefits guaranteed for grantees, a donor has to meet the following requirements:

- 1) a donor has to be a “public” organization (Kazakhstan’s legislation does not define what “public” means, but normally most forms of NCOs are considered as “public” in practice);
- 2) a donor has to be a “non-governmental” organization (Kazakhstan’s legislation does not provide a general definition of “non-governmental,” but defines it only for the purpose of the Law on SSC);
- 3) the donor’s activity must have a charitable and (or) international character (the Law on Charity defines “charity” as a socially useful activity, based on providing charitable help and satisfying humanitarian needs, executed voluntarily, *pro bono* or on preferential terms in a form of philanthropy, sponsorship, and patronage. Kazakhstan’s legislation does not define what “international character” means;
- 4) the donor’s activity must not contradict the Constitution of the RK;⁴⁷ and
- 5) the donor must be included in the List of Donors.

In practice, the fifth requirement is the most important. Presently, 165 organizations are included in the List of Donors. The procedure for including or excluding organizations from the List of Donors is not stipulated anywhere. Only the Decree of the Government of the RK № 376 states that an authorized body,⁴⁸ coordinating the activity of bringing in and utilizing grants, after considering

⁴⁴ Law on SSC, Article 6-3.

⁴⁵ The Code of the RK on Taxes and Other Obligatory Payments into the Budget, dated 10.12.2008 № 99-IV.

⁴⁶ Subpara 11) para 1 Article 12 of the TC RK.

⁴⁷ The Constitution of the RK dated 30.08.1995.

⁴⁸ In accordance with the Rules on Attracting, Using, Monitoring and Estimating the Usage of Unrelated Grants (approved by the Order of the Minister of National Economy of the RK, dated 30.12.2014 № 196), an authorized body is the Ministry of National Economy. Meanwhile, the MFA also has a function of

whether an organization's activity which is proposed by a state organ for inclusion into the List of Donors, meets the requirements set in subpara 11) para 1 of Article 12 of the TC RK; thereafter the authorized body submits a draft decision introducing changes into the List of Donors to the Government of the RK annually before February 20.⁴⁹ The only chance for a foreign organization, which is willing to provide a grant to an NCO, to be included in the List of Donors, is to inform and lobby a state organ so that this organ submits a proposal to the Government on including this organization into the List of Donors.

Besides the definition of a "grant" given in the TC RK, "grant" is also defined in the Law on SSC:⁵⁰

"grant for an NGO" is defined as funds, provided by the Operator in the sphere of grant financing of NGOs, in order to support civil society initiatives, engaging civil society organizations to take part in solving problems in the social sphere.⁵¹ The Law on SSC mainly regulates state grants. However, grants received from non-governmental sources, i.e., individuals and legal entities, including international and foreign organizations, can also be regulated by this law under the part concerning providing grants to the Operator.⁵² The Law on SSC does not limit the possibility for a foreign donor to provide grants directly to an NCO, and not through the Operator. However, for a grant to be exempt from taxation, it must meet the requirements set in the TC RK.

Additionally, the definition of a "charity grant" is given in the Law on Charity: "money, given to a user in order to support him financially, spending of which is confirmed by keeping a record."⁵³ However, this definition does not relate to taxation issues or the right of a donor to distribute grants. A charity grant is utilized in accordance with an agreement, signed with a benefactor.⁵⁴ In practice it is not clear yet if legal regulation of a charity grant substantially differs from other existing grant definitions.

2. Other types of income from foreign sources

Kazakhstani NCOs are entitled to receive funds from foreign sources in different forms. Additionally, NCOs may receive funds from foreign sources in the following forms: humanitarian aid, free technical assistance, and other forms of income received free of charge for statutory goals (donations and others). The legal regulation of other forms of income, received free of charge from foreign sources does not differ from the same forms of income, received from local sources, except for a requirement to notify a state organ about its receipt and to submit a report on its spending under certain circumstances established by law. The specifics of notification and reporting required when receiving funds from foreign sources will be considered below. Other issues of legal regulation of income received free of charge will be considered in sub-section "Income from local sources."

"participation in attracting direct financial resources for realization of program documents, prioritized projects, including at the expense of loans and grants, given by international economic and financial organizations" (based on the Decree of the Government of the RK on Issues of the Ministry of Foreign Affairs of the Republic of Kazakhstan dated 28.10.2004 № 1118 (with amendments and additions as of 19.09.2014).

⁴⁹ Para. 2 of the Decree of the Government of the RK № 376.

⁵⁰ Amendments were introduced by the Law of the RK on Introducing Amendments and Additions into Some Legislative Acts of the Republic of Kazakhstan Concerning Issues of Activity of Non-Governmental Organizations, dated 02.12.2015 № 429-V.

⁵¹ Law on SSC, Article 1, Para. 7-1.

⁵² *Ibid*, Article 6-1, Para. 1.

⁵³ *Ibid*, Article 1, Para. 8.

⁵⁴ *Ibid*, Article 20, Para. 6.

Limitations on receiving and using funds from foreign sources

RK legislation contains certain limitations on receiving and using funds from foreign sources for NCOs. In particular, it is prohibited to use funds, received from foreign sources, to organize and conduct assemblies, meetings, rallies, pickets and demonstrations, and also to solicit participants to participate in such events, if they aim at inciting racial, national, social, or religious intolerance, caste exclusiveness, forced overthrow of constitutional order, encroachment on the territorial integrity of the republic, as well as violation of other constitutional norms, laws, and other legal acts of the RK, or if the conduct of such events threatens public order and safety of citizens.⁵⁵

Legislation prohibits the financing of political parties and professional unions in the RK by foreign legal entities and citizens, foreign states, and international organizations.⁵⁶ Moreover, political parties cannot receive funds from legal entities with a foreign share; state bodies, and state organizations; religious associations and charitable organizations; anonymous donors; or citizens and non-governmental organizations of the RK, who receive grants and other funds from international or foreign NGOs.⁵⁷

Free technical assistance

In accordance with the definition given in the Budget Code of the RK, “free technical assistance is execution and organization of delivery of goods, performance of works, and provision of services by donors to state organizations of the [RK...].”⁵⁸ Meanwhile, donors are foreign states, governments of foreign states and their agencies, international and foreign state organizations, and foreign non-governmental public organizations and foundations, whose activity does not contradict the Constitution of the RK.⁵⁹ NCOs cannot receive free technical assistance directly.

Humanitarian aid

Humanitarian aid is defined in the TC RK as property that is provided free of charge to the RK in the form of food, consumer goods, machinery, equipment, tools, medical equipment and medicines, and other property sent from foreign countries and by international organizations to improve the living conditions and daily life of the population, and likewise to prevent and respond to military, ecological, natural, or anthropogenic emergencies, and which is distributed by the Government of the RK through its authorized organizations.⁶⁰

Donors of humanitarian aid are foreign states and their governments, and the beneficiary of humanitarian aid is the RK.

The order of import of humanitarian aid is stipulated in the Regulation on Order of Import of Goods Sent as Humanitarian Aid on the Customs Territory of the RK from Abroad.⁶¹ In practice, almost all

⁵⁵ Para 22 of the Law of the RK on Introducing Amendments and Additions into Some Legislative Acts of the Republic of Kazakhstan Concerning Issues of Payments and Payment Systems dated 26.07.2016 № 12-VI 3PK (hereinafter - Law on Payments).

⁵⁶ Article 5 of the Constitution of the RK.

⁵⁷ Para 2 of Article 18 of the Law of the RK on Political Parties, dated 15.07.2002 № 344-II.

⁵⁸ Subpara 64) para 1 Article 3 of the Budget Code of the RK.

⁵⁹ Subpara 25) para 1 Article 3 of the Budget Code of the RK.

⁶⁰ Subpara 12) para 1 Article 12 of the TC RK.

⁶¹ Approved by the Decree of the Cabinet of Ministers of the RK, dated 07.08.1995 № 1090.

humanitarian aid arrives in the RK and is distributed by the Government of the RK through its authorized organizations. NCOs do not receive humanitarian aid directly.⁶²

3. Specifics of reporting when receiving income from foreign sources⁶³

The TC RK⁶⁴ obliges all legal entities and individuals, including NCOs, to inform the tax authorities about the receipt of money and (or) other property in the amount exceeding 1 tenge from foreign states, international and foreign organizations, foreigners, or stateless persons (hereinafter – foreign funds) in the manner, form, and within the timeframe set by the Committee of State Income of the MoF of the RK (hereinafter - Committee),⁶⁵ if the activity of the receiver of foreign funds is aimed at:

- providing legal assistance, including distribution of legal information, protection and representation of the interests of citizens and organizations, and legal consultations;
- conducting public opinion studies and polls (except for public opinion polls and surveys conducted for commercial purposes), as well as the distribution and publication of their results; and
- collecting, analyzing, and disseminating all types of information, except when such activity is carried out for commercial purposes.⁶⁶

Tax authorities must be informed not only about the receipt of foreign funds, but also about how they are spent.⁶⁷ Data on the recipients of funds and donors, as well as information about the amount of funds received and other information, will be included in the database, which will be managed by the Committee. The Committee is responsible for developing rules, which contain the order, terms, and format of notification about the receipt of these funds and reporting on their use. The Committee is currently developing the rules which will regulate managing the database of recipients of funds from foreign sources.

In addition to the abovelisted requirements, information and materials, published, distributed and (or) placed by legal entities and (or) their branches at the expense of foreign funds, must contain data about persons who made a request or order to produce, distribute and (or) place this information and materials at the expense of these funds.⁶⁸

The Law on Payments also makes amendments in the Code of Administrative Offenses of the RK, which introduce administrative penalties for violating these requirements. Particularly, NCOs will now bear an administrative liability for the following offenses:

⁶² ICNL, *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, 16.

⁶³ This subsection is included in the Overview, since very often the requirements to get approval to receive, notify about the receipt and (or) report, play a significant role which may hinder an NCO in receiving funds from different sources, thus directly affecting their financial sustainability.

⁶⁴ Amendments were introduced by the Law on Payments.

⁶⁵ *Ibid*, Para. 1 of Article 20 of the TC RK was amended by Subpara. 25-1).

⁶⁶ *Ibid*, Subpara. 1 of Para. 4 of Article 14 of the TC RK was amended by Para. 1-1. This requirement is not applicable to, among others: 1) state institutions; 2) banks of the second level and insurance organizations; 3) major taxpayers; 4) organizations of education; 5) subjects of a quasi-state sector; 6) diplomatic representations; and others (see *ibid*).

⁶⁷ *Ibid*; Article 14 of the TC RK is amended by Para. 1-1.

⁶⁸ *Ibid*; Article 14 of the TC RK is amended by Para. 1-2.

- failure to notify by the established deadlines, as well as failure to submit or late submission of information about the receipt and spending of money and (or) other property from foreign sources – is subject to a fine of 100 MCI⁶⁹ (approximately \$600 USD);
- submission of incorrect or false information about the receipt and spending of money and (or) other property from foreign sources – is subject to a fine of 200 MCI (approximately \$1,200 USD);
- repeated violation of one of the abovelisted violations, committed within a year after the imposition of the first administrative penalty – is subject to a fine of 250 MCI (approximately \$1,500 USD); and
- failure to specify information about the source of foreign funding in a publication, as well as failure to indicate that a publication was made at the expense of foreign sources – is subject to a warning for the first violation; to a fine of 25 MCI (approximately \$150 USD) for a repeated violation within a year after the warning.

Furthermore, every year before March 31, all NCOs must submit “information about their activities, including information about their founders (participants), the composition of property, sources of formation and directions of spending the money,”⁷⁰ including on property received from foreign sources, to the MRACS.

The size and structure of revenues of an NCO, as well as information on the size and composition of the assets of an NCO, its expenses, number and composition of employees, payment of labor, and use of unpaid labor of citizens in the activities of an NCO cannot be subject to commercial confidentiality.⁷¹ This means that all information about the structure and size of income of an NCO, including information on received foreign funding should be made available to interested parties and presented on demand.⁷²

3. Income from local sources

In addition to grants, NCOs may receive the following types of income for the implementation of their statutory activities: entry and membership fees, charitable help, gratuitously received property, and contributions and donations. NCOs are exempt from paying corporate income tax (hereinafter – CIT) for these types of income. However, these types of income do not enjoy the same benefits, stipulated in the TC RK for grants (regarding social tax, individual income tax (hereinafter – IIT), value added tax (hereinafter – VAT), as well as customs duties).⁷³ We will discuss tax benefits in more detail in chapter 5 “Taxation of NCOs and their donors.”

Contributions and donations on a gratuitous basis

“The TC [RK] does not give a definition of ‘contributions on a gratuitous basis.’ Similarly, civil legislation does not contain this definition either. It can be assumed that contribution means giving away part of someone’s income. At the same time, neither the subjects of contribution, nor the purpose of contribution are defined. The main condition is that a contribution should be made on a gratuitous basis to [an NCO]. Thus, subjects of contribution can be any subjects of law. NCOs may

⁶⁹ The monthly calculation index for 2016 is 2,121 tenge.

⁷⁰ Para. 5 of Article 41 of the Law of the RK on Non-Commercial Organizations, dated 16.01.2001 № 142-II (as of 03.12.2015) (hereinafter – Law on NCOs). Came into force on 02.12.2015.

⁷¹ *Ibid*, Para. 4 of Article 41.

⁷² *Some Issues of Legal Regulation of NCOs’ Activity in Countries of Central Asia*, 17.

⁷³ *Ibid*, 14-15.

receive as well as make contributions on a gratuitous basis.”⁷⁴ It is impossible and unnecessary to make distinctions between concepts of “gratuitously received property” and “contributions and donations on a gratuitous basis.”

Donation

A definition of “donation” is contained in Article 516 of the Civil Code of the RK. It is understood as “giving away a thing or a right for commonly useful purposes.” NCOs may receive as well as make donations. Following from the definition of a “donation,” any legal entity or an individual can become a donor. It is not necessary to have someone’s permission or agreement to receive a donation. A donation must be targeted.

Further, the TC RK and the Law on Charity contain a definition for “voluntary donations” as property, given by a philanthropist on a pro bono basis in order to assist a charity user in improving his financial and (or) material status:

- 1) in the form of providing social support to an individual;
- 2) in the form of sponsorship;
- 3) to an NCO in order to support its statutory activity;
- 4) to an organization implementing activities in social sphere, as determined by the TC RK.⁷⁵

Persons receiving charitable help are called “users,” i.e., persons receiving assistance in order to solve their social problems.⁷⁶ Any legal entity and individual can serve as a philanthropist. NCO may receive as well as provide charitable help to other NCOs or individuals for reaching the abovementioned goals.

Entry and membership fees

“RK legislation does not provide a definition of entry and membership fees. The NCOs, which are based on membership according to the civil legislation of the RK, are associations (unions), public associations, religious associations, chambers of auditors, collegiums of advocates, chambers of notaries, and chambers of appraisers. Only these organizations are entitled to receive income from entry and membership fees. This right must be stipulated in an organization’s charter, as well as its internal documents (such as, regulation on entry and membership fees), an agreement concluded with each member of an organization, which provides for an obligation of a member to pay association’s entry and membership fees.

Similarly, we believe that when creating an NCO of any organizational legal form (based on membership or not), founders may establish an entry fee, which will be exempt from [CIT...].”⁷⁷

⁷⁴ ICNL, *Legal Status of Non-commercial Organizations in the Republic of Kazakhstan; collection of reference materials*, 6th edition, updated and complemented, 67 (A.B. Kaptayeva, A.V. Korovina, and G.M. Kuzhukeyeva, eds., LEM Publishing House 2014) (hereinafter – Legal Status of NCOs in the RK).

⁷⁵ The Law on Charity, Article 1, Para. 10. See also the TC RK, Article 12, Para. 1, Subpara. (24). Subpara. (24-1) of Para. 1 of Article 12 of the TC RK gives a definition of “social support of an individual.” Paras 2 and 3 of Article 135 of the TC RK list the types of activities and conditions of their performance by the organizations, working in the social sphere for the purposes of the code. In more details see sub-section *Specifics of taxation of organizations working in the social sphere*.

⁷⁶ *Ibid*, Article 1, Para. 15.

⁷⁷ ICNL, *Legal Status of NCOs in the RK*, 66-67.

Sponsored help

The TC RK contains a definition of “sponsored help” as property provided free of charge with the aim of disseminating information about the person who provided the property; to individuals in the form of financial (except for social) support for participation in competitions, contests, exhibitions, shows and for the development of creative, scientific, technical, and inventive activities and to raise the level of education and sport achievements; to an NCO for realization of its statutory goals.⁷⁸ Any legal entity and individual can serve as a sponsor. NCOs may receive as well as provide sponsored help to other NCOs or individuals for these purposes.

Patronage activity

Patronage activity is the activity of a patron aimed at providing charitable help out of free will in order to develop science, education, culture, art, or sport skills, and to preserve historical and ethnocultural heritage of the society and state.⁷⁹ Philanthropic activity is the voluntary activity of a philanthropist based on distributing his private resources for meeting societal needs and improving living conditions.⁸⁰

4. Income from NCO’s entrepreneurial activity

An NCO may engage in entrepreneurial activity as long as it conforms to the NCO’s statutory objectives. The laws of the RK may set limits on entrepreneurial activity of NCOs of some organizational legal forms. For example, the Law on SSC prohibits political parties, professional unions, and religious associations from participating in a competition for receiving SSCs. Income from NCO’s entrepreneurial activity cannot be distributed among its members (participants) and is directed at fulfillment of its statutory objectives. Public and religious associations and foundations are allowed to use its funds for charitable activity.⁸¹

An entrepreneurial activity of an NCO is any activity directed at earning income, irrespective of how the profit from this activity will be spent, even if the entire profit from entrepreneurial activity will be spent for charitable activity or for NCO’s statutory objectives.

5. Volunteers

Kazakh legislation has not yet adopted regulations on the legal status of volunteers as well as issues of performing volunteer activity. At the moment of finalizing this overview, the draft Law on Volunteering is at the stage of consideration by Parliament.

6. Taxation of NCOs and their donors

⁷⁸ Subpara. 13) of Para. 1 of Article 12 of the TC RK.

⁷⁹ Law on Charity, Article 1, paragraph 13.

⁸⁰ *Ibid*, Article 1, paragraph 17.

⁸¹ Article 33 of the Law on NCOs; Article 25 of the Law of the RK on Public Associations, dated 31.05.1996 № 3-I.

This chapter is based on materials from ICNL's 2013 publication "Legal Status of Non-commercial Organizations in the Republic of Kazakhstan. Collection of reference materials," in particular, excerpts from chapter 6 "Taxation of non-commercial organizations in Kazakhstan." The text was edited and amended in accordance with the current legislation.

Concept of NCO for taxation purposes

To identify what benefits an NCO enjoys when paying taxes and other obligatory payments, we must define the concept of a "non-commercial organization" under the Tax Code. A definition of NCO for tax purposes is given in Paragraph 1 of Article 134 of the TC RK:

an NCO is an organization, registered in the form established by the civil legislation of the RK for an NCO, except for joint-stock companies, institutions and cooperatives of consumers, except for the cooperatives of apartments (premises) owners, working in the public interest⁸² and corresponding with the following conditions:

- 1) it shall not be aimed at receiving profit as such; and
- 2) it shall not distribute net profit or its property between the participants.

For the purposes of the TC RK, an NCO is a non-commercial legal entity, registered in a form of public association, foundation, religious association, association of legal entities in a form of an association (union), cooperative of apartment (premises) owners, and in other forms, such as a chamber of notaries, collegium of advocates, chamber of commerce and industry, chamber of auditors, and chamber of appraisers.

Income tax for NCOs

In the RK, there are a number of benefits applied to certain types of income received by NCOs or through entrepreneurial activity. According to Article 134 of the TC RK, the following types of income are exempt from CIT:

- income received for performing statutory activity (grant, entry and membership fees, contributions of participants of a condominium, charitable help, gratuitously received property, and unrequited contributions and donations); and
- income received from entrepreneurial activity (from implementation of SSCs, as well as interest on bank deposits).

These types of NCO's income are exempt from CIT, if certain conditions are met, as noted above (see definition of NCO). If these conditions are not met, even if one of them is not satisfied, these types of NCO's income are subject to CIT in the generally established order (Para. 3 Art. 134 of the TC RK).

The definitions and legal regulation of each type of the income received gratuitously for performing statutory activities are given in chapter 2 above. The peculiarities of taxation of certain types of income are described below:

1. Contributions and donations on an unrequited basis

⁸² Meanwhile, the legislation of Kazakhstan does not define what kind of activity should be recognized as being performed "in the public interest."

NCO recipients of donations are exempt from CIT, but individual recipients of donations are not exempt from IIT and this type of income is considered as taxable income. This means that organizations which donate money to individuals must withhold individual income tax on this income at the rate of 10%.

2. Remuneration for bank deposits

Interest earned from bank deposits is one type of income received from entrepreneurial activity. By depositing temporarily available funds into deposit accounts held in commercial banks, NCOs receive interest on these funds after a certain period of time and this income is not subject to CIT. However, this type of income is not exempt from CIT at the source of payment, i.e., banks must withhold 15% CIT when paying interest on the deposits.⁸³

3. Other types of income from NCO's entrepreneurial activity

"Other types of income from entrepreneurial activity (except for interest earned from bank deposits and [the income under] an agreement on implementation of [SSC...]) are taxable in the generally established order."⁸⁴

4. Humanitarian aid

According to the TC RK, humanitarian aid is not subject to taxation under CIT. Humanitarian aid is taxable in a different way. The TC RK stipulates that for the purposes of CIT, the taxable income of a taxpayer should be deducted in the amount of humanitarian aid received. In accordance with Subparagraph 4 Paragraph 2 of Article 133 of the TC RK, a taxpayer's taxable income may be reduced by the cost of property received in the form of humanitarian aid in case of emergency situations of natural and anthropogenic character and used as intended.

Tax accounting of NCO's income

"NCOs shall be obliged to keep separate accounting for the income which is exempt from CIT and the income which is taxable in the generally established order (Para. 4 Art. 134 the TC RK). A separate accounting for these incomes means an NCO must:

- 1) fill in and submit to the tax authorities two declarations on the overall annual income: on the unrequited income received (using declaration number 130.00) and on the income received from entrepreneurial activity (using declaration number 100.00); and
- 2) maintain two separate accounts in the accounting balance: one for the income received from entrepreneurial activity and one for the unrequited income received.

When receiving income which is taxable under the generally established order, the amount of expenses of an NCO, which may be deducted, shall be determined by the choice of a taxpayer based on a proportional or separate method.

According to the proportional method, the amount of expenses to be deductible, in the total amount of expenses, shall be determined based on the proportion of the income from entrepreneurial activity (except for remuneration for bank deposits and [SSC...]) relative to the total amount of the income of

⁸³ ICNL, *Legal Status of NCOs in the RK*, 67.

⁸⁴ *Ibid.*

an NCO.

According to the separate method, a taxpayer shall keep the separate accounting records for expenses attributable to the income from gratuitous contributions (grant, etc.), and expenses attributable to the income taxable in the generally established order.”⁸⁵

Specifics of taxation of organizations working in the social sphere

The provisions of Article 134, listed above, do not apply to NCOs, which are recognized as autonomous education organizations in accordance with Article 135-1 of the TC RK,⁸⁶ and organizations working in the social sphere, in accordance with Article 135 of the TC RK. When determining the amount of CIT owed, organizations working in the social sphere can reduce the amount of CIT calculated according to Article 139 of the TC RK by 100%, if the conditions set in Articles 135 and 135-1 are met.

Organizations working in the social sphere, according to Article 135 of the TC RK, are those organizations which perform activities in the social sphere and deriving 90% of total annual income from those activities, taking into account the income in the form of gratuitously received property and remuneration for deposits. The activity in the social sphere includes the following types of activity:

- 1) provision of medical services, except for cosmetology, sanatorium, and resort services;
- 2) provision of services of primary, basic secondary, general secondary, technical and vocational, post-secondary, higher, and postgraduate education, performed under the appropriate licenses to conduct educational activities, as well as additional education, and pre-school care and education;
- 3) activity in the sphere of science (including scientific research, use, including realization of scientific intellectual property by its author), performing scientific and (or) scientific and technical activities by subjects, accredited by an authorized body in the field of science, sports (except for sport shows of a commercial nature), culture (except for entrepreneurship), provision of services for preservation (except for dissemination of information and propaganda) of historical and cultural heritage and cultural values, objects, listed in the registers of historic and cultural heritage or in the State List of Monuments of History and

⁸⁵ *Ibid*, 68.

⁸⁶ This amendment was introduced on 26.12.2012 and came into force on 01.01.2013. Article 135-1. Taxation of autonomous organizations of education

1. For the purposes of this Code, autonomous organization of education is:

1) a non-commercial organization created at the initiative of the First President of the Republic of Kazakhstan - the Leader of the Nation to provide funding for autonomous educational organizations, determined by subparagraphs 2) - 5) of this paragraph, the highest governing body of which is the Supreme Guardianship Board;

2) a non-commercial organization of education when observing all of the following conditions: a) it was created by the Government of the Republic of Kazakhstan; b) its highest governing body is the Supreme Guardianship Board, created in accordance with the legislation of the Republic of Kazakhstan; and c) it performs one or more of the educational types of activities, specified by the laws of the Republic of Kazakhstan at the following levels of education: primary school, including pre-school care and education; secondary school; high school; post-secondary education; higher education; postgraduate education; additional education <...>

- Culture in accordance with the legislation of the Republic of Kazakhstan, and in the field of social security and social welfare of children, the aged and the disabled persons; and
- 4) library services.

The income of these organizations shall not be taxable when used for the implementation of such activities.

The organizations working in the social sphere shall also include organizations which meet the following conditions:

- 1) the number of the disabled persons is no less than 51% of the total number of employees during a tax period; and
- 2) the expenses for salaries of disabled persons for a tax period are no less than 51% (in specialized organizations, where persons who are visually, acoustically, or orally disabled consist of no less than 35% of employees) from the total expenses for salaries.

Preferential taxation of income tax for donors – legal entities

The TC RK provides for a reduction of taxable income for legal entities, working under the generally established tax regime, which incurred expenses for charitable assistance, or gratuitously transferred property, executed works, or provided services to an NCO.

The TC RK separates a group of taxpayers, qualified and monitored as “major taxpayers” in a tax period.⁸⁷ These taxpayers are entitled to a reduction of taxable income for certain types of expenses (listed below), with no more than a total amount of 3% of taxable income allowed for deduction. Other taxpayers are now allowed to deduct up to 4%.⁸⁸ The reduction of taxable income is allowed for the following types of expenses:

- the amount of excess actually incurred costs over receivable (received) income in operation of the social objects, provided by Paragraph 2 of Article 97 of the TC RK;
- the value of the property, transferred to a non-commercial organization or organizations working in the social sphere, on a gratuitous basis. The cost of gratuitously executed works and provided services shall be determined by the amount of expenses incurred in connection with execution of works, and provision of services. The cost of the transferred property is specified in the act of transfer and acceptance of this property; and
- charitable help in the presence of a decision of a taxpayer based on a request from a person receiving assistance.⁸⁹

This benefit is applied to commercial organizations and NCOs, if they incur the abovelisted expenses from their income from entrepreneurial activity. These are legal entities which fall under the generally established tax regime. Legal entities which work in a special tax regime according to a

⁸⁷ Major taxpayers are taxpayers who have aggregate annual income without adjustment provided by Article 99 of the TC RK, while complying with the following conditions: 1) amount of book values of all assets is equal to at least 325,000-times the MCI established by the Law on the State Budget and effective as of the end of the year, wherein the list of major taxpayers, who are subject to monitoring, shall be approved; 2) The number of employees is at least 250 persons. See Para. 2 of Article 623 of the TC RK.

⁸⁸ Changes were introduced by the Law of the RK on Introducing Amendments and Additions into Some Legislative Acts of the Republic of Kazakhstan Concerning the Issues of Charity dated 16.11.2015 № 403-V.

⁸⁹ TC RK, subparas 1) and 1-1) of Para. 1 of Article 133.

simplified declaration, individual entrepreneurs, as well as individuals, are not entitled to reduction of taxable income. For these taxpayers, the tax legislation does not provide for any benefits when performing charitable activity.

VAT for NCOs and donors

In accordance with Article 252 of the TC RK, the following types of transactions for the implementation of services provided by NCOs are exempt from VAT:

- 1) provision of services for protection and social welfare of children, the aged and disabled persons, and veterans of war and labor; and
- 2) provision of services for implementation of rites and ceremonies by religious organizations.⁹⁰

Furthermore, in accordance with Paragraph 13 of Article 248 of the TC RK, public associations of disabled persons, as well as production organizations, are exempt from VAT for transactions on goods, works, and services (except for transactions for realization of goods (works, services) from trade and mediatory activities and transactions related to production and realization of excisable goods), if these associations and organizations correspond with the following conditions:

- the number of the disabled persons is no less than 51% of the total number of employees of such production organizations during a tax period; and
- the expenses for salaries of disabled persons during a tax period are no less than 51% (in specialized organizations, where persons who are visually, acoustically, or orally disabled consist of no less than 35% of employees) of the total expenses for salaries.⁹¹

According to Paragraph 1 of Article 255 of the TC RK, import of the following goods shall be exempt from the VAT:

- 1) the import of goods, imported at the expense of grants provided by states, governments, and international organizations (Subparagraph 10);
- 2) the import of goods, except for excisable goods, imported in the form of humanitarian aid in the order determined by the Government of the RK (Subparagraph 3) ;
- 3) the import of goods, except for excisable goods, imported for the purposes of charity by states, governments, and international organizations, including technical assistance (Subparagraph 4); and
- 4) the import of goods of religious application, imported by religious associations, registered with the justice authorities of the RK (Subparagraph 13).

The order of exemption from VAT of the import of goods, listed above, is determined by the Government of the RK.

Article 272 of the TC RK provides taxpayers with an opportunity to claim a refund of the VAT paid to suppliers of goods (works, services), purchased at the expense of a grant.⁹² However, according to Paragraph 1 of Article 275 of the TC RK, such refund shall be allowed only for two categories of legal entities:

⁹⁰ *Ibid*, Article 252.

⁹¹ *Ibid*, Para. 13 of Article 248.

⁹² *Ibid*, Subpara. 2 of Para. 1 of Article 272.

- 1) to a grantee - a state body which is a beneficiary in accordance with an international agreement on provision of a grant to the RK and responsible for appointing an implementer, unless otherwise provided by the particular international agreement; and
- 2) to an implementer - a person who is appointed by a grantee to implement a grant (hereinafter – implementer).

“Therefore, an NCO is entitled to get a VAT refund from the budget only in one case, if such NCO is appointed by the state organ of the RK, which is a grantee of an international grant, - as an implementer of this grant. Since this situation is possible only in some cases, the VAT refund from the budget, paid to suppliers as part of the costs for goods, works, or services at the expense of a grant cannot be considered as a benefit for NCOs. For all other NCOs, which are not implementers of a grant from the state organ, a VAT refund for grants is not provided for in the legislation of the RK.”⁹³

IIT

“According to Article 35 of the Constitution of the RK, payment of legally established taxes, collections, and other obligatory payments is everyone’s duty and obligation. Individuals declare and pay taxes only in certain cases determined by tax legislation (registered individual entrepreneurs, notaries and advocates, individuals, who receive income from abroad). With respect to other individuals, [IIT...] is taxable at the source of payment. However, some payments made by NCOs to individuals are exempt from taxation.”⁹⁴

According to Paragraph 1 of Article 156 of the TC RK, NCOs do not pay IIT on the following types of income paid an individual:

- 1) the payments made from a grant (except for the payments in the form of a salary);⁹⁵
- 2) the cost of property, received in the form of charitable help;⁹⁶
- 3) the cost of property, received in the form of humanitarian aid;⁹⁷ and
- 4) the payments in connection with the execution of public works and professional education, made from the budget and (or) grants in the minimum salary rate, established for the appropriate financial year by the Law on the republican budget.⁹⁸ This means that, if there is a payment for public works made for the execution of the SSC from the budget, then part of this payment in the amount of the minimum salary rate will not be taxable.

In our opinion, payments in connection with professional education mean expenses for travel to the place of education, studying materials, and others.

“Therefore, in cases when an NCO receives a grant or SSC, which entails a payment to an individual for expenses in connection with professional education, the NCO is entitled to exempt this payment from [IIT...], but only in the amount of the minimum salary rate. If these expenses exceed the

⁹³ ICNL, *Legal Status of NCOs in the RK*, 75.

⁹⁴ *Ibid*, 72.

⁹⁵ Subparagraph 11 of paragraph 1 of Article 156 of the TC RK. On 1 January 2016, an amendment came into force, which removed from the list of payments exempt from IIT, the payments which are made from a grant under an international agreement, which the RK is a party to, aimed to support (assist) the low-income citizens in the RK. (See old version Subparagraph 11-1.)

⁹⁶ *Ibid*, Subpara. 29 of Para. 1 of Article 156.

⁹⁷ This source of financing is not considered as a type of income of an individual according to Subpara. 18 of Para. 3 of Article 155 of the TC RK.

⁹⁸ Subpara. 10 of Para. 1 of Article 156 of the TC RK.

minimum salary rate in a given month, then the amount of excess shall be subject to IIT and be paid to the budget.”⁹⁹

Social tax

“According to Subparagraph 1) of part two of Paragraph 2 of Article 357 of the TC RK, payments made from a grant, shall not be subject to social tax. Meanwhile, the payments must be made in accordance with an agreement (contract), concluded with a grantee or an implementer, appointed by the grantee, for achievement of the grant objectives (tasks) (Para. 4 Art. 357 TC RK). This means that if an NCO receives a grant from a donor from the list of possible donors in accordance with a grant agreement, the NCO does not pay social tax on salary payments made to its employees from this grant.”¹⁰⁰

Land tax

The TC RK provides for three types of benefits on land tax for NCOs, depending on their organizational legal form and field of activity:

- 1) according to Subparagraph 7 of Paragraph 3 of Article 373 of the TC RK, religious associations are exempt from land tax for land plots belonging to them based the right of ownership, permanent land use, or primary unpaid temporary land use. However, religious associations are not exempt from land tax for land plots that are transferred to them for use, trust management, or rent.
- 2) according to Subparagraphs 2 and 3 of Paragraph 2 of Article 387 of the TC RK, all other NCOs, as well as organizations working in the social sphere (executing social types of activity as listed in Para. 2 Art. 135), apply the coefficient 0.1 to the tax rates when calculating land tax. This means that for NCOs, the land tax rate is 10% of that owed by other taxpayers. However, when a land plot or part of it (together with buildings, constructions, or structures situated on it or without them) is transferred for rent, use on other bases, or when used for commercial purposes, the NCOs shall calculate the tax without applying the 0.1 coefficient, i.e., in the generally established order (Para. 4 Art. 387); and
- 3) according to Paragraph 3 of Article 387 of the TC RK, organizations working in the social sphere (organizations which meet requirements on the number of disabled employees and expenses for salaries in accordance with Para. 3 Art. 135) and the autonomous education organizations (Para. 1 Art. 135-1) when calculating the tax shall apply the coefficient 0 to the appropriate tax rates. This means that for such NCOs the land tax *de facto* equals “0.”¹⁰¹

Property tax

The TC RK provides for two types of benefits on property tax for NCOs, depending on their organizational legal form:

- 1) according to Subparagraph 4 of Paragraph 4 of Article 394 of the TC RK, religious associations are exempt from property tax. However, religious associations shall pay this tax in relation to taxable objects transferred for use, trust management, or leasing;
- 2) according to Paragraph 3 of Article 398 of the TC RK, NCOs and organizations working in the social sphere shall pay property tax, but apply a preferential rate. The rate of the property tax

⁹⁹ ICNL, *Legal Status of NCOs in the RK*, 72-73.

¹⁰⁰ *Ibid*, 74.

¹⁰¹ See, *Ibid*, 75-76.

for NCOs is 0.1% of the annual average value of taxation objects. This value is determined according to the figures coming from accounting data;

- 3) according to Paragraph 3-1 of Article 398, autonomous organizations (defined in Paragraph 1 of Article 135-1) calculate property tax at the rate of 0% to the tax base.

Meanwhile, according to subparas 1) and 1-1) of Paragraph 1 of Article 396 of the TC RK, the taxable objects are defined as follows:

- 1) buildings, and structures, referred to as such in accordance with classifications established by an authorized state body in the field of technical regulation, and included as main assets or investments into the real estate in accordance with the international accounting standards and the requirements of the Law of the RK on Accounting and Financial Reporting;
- 2) buildings, referred to as such in accordance with classification established by an authorized state body in the field of technical regulation, parts of such buildings, transferred to individuals under the agreements of long-term lease with the right of redemption, accounted as long-term receivables, in accordance with the international accounting standards and the requirements of the Law of the RK on Accounting and Financial Reporting.

In cases when NCOs and organizations working in the social sphere (except for organizations of the disabled according to Para. 3 Art. 135 of the TC RK) transfer the taxable objects into use, trust management, or rent, they shall assess and pay property tax at the general tax rate – 1.5% (Para. 4 Art. 398).¹⁰²

In cases when organizations working in the social sphere (executing activities listed in Para. 2 Art. 135 of the TC RK) transfer the taxable objects into use, trust management, or rent, they shall assess and pay property tax at the tax rate – 0.1%. Meanwhile, the payment for such use, trust management or rent shall go into the state budget (Para. 4-1 Art. 398).

State fee

According to Article 532 of the TC RK, a state fee is an obligatory payment which is paid for the execution of legal-material acts and (or) issue of documents by the authorized state bodies or officials.

NCOs shall pay a state fee when they apply to the authorized state bodies or officials in order to execute legal-material acts and (or) to issue documents.

Certain categories of NCOs are exempt from paying state fees:

- 1) public associations of disabled and (or) organizations formed by them where persons who are visually, acoustically, orally disabled consist of no less than 35% of employees, shall be exempt from paying a state fee in courts when filing lawsuits in their interests;¹⁰³
- 2) the union “Voluntary Society of the Disabled of Kazakhstan” (DOIK), the Kazakh Society for the Deaf (KOG), the Kazakh Society for the Blind (KOS), and also their industrial enterprises, shall be exempt from paying a state fee when committing notarial acts with respect to all notarial acts.¹⁰⁴

¹⁰² See, *Ibid*, 76.

¹⁰³ Para. 17 of Article 541 of the TC RK.

¹⁰⁴ *Ibid*, Para. 10 of Article 542.

Fee for state registration of legal entities

NCOs are payers of a levy for state registration of legal entities in the following cases:

- 1) state registration of legal entities and accounting registration of affiliate and representative offices;
- 2) state registration of termination of activities of legal entities and accounting registration of termination of activities of their affiliate and representative offices;
- 3) reregistration of legal entities and accounting reregistration of their affiliate and representative offices;
- 4) issuance of a duplicate document which certifies the state (accounting) registration of legal entities, or their affiliate and representative offices.

The amount of the fee shall be calculated according to the rates, established in Article 456 of the TC RK:

- 1) the fee for state (accounting) registration of public associations of children and youth, public associations of disabled persons, their affiliate and representative offices, and affiliates of republican and regional national cultural public associations shall be 2 MCI. For reregistration and registration of termination of activities, or deregistration – 1 MCI;
- 2) the fee for state (accounting) registration of cooperatives of the apartment (housing) owners, their affiliate and representative offices, and for registration of termination of activities, accounting registration and deregistration – 1 MCI; for reregistration – 0.5 MCI;
- 3) the fee for state registration (reregistration) of political parties, their affiliate and representative offices, and for registration of termination of activities, accounting registration, deregistration of accounting registration – 14 MCI;
- 4) the fee for state (accounting) registration, reregistration of other legal entities, their affiliate and representative offices, and for registration of termination of activities, accounting registration, and deregistration of accounting registration shall be 6.5 MCI.

For the remaining taxes and other obligatory payments into the budget, there are no special conditions of taxation for NCOs.

Benefits for payment of customs duties

Paragraph 1 of Article 122 of the Customs Code of the RK lists the types of objects which are exempt from imposition of customs duties, including:

- 1) goods, except for excisable goods, which are imported in the form of humanitarian aid (Subpara. 4);
- 2) goods, except for excisable goods (except for cars, specially designated for medical purposes), which are imported as charitable assistance at the level of states, governments of states, and international organizations, including providing technical assistance (Subpara. 5);
- 3) goods, purchased at the expense of grants, which are provided at the level of states, governments of states, and international organizations, determined in accordance with the tax legislation of the RK (Subpara. 9).

The order of submitting the documents for exemption from imposing customs duties is determined by the Government of RK.

KYRGYZSTAN

General overview

This chapter makes use of materials from ICNL's 2015 publication, *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*. The text to a large extent repeats the same material due to the fact that the legislation has not changed in this part, but was edited and complemented.

NCOs in Kyrgyzstan have many sources of income, which are guaranteed by legislation. Foreign funding and income from entrepreneurial activity are the main sources in the Kyrgyz Republic (KR). Membership fees, donations from local legal entities and individuals, as well as state support play a role, but are not the main sources – a fact confirmed by the results of the research.

From November 2012 to June 2013, the Association of Civil Society Support Centers (ACSSC) conducted a study on the status of the development of the NCO sector in the KR. One of the elements of the study was the financial sustainability of the sector, namely sources of funding. According to this study, grants from foreign (donor) organizations still play a leading role among sources of NCOs' income, though this source's percentage considerably decreased in comparison with the results of previous research conducted by the ACSSC in 2005. With regard to diversification of sources of funding, "the range of used sources is quite wide, meanwhile every third [NCO] is partly funded from grants of donor organizations, while every fifth receives income from provision of goods and services, as well as from membership fees. Common sources of funding are sponsored contributions of commercial companies, private individual donations, and grants distributed in the framework of SSCs. Only a small part of [NCOs] (20%) has a diversified (three and more sources) system of funding, and most of the [NCOs] have not more than two sources of funding."¹⁰⁵

In 2012, the most considerable sources of funding were grants from international organizations (22%) and income from provision of services (goods) by organizations (15%). Other notable funding sources included membership fees (13%) and donations of members, employees, and founders (13%). Contributions of founders (12%) and private individual donations (9%) also made up a considerable part of funding. Sponsored help from local and foreign business organizations constituted 6% and 4%, respectively. Respondents very rarely mentioned SSCs (1%) and government subsidies (1%) as sources of funding.¹⁰⁶

However, according to the authors of the research, the volumes of foreign funding in KR also started gradually decreasing, although there is no statistical data to document this. For example, major donors, such as the Embassy of Finland, Soros Foundation Kyrgyzstan, and the Global Fund considerably reduced their budgets for grant funding for NCOs in the KR. Additionally, many post-conflict rehabilitation projects, initiated and beginning implementation in 2010, have ended.

There are local sources of funding in Kyrgyzstan, but they are limited in volume. The lack of funding from local sources is partly due to insufficient tax benefits for donors. Many companies help those in need directly, but not through NCOs. Individuals also rarely make donations. In-kind support is available more in rural areas and generally is provided on a one-time basis. Individual donations are small and often are not documented (since the KR legislation does not provide for any tax benefits

¹⁰⁵ ACSSC, *Status and perspectives of development of non-governmental sector of Kyrgyzstan (Report on Research)*, 62 (2013).

¹⁰⁶ *Ibid*, 63.

for individual donors). The number of NCOs engaged in entrepreneurial activity is still very low due to an inadequately favorable tax regime and lack of initial capital.

Below, we will consider the legal regulation of different sources of funding of NCOs in the order of their importance for the majority of NCOs in the KR, as well as the tax legislation pertinent to NCOs and their donors:

1. Foreign funding
2. Income from entrepreneurial activity
3. Income from local sources
4. State funding
5. Tax benefits for NCOs and their donors
6. Legal regulation of volunteers

1. Foreign funding

Funds received from foreign sources by NCOs in the KR make up the larger part of income for many NCOs. The KR legislation concerning the regulation of foreign aid corresponds to international best practices and does not create any obstacles for its receipt. In particular, the KR legislation does not contain any requirement for NCOs to get special permission from state bodies for receiving foreign aid. There is no requirement to register the receipt of foreign funds either. The reporting requirements for NCOs receiving foreign funding do not differ from those for NCOs receiving funding from local sources.

NCOs in KR receive the following types of foreign aid:

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

Most of the NCOs in KR receive foreign funding in the form of grants. Below, we will consider the legal regulation of each of the types of foreign aid.

1. Grants

The biggest part of foreign aid in KR comes in as grants. The Tax Code of KR¹⁰⁷ (hereinafter – TC KR) contains the following definition of a concept “grant”:

Grant – assets, given free of charge by states, international, foreign and national organizations to the Government of the KR, bodies of local self-governance, state, and NCOs, which do not participate in supporting political parties or candidates in election campaigns.¹⁰⁸

2. Donations

The KR legislation does not contain special norms regulating the order of giving or receiving donations, and does not differentiate between donations from local and foreign sources. Therefore,

¹⁰⁷ Tax Code of the Kyrgyz Republic, dated 17.10.2008 №230 (TC KR).

¹⁰⁸ Para. 6 of Article 153 of the TC KR.

an overview of the process of giving donations is described in Chapter 3 “Income from local sources” below.

3. Humanitarian aid

Humanitarian aid – assets, given by governments and organizations to the KR Government, organs of local self-governance, state, and non-commercial organization, as well as individuals in need, in the form of food, machinery, tools, equipment, medical equipment and medicines, and other property, to improve the living conditions and daily life of the population, and likewise to prevent and eliminate emergencies of a military, ecological, and anthropogenic character with the condition of their further consumption and/or gratuitous distribution.¹⁰⁹

2. Income from entrepreneurial activity

The NCOs in the KR are allowed to provide goods and services and to earn profit from this activity. The Law of the KR on Non-Commercial Organizations (hereinafter – Law on NCOs) stipulates the main principles of performing entrepreneurial activity by NCOs: “[An NCO...] is allowed to engage in economic activity, including production, without allocating the profit received between founders, members, officials, other employees, and members of the board of directors. Such activity may include production and provision of goods, performance of works, [and] provision of services in exchange for payment and other types of entrepreneurial activity, if they do not contradict the objectives and tasks of the organization.”¹¹⁰

The Civil Code of the KR (hereinafter – CC KR) defines an entrepreneurial activity as “an independent activity, executed at one’s own risk, aimed at receiving a profit.”¹¹¹ The TC KR’s definition of “entrepreneurial activity” makes reference to the CC KR. The TC KR also contains a definition of a broader concept of “economic activity,”¹¹² which includes “entrepreneurial and other activity.” “Other activity” in its turn includes the following types of activity:

- performing of activity in accordance with labor legislation of the KR;
- depositing money into banks;
- purchasing, transferring, or selling of securities, or shares of individuals or legal entities in the charter capital;
- receiving any payments in accordance with a share of an individual or a legal entity in the charter capital;
- receiving penalties, fines, compensation for moral damage;
- receiving insured sum (compensation) according to insurance agreements; and
- other activity, which is not considered entrepreneurial.

An NCO may engage in entrepreneurial activity itself or through creation of an affiliate commercial organization. In this case, the affiliate commercial organization transfers the profit received to a founder, i.e., to an NCO, which in turn directs these funds to achievement of the purpose of its creation.

¹⁰⁹ Para. 7 of Article 153 of the TC KR.

¹¹⁰ Article 12 of the Law of KR on Non-Commercial Organizations, dated 15.10.1999 №111.

¹¹¹ Para. 4 of Article 1 of the Civil Code of Kyrgyz Republic. Part I, dated 8.05.1996 №15.

¹¹² Article 21 of the TC KR.

The Law of KR on Patronage and Charitable Activity¹¹³ (hereinafter – Law on Patronage) sets a limit for charitable organizations to engage in entrepreneurial activity: the entrepreneurial activity performed by a charitable organization shall comply with the purpose of its creation. For example, a charitable organization supporting disabled persons, may open a shop selling specialized goods intended for the disabled (e.g., wheelchairs, crutches, or prosthetics). However, if a charitable organization engaged in other types of entrepreneurial activity, such as opening a sewing factory, auditing agency, or store selling other kinds of goods, then this would not comply with the purpose of its creation and the organization would lose its status as a charitable organization, and consequently would not be able to use tax benefits granted for charity organizations in the TC KR. This limitation does not permit charitable organizations to fully use the opportunity to gain income from engaging in entrepreneurial activity.

In contrast to charitable organizations, general NCOs are able to perform any type of entrepreneurial activity, as long as it does not contradict the purposes of the particular NCO's creation. For example, an NCO which was created in order to protect citizens' health could not sell tobacco products and other goods harmful for health, but could sell other goods which are not harmful for health.

In Subparagraph 2 Paragraph 2 of Article 161 of the CC KR and Paragraph 1 of Article 18 of the Law on NCOs, there is an analogous unsupported limitation of the right to engage in entrepreneurial activity for “public associations,” and in Paragraph 2 of Article 162 of the CC KR – for “public foundations.”

3. Income from local sources

1. Donations from legal entities and individuals

Assistance from local legal entities and individuals for NCOs generally comes in the form of donations and, less frequently, gifts. A donation means “giving away a thing or a property right for commonly useful purposes.”¹¹⁴ A donation can be made by an individual or a legal entity, irrespective of citizenship, country of registration, location, or place of donation. The CC KR stipulates that a donation can be made to “citizens, institutions of social protection, medical, reformatory, scientific, educational, charitable and other analogous institutions, museums and other cultural institutions, foundations, public and religious organizations, as well as the government and administrative territorial units.”¹¹⁵ In accordance with Paragraph 2 of Article 518 of the CC KR, it is not necessary to have someone's permission or agreement to receive a donation.¹¹⁶ According to Paragraph 3 of Article 518 of the CC KR, the donation of property to a citizen must be, and to a legal entity may be, accompanied by stipulations by the donor about use of the property for a certain purpose.

“The collection of donations may be performed through:

- 1) depositing cash into the cash box of an NCO;
- 2) placing money collection boxes in public places;
- 3) collecting donations via mobile phones;
- 4) collecting via quick payment terminals;

¹¹³ The Law of the KR on Patronage and Charitable Activity, dated 6.11.1999 №119.

¹¹⁴ Civil Code of Kyrgyz Republic. Part II, dated 5.01.1998 №1, Article 518.

¹¹⁵ Para. 1 of Article 518 of the CC KR (Part II).

¹¹⁶ ICNL, *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, 43.

5) collecting via the internet from a bank card or other means, not prohibited by law.”¹¹⁷

The Law on Patronage¹¹⁸ also stipulates that individuals and legal entities may give charitable donations to charitable organizations. The use of such donations is performed according to the order established by the Law on Patronage.¹¹⁹ This law has become the first example of the legal regulation of the activity of charitable organizations in Kyrgyzstan. According to this Law, NCOs registered as a public association, foundation, or institution are entitled to voluntarily obtain status as a charitable organization. The status of “charitable organization” allows an NCO to apply tax benefits available to charitable organizations in the TC KR. However, it sets stricter requirements for reporting and transparency in comparison with general NCOs.

Despite the availability of tax benefits for charitable organizations in the TC KR, in practice not a single organization uses these benefits, as there are no charitable organizations in the country. The problem is that the current law establishes very harsh and unattainable requirements for charitable organizations. For example, for an NCO to be recognized as a charitable organization, it must direct 98% of its income to charitable purposes and can spend only 2% for administrative costs (e.g., office rent, payment for utilities, stationery, or employee salaries). This condition is practically unattainable, as not a single organization can successfully run on 2% of its income.

2. Entry and membership fees

Membership NCOs receive part of their income in the form of entry and membership fees. NCOs which are not membership-based are foundations and institutions; all other types of NCOs in Kyrgyzstan are considered membership organizations (public associations, unions of legal entities, religious organizations, association of homeowners, association of water users, and professional unions).

Membership fees are assets, transferred by a member of an NCO in the amount and in accordance with the order stipulated in the statutory documents of the organization, if such a transfer does not entail a reciprocal transfer of goods, works, or services to the member of this organization free of charge or at the price lower than their net costs.¹²⁰

Entry fees are assets, transferred by an individual when entering a membership-based NCO, in the amount and in accordance with the order stipulated in the statutory documents of the organization, if such a transfer does not entail a reciprocal transfer of services to the member of this organization free of charge or at the price lower than their net costs.¹²¹

4. State funding of NCOs

The main forms of state funding of NCOs in KR are SSCs, state procurement of services, and subsidies, as well as other forms of state support. Below we will briefly describe each of these forms.

1. SSCs

¹¹⁷ *Ibid*, 43-44.

¹¹⁸ Law of Kyrgyz Republic on Patronage and Charitable Activity dated 06.11.1999 #119.

¹¹⁹ Article 14 of the Law on Patronage. See also Article 15 of this Law.

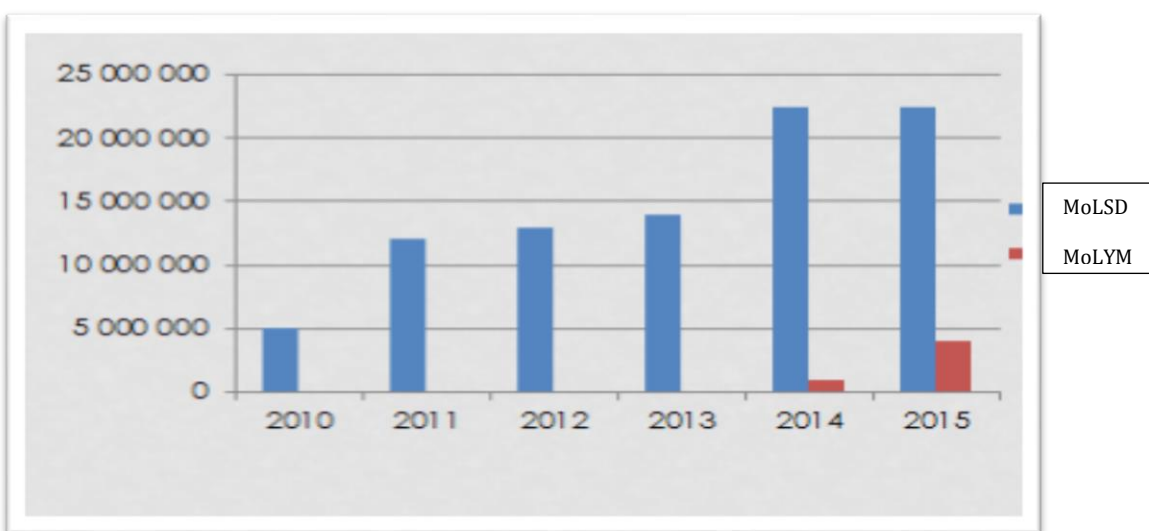
¹²⁰ Para. 29 of Article 153 of the TC KR.

¹²¹ *Ibid*, Para. 4.

The Law of the KR on State Social Contracts (hereinafter – Law on SSC) was adopted in July 2008, which created a legal basis for implementation of social programs (projects) and some measures, aimed at solving social economic tasks and providing services at the expense of funds from the state budget.¹²²

Annually, the government allocates funds from the state budget to finance publicly useful projects through the SSC mechanism. “So far each year there is a tendency of increase of allocated funds by the Ministry of Labor and Social Development of the KR (hereinafter – MoLSD),¹²³ (1) In 2010, 5 million soms were allocated; (2) in 2011 – 12 million soms; (3) in 2012 – 13 million soms; (4) in 2013 – 13.9 million soms; (5) in 2014 – 22.5 million soms; and (6) in 2015 – 22.5 million soms were allocated. In 2014, the Ministry of Labor, Youth and Migration Policy (hereinafter – MoLYM) allocated a sum of 1 million soms for SSCs, and in 2015 – 4 million soms. In 2015, the bodies of local self-governance (hereinafter – LSG) also allocated 11 million soms for SSCs, which were provided by GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit – German Organization for International Cooperation).”¹²⁴

**Grants from the state budget
for funding publicly useful projects of NCOs
through SSCs**



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According to the Law on SSC, the funding of social programs (projects), implemented in the framework of SSCs, should be done at the expense of the republican and local budgets of the KR in the form of grants.

¹²² The Law on SSC, Article 1 (definition of SSC).

¹²³ The Ministry of Social Development of the KR (hereinafter – MSD) was renamed as the Ministry of Labor and Social Development of the KR (MoLSD) in 2015.

¹²⁴ ICNL, *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*, 58.

¹²⁵ *Ibid.*

The order of allocating funds is as follows. Every ministry makes a request for funding indicating the required amount. The ministry's request is considered by the Ministry of Finance, as well as the Prime Minister and his apparatus. The amount of the allocated sum is based not only on the ministry's request, but also from the availability of funds in the state budget. Additionally, every ministry must substantiate its request and demonstrate the necessity of funding publicly useful programs/projects through the SSC mechanism.

In cases when SSCs are financed from the LSG budget, a decision on providing or rejecting funds is made by the representative body of the LSG, based on the proposal of the executive body of LSG. The amount of allocated sum depends on the planned social program.

In accordance with the provisions of the Law on SSC, the LSG bodies play a key role in determining the social services needs at the local level. In practice, the situation is that the local budgets often lack funds for social projects, and therefore the LSG bodies cannot serve as service requesters, since they cannot provide SSC funding.

The Law on SSC states that every year there should be funds planned for financing programs (projects) through SSCs in the republican budget. Accordingly, the ministries must plan for social programs to be financed through SSCs in their activities, as well as make sure that funds are allocated from the budget. However, thus far only the MoLSD and the MoLYM¹²⁶ use the SSC mechanism. From 2009 to 2013, during the first five years after adoption of the Law on SSC, this mechanism was used only by one state organ – the MSD. In 2015, the MoLYM started using this mechanism as well. NCOs note that this is not sufficient for the full-fledged development of the civil sector and recommend that the Ministry of Education and Science, the Ministry of Health, and other ministries and agencies of the KR introduce SSCs in their activities.

Besides the Law on SSC, a number of normative legal acts (hereinafter – NLAs) of the KR note the possibility of applying the SSC mechanism by different state bodies. For example, Article 3 of the Law of the KR on the Basis of Governmental Youth Policy¹²⁷ note financial support of youth organizations by state bodies and LSG bodies. According to this law, funding of youth initiatives in the framework of the implementation of state youth policy may be done through SSCs in the order established by the KR legislation.¹²⁸ Additionally, this law states that specialized organizations perform activities on social support, provision of household, medical, psychological-pedagogical, and legal services, and assisting the social and psychological adaptation and social rehabilitation of young citizens who face difficult life situations, based on the results of SSC competition.¹²⁹

The Regulation on the State Agency on Youth Affairs, Physical Culture and Sport under the Government of the KR¹³⁰ (hereinafter – SAYPS) states that functions of this agency include attracting investments and grants for financial support of programs and projects, as well as execution of a state contract for implementation of government policy on questions related to youth, physical culture and

¹²⁶ At present time, the MSD is renamed as the MoLSD, and the MoLYM as the State Agency on Youth Affairs, Physical Culture and Sport under the Government of the KR.

¹²⁷ The Law of the KR on the Basis of the Governmental Youth Policy dated 31.07.2009 №256.

¹²⁸ *Ibid*, Para. 2 of Article 13.

¹²⁹ *Ibid*, Para. 2 of Article 18.

¹³⁰ Regulation on the State Agency on Youth Affairs, Physical Culture and Sport under the Government of the KR dated 2.12.2015 № 819.

sport, and execution of a state contract for conducting scientific research and development in the sphere of its activity.

The abovementioned NLAs directly indicate that funding of youth organizations, as well as organizations engaged in the development of physical culture and sport, can be issued from the state budget through the SSC mechanism, in the framework of implementing projects in the field of government policy related to youth, physical culture, and sport.

The order of conducting a competition for receiving state funding is described in details in the research *Some Issues of Legal Regulation of NCOs' Activity in Countries of Central Asia*¹³¹ and has not changed since the publication of this research.

In 2013, research on implementation of SSCs in the KR was conducted,¹³² which revealed more than twenty shortcomings of current legislation and existing SSC practice, including:

1. an imperfect mechanism for determining which social programs to fund through SSCs;
2. an inconvenient means of submitting an application and other application documents to the competition commission for the participants of the competition;
3. a complicated and non-transparent order for assessing competition participants' project proposals; and
4. insufficient requirements to the terms of the agreement on SSC implementation; among others.

On November 1, 2016, the KR parliament considered a draft law, developed by the MoLSD with the participation of NCOs, the adoption of which would address many of the abovementioned problems.

2. State procurement

The order of executing of state procurement of goods, works, and services is regulated by the Law of the KR on State Procurement.¹³³ Article 11 of this law lists the following steps for conducting state procurement:

- 1) planning of a procurement process by the purchasing organization;
- 2) creation of a competition commission;
- 3) development of the competition documents and prequalification documents, when prequalification is necessary (in case of state procurement of complex, expensive, or highly specialized types of goods, works, and services);
- 4) publication of an announcement;
- 5) competition period;¹³⁴

¹³¹ The research is available at the following link:

<http://www.icnl.org/programs/eurasia/Comparative%20research%20CAR.pdf>.

¹³² See "Analysis of the state social contract in Kyrgyz Republic and recommendations for its improvement," USAID, EWMI, ICNL, Bishkek 2014; part 3 "Problems in the SSC system in Kyrgyzstan and recommendations for its improvement."

¹³³ The law was adopted on 3.04.2015, № 72.

¹³⁴ Includes such stages, as submitting competition documents and prequalification documents, explaining and changing prequalification and competition documents and submitting competition applications and applications for the participation in the prequalification process in accordance with Article 23 of the Law, except for cases when procurement is done through a direct conclusion of a contract.

- 6) opening of competition applications (except for cases when procurement is done through direct conclusion of a contract);
- 7) assessment and comparison of competition applications;
- 8) selection of a winning bidder; and
- 9) conclusion of an agreement.

Although formally NCOs may participate in competitions for receiving state procurement contracts equally with commercial organizations, most NCOs do not use this mechanism due to the following reason. Article 52 of the Law of KR on State Procurement stipulates that a purchasing organization may request a collateral security for the contract from a supplier (contractor). Collateral security may be presented in the form of cash deposits, treasury bonds, bank guarantees, securities issued or secured by the National Bank of the KR in the form of certificates of the deposit bearer, guarantees, and pledged securities, given by individuals or legal entities. As a rule, NCOs do not have free funds which they can present as collateral security.

3. Subsidies and other types of state support

A definition of “subsidies” is given a number of laws of the KR.¹³⁵ In the TC RK, a “subsidy” is defined as “assistance given by the Government of the Kyrgyz Republic, Zhogorku Kenesh of the Kyrgyz Republic, and local kenesh of the Kyrgyz Republic in the form of transfer of assets to a taxpayer in exchange for the past or future performance of certain conditions, related to their economic activity.”¹³⁶

Paragraph 4 of Article 20 of the Law of the KR on the Main Principles of Budget Law in the Kyrgyz Republic¹³⁷ states that “the expenditure part of the budgets in exceptional cases may contain subsidies for legal entities to ensure fulfillment of functions and tasks of the government and [LSG...].” Hence, NCOs may in “exceptional cases” receive subsidies from the republican or local budget.

In accordance with Article 11 of the Law on Patronage, participants of charitable activity (who are citizens and legal entities, performing charitable activity, or in whose interests this activity is performed) can receive support from bodies of state power and LSG bodies in the following forms:

- providing benefits on payment of taxes, customs duties, and other collections and payments and other benefits, in accordance with the laws of the KR;
- providing logistics and subsidizing charitable organizations (including full or partial exemption from payment for the services, provided by government organizations, from payment for the use of state property);
- funding, on a competitive basis, charitable programs developed by charitable organizations;
- transferring state property, which is in the process of denationalization and privatization, into the ownership of charitable organizations on a free or preferential basis, performed according to the order established by the legislation.¹³⁸

ICNL is aware of two cases when NCOs were subsidized by the state:

¹³⁵ The Law of the KR on Subsidies and Compensatory Measures dated 31.10.1998 №140, contains a definition of a “subsidy,” however, this law regulates relationships, in which an NCO is not a party.

¹³⁶ The TC RK, Article 153, Para. 26.

¹³⁷ The Law of the KR on Main Principles of Budget Law in the Kyrgyz Republic” dated 11.06.1998 № 78.

¹³⁸ Article 11 of the Law on Patronage.

- 1) The city administration of Bishkek provided premises for the Sezim crisis center for long-term free use (individually at the request of Sezim).
- 2) The MoLSD provided premises for [public association] “ARDI” on the basis of an agreement on free use of the premises for five years (not on the basis of a NLA, but individually).

It is worth noting that in 2016, a new Budget Code was adopted in Kyrgyzstan, wherein subsidies were listed as one of the types of operational expenses from the state budget (republican and local). Subsidies, according to this code, “are provided to legal entities – producers of goods, works, [and] services on a gratuitous and irrevocable basis for compensation of losses, suffered by them when performing their production activity, in accordance with state economic and social policy.”¹³⁹

5. Tax benefits for NCOs and their donors

1. Concept of NCO for taxation purposes

Before we consider what tax benefits the KR legislation grants for NCOs and their donors, we shall give a definition of an NCO, contained in the tax legislation of the KR for taxation purposes. Paragraph 11 of Article 153 of the TC KR states:

An NCO is an organization, which meets the following requirements:

- a) this organization is registered in an organizational legal form, provided by the KR legislation on NCOs,¹⁴⁰ as well as other KR legislation; and
- b) this organization does not aim at receiving profit as the main purpose of its activity and does not distribute gained profit between its members, founders, and officials.¹⁴¹

This status in itself is not sufficient to apply a specific tax regime or to receive tax benefits. If, in the course of its activity, an NCO gains profit, it must pay income tax similarly to other subjects. Moreover, an NCO would pay VAT, if the volume of taxable supplies, delivered by this organization within one year, reaches the registration threshold for VAT. Employees of NCOs must pay IIT on income they receive. Additionally, NCOs pay sales tax, land tax, and property tax.

2. Taxation of charitable organizations

At the same time it should be noted that the tax legislation in some ways encourages the activity of NCOs, especially charitable organizations. In accordance with Paragraph 2 of Article 153 of the TC KR, a charitable organization is an NCO:

- 1) created and performing charitable activity in accordance with legislation on NCOs and charitable activity;
- 2) not performing activity on production and/or realization of excisable goods; and

¹³⁹ Paras 1 and 5 of Article 22 of the Budget Code of the Kyrgyz Republic dated 16.05.2016 № 59 (the Code comes into force on 1.01.2017).

¹⁴⁰ According to KR legislation, NCOs can be created in the following organizational legal forms: public associations, foundations, institutions, unions (associations) of legal entities, jamaaty (community organizations), partnerships of home owners (condominiums), non-commercial cooperatives (housing maintenance, summer cottage, garage etc.), credit unions, trade unions, associations of employers, associations of water users, stock exchange, self-regulatory organization of professional participants of the securities market, non-governmental pension fund, political party, and religious organizations.

¹⁴¹ Para. 11 of Article 153 of the TC KR.

- 3) not participating in activity in support of political parties or election campaigns.

The Law on Patronage clarifies that such an organization must be non-governmental and be created for the realization of goals, listed in this Law, in the interests of society or certain categories of persons.¹⁴²

Paragraph 1 of Article 153 of the TC KR also defines charitable activity as a voluntary activity of an individual and/or a legal entity, directed at realization of charitable goals, provided for by the KR legislation on charitable activity, entailing transfer of assets to citizens and legal entities,¹⁴³ rendering services, and performing works on a disinterested (gratuitous or preferential terms) basis or for payment, not exceeding expenses incurred for their implementation. Article 1 of the Law on Patronage contains “providing other support” in this definition.

“To attain status as a charitable organization, NCOs must meet the criteria, established by the legislation for charitable organizations. In particular, these criteria are contained in the Law on Patronage. In accordance with this law, an organization is recognized as charitable, if it spends not less than 98% of funds received for charitable purposes.¹⁴⁴ This means that expenses for salaries of NCO’s staff members, office rent, purchase of equipment and other necessary material resources must comprise not more than 2% of funds received.”¹⁴⁵

This Law defines the following list of charitable purposes:

- providing social support and protection of citizens, including improvement of the material conditions of poor people, social rehabilitation of unemployed persons, disabled persons, and other persons, who due to their physical and (or) intellectual capacities, or other circumstances, are unable to realize their rights and lawful interests themselves;
- providing assistance to victims who have suffered from natural disasters; ecological, industrial, or other catastrophes; social, national, or religious conflicts; and forced migrants;
- facilitating strengthening of peace, friendship, and harmony among nations, preventing social, national, or religious conflicts;
- facilitating activity in the sphere of education, science, culture, art, education, and individual spiritual development;
- facilitating protection of motherhood and childhood;
- facilitating activity in the sphere of prevention and protection of the health of citizens, as well as promoting healthy lifestyles, and improving the moral psychological conditions of citizens;
- facilitating activity in the sphere of physical culture and mass sport;
- environmental protection and protection of animals;
- protection and proper maintenance of buildings, objects, and territories having historical, cult, cultural, or environmental significance, as well as burial sites.¹⁴⁶

Charitable organizations are exempt from paying three types of taxes: income tax, VAT, if supplies are made for charitable purposes, and sales tax. “Regarding common NCOs, tax benefits are granted through releasing certain types of income, turnovers, socially-useful supplies, from taxation. The rationale behind this approach is that not a single organization may be released from paying taxes,

¹⁴² Article 5 of the Law on Patronage.

¹⁴³ The Law on Patronage uses the phrase “property, including monetary funds” instead of the word “assets.”

¹⁴⁴ Article 9 of the Law on Patronage.

¹⁴⁵ ICNL, *Non-commercial Law (Textbook)*, 78 (N. Idrisov ed., Kirland 2012).

¹⁴⁶ Article 1 of the Law on Patronage.

just because it declares itself as non-commercial. While income, turnovers, and supplies of an organization are considered preferential, it won't pay any taxes. However, when taxable objects appear, taxes are paid on a general basis. This may happen at any stage of its activity, since any NCO is entitled to conduct an economic transaction which is not prohibited by law, receive income, or deliver supplies subject to taxation."¹⁴⁷

The law prohibits granting tax benefits individually to certain charitable organizations, their founders (members), and other participants of charitable activity. A charitable organization is entitled to get tax and other benefits, established by law, from the moment of its state registration.¹⁴⁸

3. Income tax of NCOs

As a rule, tax legislation does not release NCOs from income tax. If an NCO receives taxable income, then it should pay a tax at 10% in the general manner. Exceptions are, according to Paragraph 2 of Article 212 of the TC KR, income received by the society of disabled persons of Categories I and II; organizations of the Kyrgyz Society of the Blind and Deaf; and individual entrepreneurs, who employ not less than 50% of blind and deaf persons from the total number of employees, with their salaries comprising at least 50% of the total amount of salaries for all employees. In this case, such organizations are exempt from paying income tax. The list of such societies, organizations, and individual entrepreneurs is determined by the Government of the KR.¹⁴⁹ Similarly, the income of credit unions is also exempt from income tax, according to Paragraph 7 of Article 212 of the TC KR.

Furthermore, in accordance with sub-Paragraph 1 of Paragraph 1 of Article 212 of the TC KR, "a profit received by the charitable organizations is also exempt from taxation."

Besides the exemption from income tax of certain types of NCOs, the TC KR provides for certain benefits through exemption of some types of income received by NCOs.

The following types of income received by NCOs are exempt from income tax:

- a) membership and entry fees;
- b) humanitarian aid and grants, if they are used for statutory objectives;
- c) cost of gratuitously received assets, if they are used for statutory objectives;
- d) payment for services of technical maintenance of apartment houses, buildings, and structures servicing them;
- e) payment for services of delivery of irrigation water provided by associations of water users for their members within the framework of their statutory activity;
- f) income from providing religious rites, rituals, ceremonies, and services for the organization and conduct of pilgrimage, as well as voluntary donations.¹⁵⁰

¹⁴⁷ ICNL, *Non-commercial Law*, 77.

¹⁴⁸ Article 11 of the Law on Patronage.

¹⁴⁹ The list of enterprises of the society of disabled persons of I and II categories, as well as organizations of the Kyrgyz society of blind and deaf, which employ not less than 50% of blind and deaf persons from the total number of employees, while their salaries comprise 50% of the total amount of salaries for all employees, are exempt from paying an income tax. The list is approved by the decree of the Government of KR on 30.12.2008 N 736.

¹⁵⁰ Paragraph 3 of Article 189 of the TC KR.

Membership and entry fees are defined in Section 3 “Income from local sources.” Definitions of humanitarian aid and grants are given in Section 1 “Foreign funding.” Types of NCO income, listed under items c)–e), are not defined in the TC KR.

The Law of the KR on Freedom of Religious Belief and Religious Organizations in the Kyrgyz Republic gives definitions of the following concepts:

- pilgrimage – visit of religiously significant holy places by pilgrims;
- religious rites – a set of religious actions, which embody religious ideas;
- religious rituals and ceremonies – an order of performing ritual actions, established by the religious belief.¹⁵¹

It is necessary to note that the sum of expenses, not related to the receipt of income exempt of taxation, is not deductible.¹⁵² “This means that it is necessary to keep a separate accounting of income and expenses on statutory non-commercial activity and income and expenses on commercial activity (if an NCO conducts such activity). One needs to keep in mind that this separate accounting method is complicated in practice and not clearly regulated in legislation.”¹⁵³

4. Tax benefits for NCOs’ local donors

The TC KR allows taxpayers to reduce their taxable income by deducting expenses for charity when calculating their payable income tax. Thus, Article 208 of the TC KR contains the following norm: “Assets, including monetary funds and property (at their balance cost), transferred gratuitously to charitable organizations and organizations of culture and sport, regardless of forms of ownership, in the amount of not exceeding 10% of taxable income of a taxpayer during a tax year, are subject to deduction from total annual income, if these assets are not used by the taxpayer himself for his own needs.”

Donors are not entitled to a deduction, if they support NCOs which do not possess the status of a charitable organization and are not organizations of culture and sport.

Hence, legislation allows national donors, including individual entrepreneurs, to reduce their taxable income by the amount of expenses for charity, but not more than 10% from the total taxable income.

Individuals do not enjoy this benefit. Only legal entities and individual entrepreneurs are entitled to get reductions.

5. VAT for NCOs and donors

In general, NCOs are not exempt from paying VAT. However, in most of the cases, they do not pay VAT, because the volume of their taxable supplies usually does not reach the registration threshold, which is currently set at 8 million soms (approximately \$116,500) for 12 consecutive months.¹⁵⁴ If an organization reaches the registration threshold, during the next month it should obtain VAT registration from a tax authority and pay this tax on a monthly basis and submit reports until it ceases to execute taxable supplies and annuls the registration.

¹⁵¹ Article 3 of the Law on Freedom of Religious Belief and Religious Organizations in the Kyrgyz Republic” dated 31 December 2008 №282.

¹⁵² Paragraph 13 of part 1 of Article 209 of the TC KR.

¹⁵³ ICNL, *Non-commercial Law*, 79.

¹⁵⁴ Paragraph 1 of Article 229 of the TC KR.

The VAT calculation is completed as follows. If goods, works, and services are purchased from VAT taxpayers – a sum of the tax is indicated on an invoice separately from a purchasing price. When preparing a report, a taxpayer calculates the VAT sum, charged to its buyers during a month, and then deducts VAT already paid and VAT payable. If VAT for supplies exceeds VAT for purchases, the difference shall be paid to the state. If this difference is negative, then this amount is applied to the taxpayer's personal account and used to cover taxes for future periods.

However, the TC KR exempts from VAT certain supplies, made by NCOs:

“Supplies made by an NCO for payment not exceeding the costs of these supplies are exempt from VAT, if these supplies are:

- 1) for the welfare and protection of children or poor citizens of old age; or
- 2) in the sphere of education, medicine, science, culture, and sport.”¹⁵⁵

In accordance with Article 251 of the TC KR charitable organizations are exempt from VAT, if supplies are made for charitable purposes. However, the TC KR does not explain what “supply of services for charitable purposes” means. Above we have listed the purposes, for which charitable organizations may be created. Admittedly, when interpreting the concept of “supply of services for charitable purposes,” one can take into consideration those listed purposes.

Providing religious rites, rituals, and ceremonies, as well as services for the organization and conduct of pilgrimage, shall not be subject to VAT taxation.¹⁵⁶ Hence, supposedly, religious organizations do not pay VAT when rendering these services.

A transfer of fixed assets into the ownership of an organization based on the decision of the Government of the KR or LSG bodies is also exempt from VAT.¹⁵⁷ It is necessary to note, that if an individual supplies goods to an NCO free of charge, the liability to pay VAT rests on the supplier.

Besides the benefits for taxation of supplies, the TC KR provides for benefits for NCOs and their donors, in the form of exemption for certain types of import. Thus, specialized goods for disabled, imported to the KR, are exempt from VAT.¹⁵⁸ Goods, imported to the KR in the form of humanitarian aid and grants, are also exempt from VAT according to the order established by the Government of the KR.¹⁵⁹ The Government of the KR also may establish a special customs regime in relation to goods transferred over the customs border as grants and humanitarian aid.¹⁶⁰ In cases, when international and other agreements provide for an exemption from paying taxes, customs duties, and other payments, or if it is indicated that funds provided in the framework of international and other agreements shall not be used for payment of taxes, customs duties, and other payments, the import of goods, carried out at the expense of grant and credit funds, is exempt from VAT, excise tax, customs duties, and other payments for customs clearance when there is an external economic transaction on behalf of an organization, a department of project realization, and general contractor.¹⁶¹ Goods, which

¹⁵⁵ *Ibid*, Article 252.

¹⁵⁶ *Ibid*, Subpara. 7 of Para. 2 of Article 231.

¹⁵⁷ *Ibid*, Para. 2 of Article 253.

¹⁵⁸ *Ibid*, Para. 2 of part 1 of Article 257.

¹⁵⁹ *Ibid*, Para. 8 of part 1 of Article 257.

¹⁶⁰ Article 178 of the Customs code of the Kyrgyz Republic, dated 12 July 2004 № 87.

¹⁶¹ Part 2 of Article 5 of the Regulation on the order of implementation of international and other agreements, to which Kyrgyz Republic is a party, in the part of exemption from paying taxes, customs duties and other payments. Approved by the decree of the Government of KR, dated 12.04.2011 № 155.

are imported to the KR as part of humanitarian aid, as well as means of transportation and delivering humanitarian goods, are exempt from taxes, customs duties, and fees for executing actions associated with the release of the goods.¹⁶²

In certain cases, per Articles 278 and 279 of the TC KR, there is compensation or a refund of the excess amount of VAT on the acquired material resources over the amount of VAT on the taxable supplies and for supplies taxable at the zero rate. However, the amount to be refunded is used to cover fines and tax penalties on VAT of a taxpayer, or VAT for the following tax period, including arrears on VAT for import of goods or arrears on other taxes.

6. Land, property and other taxes and compulsory payments, influencing NCOs

IIT and insurance contributions to the Social fund

“All commercial and non-commercial organizations are obliged:

- 1) to pay insurance contributions to the Social Fund from their own funds in the amount of 17.25% of all types of payments, accrued in favor of employees (portion of the employer);
- 2) to withhold from accrued salaries of employees and transfer:
 - to the Social Fund, insurance contributions in the amount of 10% of salary accrued in favor of an employee (portion of the employee);
 - to the state, IIT in the amount of 10% of salary accrued in favor of an employee.

Income of NCOs' employees is subject to IIT on the general basis. They pay income tax even if salaries are paid from non-taxable income, such as grants [or] entry and membership fees. IIT is normally charged at the source of payment, which is the employing organization.”¹⁶³ The exception to this norm is income of employees of religious organizations in the form of salary, awards, compensation, and other compensatory and incentive payments. These types of income are not subject to IIT in accordance with Paragraph 42 of Article 167 of the TC KR.

Furthermore, “some types of income, paid by NCOs to individuals, - in particular, gratuitously transferred assets from NCOs to individuals requiring social rehabilitation or adaptation, medical help and possessing income below the subsistence level: (a) refugees and (b) seriously ill persons -, are not subject to IIT. This norm is reflected in Paragraph 37 of Article 167”¹⁶⁴ of the TC KR. Also, in accordance with Paragraph 22 of Article 167 of the TC KR, income received in the form of payments made by trade union authorities to disabled and retired persons, orphans, and mother or fathers of large families, is also not taxable income.

The TC KR does not contain any benefits for citizen grantees of charitable grants. “For example, grants, given to individuals for studying, research, [and] literary and other activity, are not grants for the purposes of taxation, and are considered as part of the total annual income of a grantee and as taxable income in the general manner. Exceptions are the cost of property, received by an individual as humanitarian aid (Para. 26 Art. 167), as well as gratuitous help, received from an individual and considered as a gift and therefore not a taxable income.”¹⁶⁵

¹⁶² Article 6 of the Regulation on the order of receiving and allocating of humanitarian aid in the Kyrgyz Republic. Approved by the decree of the Government of KR, dated 01.02.2016 № 43.

¹⁶³ ICNL, *Non-commercial Law*, 80.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*, 80-81.

Land tax

“The land tax is paid by the persons recognized as land owners or land users whose rights for the land plot is certified by the state act of ownership or use. The land tax includes a tax on agricultural land and land of settlements, industry, transport, communications, defense, environmental protection, health, recreational, forestry, and others. The rates in the TC KR are established differentially, depending on the location and classification of the land plots (their intended use).”¹⁶⁶ Certain types of NCOs are exempt from paying the land tax. Thus, in accordance with Paragraphs 5, 8 and 9 of Article 343 of the TC KR, the following categories of land are not taxable:

- 5) land of the organizations of disabled persons, war veterans, and persons of similar status, and land owned by the Kyrgyz Society of Blind and Deaf, and individual entrepreneurs, where disabled, blind and deaf persons make up no less than 50% of the total number of employees and their salaries account for no less than 50% of the total amount of salaries of all employees. The list of such societies, organizations and individual entrepreneurs is set by the Government of the KR;
- 8) land of sanatoriums, holiday houses, and boarding houses of labor unions, included in the sanitary protection zone; and
- 9) land of liturgical objects¹⁶⁷ of religious organizations, registered in the manner established by KR legislation.

Property tax

“Property tax is imposed on immovable and movable property, which can be under state, municipal, or private ownership.¹⁶⁸ Property tax differs from land tax in that land tax is applied to land plots, while property tax is applied to the constructions built on land plots.

The tax payer of a property tax is its owner. If it is impossible to determine the owner of the property (for example, in the absence of property rights’ registration), the payer of the property tax shall be the organization or an individual using this property. State property, transferred to private use, is subject to property tax and the latter shall be paid by the users of this property.”¹⁶⁹

According to the TC KR, the property objects shall be divided into four groups:

- Group 1: dwelling houses, apartments, summer residences (cottages), designed for permanent or temporary stay, and not used for performing entrepreneurial activity;
- Group 2: dwelling houses, apartments, summer residences (cottages), boarding houses, rest houses, sanatoriums, resorts, production, administrative, industrial, and other capital structures, designed and/or used for performing entrepreneurial activity;
- Group 3: temporary buildings from metal and other constructions, such as kiosks and containers, designed and/or used for performing entrepreneurial activity; and
- Group 4: means of transportation, including self-propelled machines and mechanisms.¹⁷⁰

¹⁶⁶ *Ibid*, chapter 6, Para. 6 “Land tax,” p. 82.

¹⁶⁷ Liturgical objects – immovable property of religious institutions used directly for worship, prayers for the purpose of joint confession and dissemination of faith.

¹⁶⁸ Part 1 of Article 324 of the TC KR.

¹⁶⁹ ICNL, *Non-commercial Law*, 83.

¹⁷⁰ Part 2 of Article 324 of the TC KR.

The calculation of a taxable cost of an immovable property (Groups 1, 2, and 3) depends on the year of the construction, type of construction materials used to build the immovable property (such as brick or concrete), and the location of the property, inside the country as well as in any other settlement.

If a property is used for entrepreneurial activity (Groups 2 and 3), the property tax rate is set at 0.8% of the taxable base (cost), but if a property is not used for entrepreneurial activity (Group 1), then the rate is set at 0.35% of the taxable base (cost).

The rate of a taxable cost of property of the Group 4 is set depending on the type, engine capacity, year of production of the vehicle, and other technical characteristics.¹⁷¹

There are certain peculiarities in paying the property tax. According to the TC KR, an NCO's property used for non-commercial purposes (for example, for the needs of an office), and not used for carrying out entrepreneurial activity, does not fall under any of the above listed groups. Therefore, such property of an NCO shall not be subject to property tax. However, even if a part of an NCO's immovable property is rented out or used for carrying out entrepreneurial activity, then all of this property shall be classified under Group 2 and be the subject to property tax at the rate of 0.8% of the taxable base.

Regardless of the purpose of using the property, some NCOs are exempt from paying the property tax, depending on the sphere of their activity. In accordance with Paragraphs 3 and 4 of part 1 of Article 330 of the TC KR, the property tax shall not imposed on the following objects:

- 3) property objects of the society of the disabled persons of Categories I and II, organizations of the Kyrgyz Society of the Blind and Deaf, where disabled, blind, and deaf persons compose no less than 50% of the total number of employees and their salaries account for no less than 50% of the total amount of salaries of all employees, as well as institutions and enterprises of the penitentiary system. The list of the above indicated enterprises shall be determined by the Government of the KR;
- 4) property objects of Group 2 organizations, carrying out activities in the sphere of science, education, health service, culture, sports, social welfare, and protection of children or low-income senior citizens.

Sales tax

"Sales tax – is indirect tax (valuation charge to the cost of goods or services), which is charged to a buyer and paid to the budget by a supplier from the total value of goods or services. The taxation object of the sales tax is sale of goods, performance of works, and provision of services. The rate of the sales tax varies depending on whether the sale of goods, works, or services is subject to VAT or is exempt from VAT. The other criteria for determining the rate of the sales tax is whether the sale of goods, works, or services is carried out for trading activities or not."¹⁷²

The sale of goods, works, or services which is subject to VAT and/or exempt from VAT, and paid for in cash, is taxed at a rate of 1% when carried out for trading activities and 2% when carried out for non-trading activities. The rate of the sales tax for the taxpayers who pay VAT and receive an income from the sale of goods, works, or services in non-cash form, is set at 0%. If the sale of goods, works,

¹⁷¹ *Ibid*, Article 328.

¹⁷² ICNL, *Non-commercial Law*, 85.

services is not subject to VAT (if the VAT registration threshold was not reached), and is not exempt of VAT, then the rate of the sales tax for the sale of goods, works, services, paid for in cash, is set at 2% for trading activities and 3% for non-trading activities, respectively.

“In accordance with part 2 of Article 315 of the TC KR, the sales tax exemption shall apply to the sale of goods, performance of works, or provision of services by [NCOs], provided that the payment does not exceed the cost of that sale, performance of works, or provision of services:

- 1) for the purpose of social welfare and protection of children or low-income senior citizens; or
- 2) in the sphere of education, health service, science, culture, and sports.”¹⁷³

In accordance with Paragraphs 4 and 5 of part 1 of the same Article, the sales tax exemption shall apply to the sale of goods, performance of works, or provision of services by charitable organizations and societies of disabled persons of Categories I and II, organizations of the Kyrgyz Society of the Blind and Deaf, and individual entrepreneurs, where disabled, blind and deaf persons make up no less than 50% of the total number of employees and their salaries account for no less than 50% of the total amount of salaries of all employees. The list of these societies, organizations and individual entrepreneurs shall be determined by the Government of the KR.

6. Legal regulation of volunteers

The legislation of Kyrgyz Republic does not regulate the legal status of volunteers, as well as issues related to the implementation of volunteering activities. Some legislative acts contain such wording as “voluntary activity” or “labor of volunteers,” but there is no clear regulation of such relations. For example, the Law on Patronage states that the labor of volunteers is one of the allowed sources for the formation of charitable organization's property. See Article 8 of the Law on Patronage.

¹⁷³ *Ibid.*

TAJIKISTAN

General Overview

In this section, materials are used from ICNL's 2015 publication, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*. Text was edited and amended and includes changes in legislation which occurred after publication of the above-mentioned edition.

The issue of financial sustainability for NCOs is critical in the Republic of Tajikistan (hereinafter – RT). According to authors, this is due to NCOs' lack of skills and experience in fundraising, as well as limited available resources (a limited number of local and foreign donors).

Traditionally, foreign aid was an important funding source of many NCO's activities. Foreign donors give small grants and contracts to NCOs on services provision in social sphere. Until recently, NCOs in the RT could receive foreign aid without any impediment. Starting from 2015, with the adoption of amendments to the Law on Public Associations (hereinafter – Law on PAs),¹⁷⁴ NCOs must notify the MoJ on the receipt of any assistance from foreign sources. This requirement applies to all PAs in RT. Currently, as far as we are aware, that requirement is not a restriction for PAs to get foreign funding and did not bring about a decrease in the volume of foreign aid available to NCOs.

Though official statistics data is not available to us, state funding comprises a small part of NCO income. Only a few NCOs (and in small volumes) receive state support in the form of state social contracts (SSCs) and grants.

SSCs are distributed by a few ministries, for example, the Ministry of Health and Ministry of Labor, Migration and Social Support (MLMSS). Starting from 2009, the MLMSS annually allocates from its budget SSCs for NCOs that provide social services for physically-challenged children and single elderlies.¹⁷⁵ In 2014, this Ministry granted SSCs in the amount of 1.8 billion somoni (approximately 274,000 US Dollars) for NCOs.¹⁷⁶

Grants are given by two state organizations only, the Committee on Women and Family Issues, which gives grants mostly to women's organizations, and the Committee on Youth, Sports and Tourism (hereinafter – the Women's Committee and the Youth Committee, respectively), which gives grants to youth organizations. Since 2005, on an annual basis, the Youth Committee has allocated six grants to youth organizations in amounts equivalent to approximately \$2,000 for each organization. In 2011, the Youth Committee provided five grants from the state budget (total amount in the amount of approximately \$12,000, and 59 grants from other sources (World Bank projects) in the amount of \$360,000. Since 2011, on an annual basis, the Women's Committee has distributed 80 grants to women NCOs and women-entrepreneurs that create working places for women in the amount of 2 billion somoni.¹⁷⁷

Local commercial organizations and citizens support NCOs very rarely due to a number of factors, such as a lack of information about NCOs' activity, a lack of tax incentives, and the economic situation

¹⁷⁴ Signed by the President of the RT on 8 August 2015, # 1210.

¹⁷⁵ ICNL, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*, 76.

¹⁷⁶ Timur Abdullaev et al., *NGO Social Contracting: Factsheet Tajikistan*, 8 (UNDP 2016).

¹⁷⁷ Government Decree of the RT on the Establishment of Grants of the President of the RT in the field of Entrepreneurial Activity among Women in 2011-15, dated 2 April 2011 (as amended on 5 December 2013 # 579). Somoni is the national currency of the RT.

in Tajikistan. Support is given in the form of donations; however, volumes of private and corporate donations are minor. Only NCOs in rural areas receive in-kind support and volunteers' help for resolving local issues, and few NCOs try to provide paid services.

NCOs that receive aid from foreign donors are more professional and often have developed financial management procedures. However, even these NCOs do not have a systematic approach to financial planning for the long term. Typically, NCOs plan their finances only for the period of certain projects and do not plan for longer terms.

Further, we analyze legislation on various funding sources for NCOs in order of priority for the majority of NCOs in Tajikistan, as well as tax legislation for NCOs and their donors:

1. Foreign funding
2. Funding from local sources
3. State funding
4. Income from entrepreneurial activity
5. Volunteers
6. Tax benefits for NCOs and their donors

1. Foreign funding

Grants, donations, voluntary contributions, and humanitarian aid are the main forms of support of foreign donors to NCOs in Tajikistan. Foreign states, international and foreign organizations, financial institutions, and other foreign legal entities and individuals can be donors.

PAs have to notify the MoJ on the receipt of any foreign aid in any form before starting financed activity. Procedure of notification is stipulated in the Regulation on Creation and Implementation of the Register of Humanitarian Aid¹⁷⁸ (hereinafter – Regulation). The rules of notification and conduct of the Register will be reviewed below in a sub-section “Notification and reporting requirements for foreign aid recipients.”

1. Humanitarian aid

The Tax Code of the RT (hereinafter - TC RT) is the sole source which provides a definition of humanitarian aid: “Humanitarian aid is goods (works, services) granted gratuitously to the [RT...], directed from foreign states and international organizations to improve the living conditions of the population, and likewise to prevent and respond to military, ecological, natural, anthropogenic or other emergencies, and distributed in an order, stipulated by the Government of the [RT...].”¹⁷⁹

Humanitarian aid in the RT can be given to the government only. NCOs cannot get humanitarian aid, but can participate in realization of such aid through contracts with state agencies.

2. Grants, donations and voluntary contributions

Grants, donations, and voluntary contributions do not have a specific regulation mechanism, irrespective of whether they were received from local or foreign sources (except for PAs’

¹⁷⁸ The Regulation was approved by the Decree of the Government of the RT on 31 March 2016 (#149) and entered into force.

¹⁷⁹ Paragraph 29 of Article 17 of the Tax Code of the RT dated 17.09.2012 #901.

responsibility to notify the MoJ if received from a foreign source). Due to this, their legal regulation will be reviewed in Section 2. Funding from local sources.

3. Notification and reporting requirements for foreign aid recipients

According to the Regulation, approved by the RT Government, PAs of Tajikistan are obliged to notify the MoJ on the receipt of any form of aid from foreign sources.

In accordance with this Regulation, a PA has to notify the MoJ on the receipt of aid within ten days of the date of its receipt. Projects funded from aid resources can be started only after a PA notifies the MoJ.¹⁸⁰

Notably, only PAs and affiliate and representative offices of public (non-commercial and non-governmental) organizations of foreign states, registered at the MoJ in accordance with the Law on PAs, have to notify the MoJ on the receipt of foreign aid. This requirement does not apply to other forms of NCOs. Other NCOs, not registered in accordance with the Law on PAs, but registered in accordance with the Law on State Registration of Legal Entities and Private Entrepreneurs (hereinafter – Law on State Registration), for example, funded by owners of institutions, associations (unions) of legal entities, and charitable and other funds,¹⁸¹ do not have an obligation to register any received aid in the Register.

The Regulation does not stipulate a minimal value of assets required for registration. Thus, a voluntary contribution or a foreign donation equivalent to \$5 should be registered in the same order as a \$20,000 grant.

Article 5 of the Regulation lists obligatory data, which PAs must mention in their notification to the MoJ:

- name and registration number of the PA;
- legal address;
- individual number of a taxpayer;
- name of the head of the PA;
- form and type of contribution (donation or targeted contribution);
- funding with specification of foreign subject or through other organization (branch recipients of funds);
- name and aim of project;
- region of project activity;
- project lifetime;
- quantity of aid recipients; and
- name of organizations that will be directly involved in project implementation.

At its sole discretion, the MoJ is authorized to request additional information, which is not stipulated in the Regulation, as well as to inspect the activity of PAs subject to provision of information on aid. Thus, the volume of information that PAs have to submit to the MoJ can be unlimited. The heads of

¹⁸⁰ Paragraph 8 of Article 39 of the Law on PAs.

¹⁸¹ Article 50 of the Civil Code of the RT (hereinafter – CC RT), Part 1, dated 30.06.1999. Non-commercial legal entities can be created in the form of non-commercial cooperatives, consumer's cooperatives, public associations or religious organizations, funded by owners of institutions, charitable and other foundations, as well as other forms, prescribed by law.

PAs are held liable for any failure to submit such information in accordance with the requirements of the Law on PAs and the Regulation.

2. Funding from local sources

1. Grants

The following legislative acts contain a definition of a “grant” in legislation of the RT: the Law of the RT on Charitable Activity,¹⁸² the Law of the RT on State Finances of the Republic of Tajikistan,¹⁸³ and in the TC RT. We review these definitions below:

“A grant is an asset (including monetary means), provided gratuitously to individuals and NCOs for the implementation of a certain program or project”;¹⁸⁴

“A grant is a monetary source allocated by state authorities and state authorities of other countries, or international financial organizations, gratuitously and without taking obligations to refund, in order to support certain directions of economic policy”;¹⁸⁵

“A grant is a monetary source and (or) other asset, granted (transferred) on a gratuitous and non-refundable basis for achievement of certain objectives (tasks)”¹⁸⁶:

1. by foreign states (governments of foreign states), international organizations, individuals and legal entities - to the RT and the RT Government;
2. by individuals and legal entities, which produce necessary structures to eliminate the consequences of disasters, or solve other social issues, and which are granted gratuitously to the government authorities;
3. by international and foreign organizations, foreign non-governmental public organizations and foundations, whose activity has a charitable and (or) international character and does not contradict to the Constitution of the RT - to the RT, the Government of RT, legal entities and individuals of RT.

Thus, from the above definitions of grant, grantors can be foreign states (governments of foreign countries), international and foreign organizations, individuals and legal entities of foreign states, and grant recipients can be the RT, the Government of RT, and individuals and legal entities, including NCOs.

2. Donations

The next most popular type of income for NCOs is a “donation.” The definition of “donation” is provided in the CC RT, as well as the Law on Charity. It is accepted that a donation¹⁸⁷ is a gift for the public good. Donations can be granted to citizens; medical and educational institutions; institutions of social protection and other similar institutions; charitable, scientific and educational institutions;

¹⁸² Law of the RT on Charitable Activity, dated 22.04.2003 # 18 (hereinafter - Law on Charity).

¹⁸³ Law of the RT on State Finances of the Republic of Tajikistan, dated 28.06.2011# 723.

¹⁸⁴ Article 2 of the Law on Charity.

¹⁸⁵ Article 2 of the Law of the RT on State Finances of the Republic of Tajikistan.

¹⁸⁶ Paragraph 23 of Article 17 of the TC RT.

¹⁸⁷ Article 613 of the CC RT, Part 2, dated 11. 12. 1999.

foundations; museums and other cultural institutions; and public and religious organizations, as well as the state. Acceptance of a donation does not require anyone's permission or consent.¹⁸⁸

Donation of property to a citizen should be, and to others (including NCOs,) may be, preconditioned by the donor for a specific purpose. If there is no such condition, the property is considered an ordinary gift to a citizen, while in other cases, the donated property is used by a recipient in accordance with the purpose of the property.

In accordance with the Law on Charity,¹⁸⁹ a donation is a voluntary gratuitous aid in monetary or other form, given to NCOs or to lower-income people for charitable purposes.

3. Voluntary contributions

Voluntary contributions are membership and entry fees. However, legislation of the RT does not provide a definition for voluntary, membership, or entry fees.

From a legal practice, “membership fees are commonly understood as contributions - assets transferred into the ownership of an NCO by current members or people entering the membership of this NCO, in the amount and order stipulated in the statutory documents or in the decisions of the higher body of this organization. It should be kept in mind that NCOs only based on membership (e.g., public and religious associations, associations (unions) of legal entities, but not public foundations and institutions) may have membership (entry) fees as a source of income.

The right to charge membership (entry) fees should be fixed in an NCO's charter, while the payment procedure and amount can be regulated by the internal documents of the organization (for example, a regulation on entry and membership fees), if they have not been settled in the charter beforehand. Payment of membership fees should be documented.”¹⁹⁰

3. State funding

In the RT, funding of NCOs from the state budget is issued through provision of state grants and SSCs.

The RT legislation on funding NCOs through SSCs and state grants is directed to an effective and targeted utilization of budgetary and attracted funds, solving problems of social values, contribution to improvement of the living conditions of citizens, as well as involvement in such activity of individuals and legal entities, regardless of ownership and organizational legal form, as well as the wider population.¹⁹¹

1. State grants

¹⁸⁸ *Ibid*, Article 615.

¹⁸⁹ Article 2 of the Law on Charity.

¹⁹⁰ ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, 76-77 (2013).

¹⁹¹ Please see definition of SSC in Article 1 of Law on SSC: “economic and legal form of implementation of social programs and projects aimed at solution of social problems of republican and local levels, provided at the expense of state budget, as well as funds attracted by concluding an agreement between state social customer and performer.”

The Regulation on Grants of the Government of the Republic of Tajikistan for Public Associations Working in the Sphere of Patriotic Education of Youth" (hereinafter - Regulation on Government Grants) was adopted in 2005.¹⁹²

The Regulation on Government Grants was adopted to support youth and children-focused PAs and other PAs working in the sphere of state youth policy, in order to encourage cooperation with PAs on the development and implementation of projects and programs of patriotic education of youth.

2. SSCs

SSC implementation began after adoption of the special Law of the RT on State Social Contract (hereinafter - Law on SSC) in 2008.¹⁹³

The Law on SSC establishes the legal bases, principles, order of formation, allocation, funding, and implementation of SSCs by individuals and legal entities irrespective of ownership and organizational legal forms. This law allows different types of legal entities (both commercial and non-commercial) to participate in SSCs, though in practice NCOs are the main performers of SSCs. This is due to the fact that the Regulation on SSC Competition¹⁹⁴ foresees only NCOs as executors.

In compliance with the Law on SSC, the Regulation on SSC Competition was adopted, and defines the procedure for conducting a competition of social programs by state authorities.

State authorities and their subdivisions, the competence of which includes implementation of SSCs (annually and before preparing the state budget for the next year), and developing social programs and projects by identifying socially significant problems in particular areas.

State social customers in the RT are state authorities and their divisions. They are in charge of selection of implementers, conclusion of agreements, funding, and control over SSC execution. For example, currently in Tajikistan SSCs are distributed by the MLMSS, the Youth Committee, and the Women's Committee.

SSC executors are individuals and legal entities (commercial and NCOs), which win the competition and enter a contract with a customer on implementation of an SSC.¹⁹⁵

The procedure for conducting a competition for SSC was described in detail in ICNL's 2015 publication, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*¹⁹⁶ and has not been changed since then.

3. Order of receiving state grants

¹⁹² Regulation on Grants of the Government of [RT...] for [PAs...] working in the sphere of patriotic education of youth, dated 10 May 2005 # 167.

¹⁹³ Law of the RT on State Social Contracts, dated 31 December 2008 # 482.

¹⁹⁴ Standard Regulation on conducting the competition for execution of SSCs, dated 3 May 2010 #230.

¹⁹⁵ Law on SSC, Article 1.

¹⁹⁶ <http://tajikngo.tj/en/component/k2/item/3090-otdelnyie-voprosyi-pravovogo-regulirovaniya-deyatelnosti-nko-v-stranah-tsentralnoy-azii.html>.

The procedure of grants allocation to PAs working in the sphere of patriotic education of youth is regulated by the Regulation on Government Grants¹⁹⁷ and the Regulation on the Youth Committee under the RT Government.

The Youth Committee, in coordination with the RT Government, establishes the Commission on Government Grants for PAs in the sphere of patriotic education of youth of Tajikistan (hereinafter - Commission). The Commission is elected for one year. The Commission publishes an announcement on a grants competition in mass media. The competition participants submit an application in the established manner, including their project or program, copies of statutory documents of the association, and the curriculum vitae of project participants. The duration of each project or program shall be at least 6 months. Applications are considered individually by the Commission within one month. Participants are informed in writing on the results of the competition within one month after the Commission decides on the winners. An agreement on project implementation is signed with winning PAs, specifying obligations of the parties and terms of funding.

As mentioned above, besides grants for PAs working in the sphere of patriotic education of youth, there are grants of the President of the RT on support and development of entrepreneurial activity among women in 2011-2015.¹⁹⁸ The procedure for allocation is regulated by the Rules on Grants' Allocation for Women. To allocate these grants, the Commission under the Women's Committee was also formed for a period of one year. The Commission determines a quota, depending on areas and regions of activity. The procedure for awarding grants to women entrepreneurs is similar to the procedure for grants to PAs discussed above. The only difference is that this Commission considers received project proposals within two months. Only the 40 best applications are funded. Group applications for one grant from women-entrepreneurs are also accepted. The amount of a grant is determined in accordance with the cost estimates and planned work volume. The Women's Committee and Agency for State Financial Control and Fight against Corruption coordinate targeted utilization of grants and monitoring.

4. Other types of state funding

In addition to grants and SSCs, the state can provide other types of aid. Thus, the Law of the RT on State Finances contains definitions of subvention and subsidy.

Subvention is when budgetary funds are granted to a budget at another level of the RT budget system or to a legal entity gratuitously and on a non-refundable basis for execution of certain expenses.

Subsidy is when budgetary funds are provided to a budget at another level of the RT budget system, as well as individuals and legal entities on terms of shared financing of targeted expenses.¹⁹⁹

However, in practice, subsidies and subventions are not granted to NCOs. The Law of the RT on the State Budget for 2016 does not contain any subsidies or subventions for NCOs.²⁰⁰

4. Income from entrepreneurial activity

¹⁹⁷ Regulation on Government Grants, see footnote 19 above.

¹⁹⁸ Rules of distribution of grants of the President of the RT on support and development of entrepreneurial activity among women in 2011-2015, approved by the Decree of the RT Government #185, dated 2.04.2011.

¹⁹⁹ Article 2 Law of the RT on State Finances of the [RT...].

²⁰⁰ Law of the RT on the State Budget of the [RT...] for 2016, dated 25.11.2015 #1257.

The definition of entrepreneurship or entrepreneurial activity is fixed in the norms of RT legislation, in particular in Article 1 of the CC RT and Article 34 of the Law of the RT on State Protection and Support of Entrepreneurship in the [RT].²⁰¹

Entrepreneurship is an independent activity carried out at one's own risk by entities registered in accordance with RT legislation, directed at receiving profit from utilization of property, production, and sale of goods (performance of works or provision of services).²⁰²

Tajikistan's civil legislation defines the legal status of NCOs. They are non-commercial organizations that do not make profit as the main purpose of their activities and do not distribute profit received among their participants. Not making profit as the main purpose of their activity does not mean that NCOs are prohibited from engaging in entrepreneurial activity. However, in accordance with Article 50 of the CC RT, NCOs can be engaged in entrepreneurial activities only to the extent that it is necessary for their statutory objectives²⁰³ and corresponds to that purpose.²⁰⁴

Qualifying attributes satisfying this are that the net income resulting from entrepreneurial activity cannot be distributed among founders and participants of an NCO, and after the payment of taxes, should be directed and utilized for achieving the purposes for which the organization was created.

The Law on State Protection and Support refers NCOs to subjects of entrepreneurial activity along with commercial organizations.

5. Volunteers

The RT legislation on voluntary activity is based on the Constitution of the RT and consists of the Law of the RT on Voluntary Activity²⁰⁵ and other normative legal acts of the RT.

The Law on Volunteering gives the following definition of voluntary activity: "voluntary social benefit activity, carried out gratuitously by individuals in the form of works and services for the benefit of the society."²⁰⁶

NCO can attract individuals on a contractual basis for voluntary activity without making profit. At the same time, voluntary activities can be performed in the following directions: in the field of social protection, protection of human rights, health, education, science, culture and sports sector, charity, and environmental protection.²⁰⁷

An NCO has to conclude a contract with a volunteer, if they volunteer at least 20 hours per month. A contract may be concluded only with a person above 16 years' old.²⁰⁸ Article 6 of the Law on Volunteering lists the conditions that a contract must include, as well as consequences for non-compliance, and termination of the contract.

²⁰¹ Law of the RT on State Protection and Support of Entrepreneurship in the [RT] dated 26.07.2014 #1107 (hereinafter – the Law on State Protection and Support).

²⁰² *Ibid*, Article 1.

²⁰³ Article 50 of the CC RT.

²⁰⁴ *Ibid*, Article 129.

²⁰⁵ Law of the RT on Voluntary Activity dated 19 September 2013, # 1019 (hereinafter - Law on Volunteering).

²⁰⁶ *Ibid*, Article 1.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*, paragraphs 2 and 4 of Article 5.

In addition, Article 7 of the Law on Volunteering lists the rights and responsibilities of volunteers. Among the rights of volunteers, it is worth emphasizing the right to demand compensation for the costs associated with voluntary activity, as well as to receive from NCOs a volunteer book, a volunteer certificate, and a letter of recommendation, confirming acquired skills and experience. Among the responsibilities of a volunteer it is worth emphasizing respect for property used in the process of volunteering, as well as keeping confidentiality of information about the organization.

In its turn, in accordance with Article 8 of the Law on Volunteering, the NCO must ensure a safe environment for volunteers, provide them medical care, and reimburse them costs for the implementation of voluntary activity.

The Law on Volunteering also defines competencies of the RT Government, as well as authorities of an authorized state body and local executive authorities in voluntary activity. Furthermore, in a method established by RT legislation, NCOs cooperate with the government authorities, local state executive authorities, and bodies of self-administration of villages in the implementation of measures to develop voluntary activity.²⁰⁹

The government supports the development of voluntary activity through means provided for in RT legislation.²¹⁰ Thus, a period of voluntary activity, confirmed by a volunteer book, a volunteer certificate, and a contract on voluntary activity, is taken into account for admission to educational institutions of secondary and higher professional education, if this activity corresponds to an educational profile and profession, or is acknowledged as experience, if such experience is a prerequisite for employment and a volunteer worked in the corresponding sphere.. In order to recognize and stimulate the merits of volunteering, individuals and legal entities can receive state awards and other types of rewards in an order prescribed in RT legislation.

6. Tax benefits for NCOs and their donors

In this section, materials from the publication issued by ICNL in 2013 “Guide to taxation of NCOs in the Republic of Tajikistan,” in particular from Chapter 5, subsections 5.2 and 5.3., are partially used. Text was edited and amended in accordance with current legislation.

The TC RT does not contain a special definition for NCO and applies the concept given in the CC RT. An NCO is an organization, which does not make profit as a primary objective of its activity and does not distribute profit received among its participants.²¹¹ NCOs can be created in the form of non-commercial cooperatives, consumer cooperatives, public or religious organizations (associations), funded by owners of institutions, and charitable and other funds, as well as in other forms prescribed by law. Creation of associations of commercial and non-commercial organizations in the form of associations and unions is also allowed.

In addition to the definition of an NCO, the TC RT provides a definition of a “charitable organization.” The Law on Charity gives the following definition of a charitable organization: “non-governmental, non-commercial organization, established in accordance with RT legislation for the achievement of charitable purposes, carrying out charitable activity as a core activity for public interests or for certain categories of people.”²¹²

²⁰⁹ *Ibid*, see section 3, Articles 10-13.

²¹⁰ *Ibid*, see section 4, Articles 14-15.

²¹¹ Article 50 of the CC RT.

²¹² Article 2 of the Law on Charity.

The TC RT does not have any special tax treatment for NCOs or charitable organizations, however, they enjoy a number of privileges on certain types of taxes.

1. Simplified tax regime

NCOs are eligible to apply a simplified tax regime, if they are engaged in entrepreneurial activity. The simplified tax regime is applicable as long as the gross income of an NCO does not exceed 500,000 somoni.²¹³ If this limitation is exceeded, then starting from 1 January of the next year, the NCO loses its right to apply the simplified tax regime and must apply the general tax regime, i.e., pay an income tax.

Taxpayers (NCOs) which pay taxes under the simplified tax regime are not treated as taxpayers for the following types of taxes in accordance with part 4 of Article 290 of the TC RT:

- Income tax, except for income which is taxable at the source of payment;
- Tax of road users; and
- VAT, except for VAT when importing goods into the customs territory of the RT and for non-resident VAT levied at the source of payment.

The tax rate under the simplified tax regime, in accordance with Article 296 of the TC RT is set as follows:

- for activity of production of goods is 5%; and
- for other activities is 6%.

According to part 1 of Article 292 of TC RT, the object of taxation under the simplified tax regime is the gross income, including income from supply of goods, performance of works, and provision of services, as well as other income received, except for income taxable at the source of payment.

Article 294 of the TC RT states that benefits fixed in Article 110 of the TC RT, provided for certain types of taxpayers or for certain types of income, which are exempt from income tax, also apply to taxpayers under the simplified tax regime. Below we will list these benefits.

According to part 2 of Article 294 of the TC RT, tax exemption under the simplified tax regime does not release NCOs from submitting a tax declaration for exempted income for every half-year of a calendar year according to the form approved by an authorized state body, not later than the 20th day of the month following the reporting half-year.

2. Income tax for NCOs

NCOs are payers of income tax if “the gross income from entrepreneurial activity for the previous calendar year exceeds the amount of the fixed threshold for the income tax under the simplified tax regime – 500,000 somoni. These NCOs are obliged to inform in writing tax authorities and transfer to general tax regime, which includes payment of income tax. It should be kept in mind that income received as a result of charitable activity,²¹⁴ is not counted when calculating the income threshold indicated above.”²¹⁵

²¹³ ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, 69.

²¹⁴ Property received by NCO as a result of free (gratuitous or on preferential terms) transfer from individuals and legal entities (Article 2 of the Law on Charity).

²¹⁵ ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, 73.

According to Paragraph 1 of Article 106 of the TC RT, the object of taxation of income tax for residents is the gross income reduced by the amount of deductions provided by the TC RT. "Gross income consists of income, remuneration and taxpayer benefits in monetary and natural (non-material) form, including all receipts, leading to an increase of a net value of taxpayer's assets, except for income exempt from income tax."²¹⁶ According to part 5 of Article 107 of the TC RT, for the purposes of income tax, the gross income shall not include the costs of property received by a taxpayer as a shared contribution, and (or) as contribution to a statutory (shared) capital, as well as amount of money received by a taxpayer from placement of its issued shares.

Unlike other taxpayers, fixed assets of NCOs, government agencies and public organizations, including fixed assets used for income generation, are not subject to amortization and, therefore not deductible from a taxable income.²¹⁷

Part 1 of Article 110 of the TC RT lists the following types of legal entities, as well as the types of income that are exempt from income tax:

- 1) Institutions, religious, charitable, inter-governmental and inter-state (international) NCOs, except for income received by them from entrepreneurial activity. At the same time, these institutions and organizations are obliged to keep separate records of their main activity (activity exempt from income tax) and entrepreneurial activity;
- 2) Gratuitous transfers received by NCOs, gratuitous property and grants used for non-commercial activity, and received membership fees and donations; and
- 3) Enterprises,²¹⁸ except for enterprises engaged in trading, intermediary, supply, marketing and procurement activities, which meet the following conditions within a reporting fiscal year:
 - a) not less than 50% of employees are disabled;
 - b) not less than 50% of salary fund and other material remuneration, including natural, is spent for the needs of disabled persons.

Thus, the TC RT exempts from income tax any gratuitous transfers and gratuitously transferred property, the recipients of which are NCOs. At the same time, gratuitous transfers and gratuitously transferred property differ from grants and donations, which are defined in RT legislation. From a formal point of view, such gratuitous transfers and gratuitously transferred property do not require a compliance with conditions and restrictions that are set for grants and donations.

In order to avoid disputes with tax authorities, NCOs try to conclude civil contracts with individuals who make gratuitous contributions or transfer property gratuitously, where they specify the purpose of such transfer.

In "Section 2. Funding from local sources," we have already provided a definition of "grant" and "donation." However, we must add that grants received by individuals and legal entities (i.e., not only NCOs), are exempt from income tax under the condition that these grants will be used exclusively for non-commercial activity (goals) and separate accounting will be maintained for taxable income and exempted income and related expenses. Otherwise, the grant will not be exempt from income tax.

²¹⁶ Part 2 of Article 106 of the TC RT.

²¹⁷ *Ibid*, paragraph 4 of part 2 of Article 118.

²¹⁸ *Ibid*, paragraph 13 of Article 17: Enterprise (entrepreneurial organization) is an organization (including NCO), carrying out entrepreneurial activity or set up to carry out such activities (NCOs, for example, are eligible to establish subsidiaries, especially for entrepreneurial activities).

In order to facilitate accountability to tax authorities, NCOs and other grant recipients enter a written agreement with a donor, stating the purpose (activity) for which grant funds should be spent. This agreement will help to prove existence of certain purposes (activities), which a grant was given for, and justify utilization of the grant funds for their intended purpose when reporting to a tax authority.

With regards to donations, it should be noted that for tax purposes only those contributions, whose recipients are NCOs, will be exempt from income tax. At the same time, NCOs accepting donations should keep separate records of transactions using donations, if this NCO generates income from entrepreneurial or other taxable activity.

The TC RT does not define membership (entry) fees. Their definition based on legal practice, is given in Section 2. Funding from local sources. The TC RT provides for exemption of these types of income from income tax.²¹⁹

3. Tax deductions on income tax for local donors

In Tajikistan, tax incentives can be provided directly to NCOs, as well as legal entities, making donations to charitable organizations and for charitable activities.

According to part 1 of Article 113 of the TC RT, legal entities - taxpayers of income tax under the general tax regime - are entitled to deduct from taxable income payments to charitable organizations and for charitable activities in the amount of actual payments, but not more than 10% of taxable income, determined without consideration of the deducted amount.

"In case of payments to charitable organizations, it is quite simple to calculate and prove a deduction. Payment or transfer of property should be sent to an account or a balance sheet of a charitable organization registered in accordance with the Law on Charity.

As for the possibility of using deduction of payments to carry out charitable activity, the situation is more complicated. The TC RT does not provide a definition of charitable activity and refers to the Law on Charity,"²²⁰ which states:

"Charitable activity is voluntary activity of individuals and legal entities to provide financial or other assistance (support), including free (gratuitous or on preferential terms) transfer to low income individuals in need of such assistance, or legal entities, directly providing such assistance, including transfer of property to charitable organizations, monetary means, free performance of works, provision of services, or scientific, educational, or other activities performed in the public interest."²²¹

According to part 2 of Article 10 of the TC RT, any aid (support) shall not be considered a charitable activity for tax purposes, provided whichever of the following takes place:

- an individual/legal entity being a recipient of such aid (support) commits to property or non-property obligations (except for the obligation to use any received funds or property for their intended use) to any individual/legal entity providing such aid;
- an individual/legal entity being a recipient of such aid (support), and individual/legal entity providing such aid (support) are interdependent to each other; or

²¹⁹ *Ibid*, paragraph 2 of Article 110.

²²⁰ ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, 77.

²²¹ Article 2 of the Law on Charity.

- such aid (support) is granted to any individual or legal entity to engage in election campaign of any level.

According to part 2 of Article 113 of the TC RT, should any charity be donated in the form of property, the actual value of such donated charity shall be the lesser of its market value or cost value.

“The charity providers entitled to the tax-deduction from charity payments shall be the legal entities proceeding under general tax regime (both commercial entities and NCOs).

These deductions shall not be applicable to the legal entities recognized as taxpayers under the simplified tax regime. For these taxpayers and individuals (i.e., individual entrepreneurs) no recoveries on any charitable activity are provided by the tax laws.”²²²

4. VAT for NCOs and donors

According to the TC RT, an NCO shall not be recognized the VAT payer in the following three cases, namely if it:

- does not carry out any entrepreneurial activities;
- carries out entrepreneurial activities, but its gross income from such entrepreneurial activities does not exceed 500,000 somoni²²³ over the calendar year; or
- does not implementing any taxable import of goods in the Tajikistan territory.

Most Tajik NCOs do not pay VAT. If an NCO is not a VAT payer, then it is exempted from charging VAT on the goods (works, services) sold or provided free of charge to its customers or beneficiaries. However, as is the case for other consumers or customers, the NCOs shall pay VAT, if they procure goods, works, services from any third parties recognized as VAT payers. Moreover, NCOs, as non-payers of VAT, shall not be entitled to any special tax exemptions from particular procurements as stipulated by the TC RT, including any exemptions from procurements at the cost of international grant agreements, to which the RT Government is a party.

VAT paying NCOs shall provide monthly reports and pay VAT. The tax rate is 18% of the total cost of taxable transactions. The procedure for calculating the VAT amount payable to the state is somewhat complicated. In particular, it provides that the VAT amount accrued on the sales of the NCO's goods (works, services) may be reduced by the VAT amount paid by the NCO for the procured goods (works, services) further used in its entrepreneurial activity. The positive balance left after recovered VAT shall be paid to the state. Should the remaining balance be negative and the NCO paid more VAT than it has recovered, then the VAT may be offset (with the excess VAT payments refunded or carried-forward to future VAT payments). Basically, tax benefits (tax exemptions or reduced tax rates) do not apply to the NCO's procurements (supplies).

The VAT exemption means that the procurements of VAT-free goods, works and services shall not be considered taxable transactions and their value shall not be counted by the tax payer as taxable turnover. VAT paying NCOs do not accrue any VAT on the cost of such procurements (if any).

The following procurements of goods (works, services), whenever made in the RT and related to NCOs, shall be exempt from VAT:

²²² ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, p. 78.

²²³ Such NCOs are the taxpayers under the simplified tax regime.

- Religious and ceremonial services provided by a religious organization;
- Donation (refusal) of goods to the state, delivery of goods, performance of work, and provision of services as humanitarian aid;
- Procurement of special-purpose personal accessories for disabled persons per the list defined by the RT Government;²²⁴ or
- Procurement of goods (works, services) at the cost of credit (grant) agreements to fund/implement investment projects of the RT Government.²²⁵

Should the goods, works, or services be procured at the cost of credit (grant) agreements on funding investment projects, to which the RT Government is a party, such procurement may be relieved of VAT, provided that such procurement is:

- approved by the grant/credit receiver (most often the state authority) which is the authorized contractor under the project (program, agreement), for which such grants (credits) were provided;
- related directly to the project (contract, agreement) funded via grants/credits;
- contracted during provision of grant (credit); and
- terminated prior to expiration of project (program, agreement) lifetime, for which such credits (grants) were provided.²²⁶

Procedure for VAT exemption for procured goods (works, services) funded at the cost of the agreements is approved by the RT Government.²²⁷

Such procurements shall be exempted from VAT based on the request by the grant (credit) receiver to the provider of goods (works, services), if all of the following conditions are met in their entirety:

- goods (works, services) are procured at the cost of agreements approved by the RT Government;
- goods (works, services) are procured exclusively for the purposes as provided in the said agreements; and
- goods (works, services) are procured in accordance with the agreement (contract) directly entered into with the grant (credit) receiver or with any individual/legal entity authorized to implement the project.²²⁸

One should note that the aforementioned exemptions are not applicable to any procurements not directly connected with the implementation of the project (program, agreement), for which such grants (credits) were provided, or if the concluded transactions (contracts, agreements) do not meet the requirements stated above.²²⁹

Apart from procurements (supplies), the TC RT lists the following import types that are effective for NCOs and free of VAT:

²²⁴ Subparas 4, 7 and 9 of Para. 2 of Article 169 of the TC RT.

²²⁵ *Ibid*, Article 192.

²²⁶ Procedure for Exemption from Value Added Tax of Procured Goods (Performed Works, Services) Funded at Expense of the Agreements, approved by the Decree of the RT Government No. 211 dated 02 May 2013, Articles 5 and 3.

²²⁷ *Ibid*.

²²⁸ Paragraph 1 of Article 192 of the TC RT.

²²⁹ *Ibid*, Article 6.

- import of goods gratuitously transferred at the disposal of the RT state authorities, import of goods as humanitarian aid, import of goods gratuitously transferred to charitable organizations as intended to liquidate aftereffects of natural hazards, accidents and disasters;
- import of goods to implement investment projects of the RT Government within grant (credit) agreements; and
- import of special-purpose personal accessories for the disabled persons per the list defined by the RT Government.²³⁰

For the goods (works, services) used for the purpose of the exempted transactions, the VAT also payable to the suppliers and on import shall not be offset. In case of taxable and exempted transactions, the offset VAT value shall be the amount accrued proportional to the tax period. According to the proportion method, the VAT amount to be offset shall be calculated based on the ratio of the taxable transaction to overall transaction value.²³¹

Any offset tax amounts in excess of the amount charged over the accounting period shall be refunded, once the documents defined in part 2 of Article 191 of the TC RT have been delivered to the tax authority.²³² The procedure for refunding any excessive offset VAT over the amount of VAT taxable within the accounting period is approved by the RT Government.²³³

5. Other taxes and compulsory payments influencing NCOs

Individual Income Tax (IIT)

Generally, the procedure for calculation and payment of IIC for NCOs is the same as for the commercial organizations. The tax base (tax unit) is the gross income of an individual, which, when assessed, takes account of all earnings of the tax-payer, including any payments, benefits, or commissions gained in cash or in-kind.²³⁴

The gross income of an employee does not include any amount of travel expenses reimbursed by an employer under respective legislative regulations, as well as any amount of travel expenses reimbursed by the international organizations and their affiliates, foundations, or non-resident non-governmental organizations at the expense thereof.²³⁵

Also, no humanitarian and charitable assistance acquired by individuals from NCOs or charitable organizations, including in case of natural disasters, shall be taxed.²³⁶

Social Tax

According to part 1 of Article 212 of the TC RT, the social tax payers, particularly, include:

- NCOs, which pay salaries, reimbursement fees, or other benefits to resident individuals employed thereby in line with or without employment agreements (contracts);
- NCOs, which repay any services (works) provided within the RT to resident individuals not

²³⁰ *Ibid*, part 4 of Article 169.

²³¹ *Ibid*, Article 185.

²³² *Ibid*, parts 1 and 2 of Article 191.

²³³ *Ibid*, part 6 of Article 191.

²³⁴ *Ibid*, Article 98.

²³⁵ *Ibid*, part 4 of Article 99.

²³⁶ *Ibid*, part 6 of Article 104.

registered as individual entrepreneurs in line with or without civil agreements (contracts); and

- individuals paid by NCOs in line with or without civil agreements (contracts).

“The peculiarity of this tax type is that the NCOs act as both the social tax payers and the tax agents, since the resident individuals employed and paid by such NCO also act as the payers of the same. The NCOs shall withhold 1% social tax from the individual’s income and pay 25% of the amount paid to such individual.”²³⁷

Pursuant to Article 213 of the TC RT, the tax base for the NCO shall be the salaries, reimbursement fees, and other revenues or incomes under employment and civil agreements (contracts), including payments and royalties under copyright agreements. And for the individuals (except for individual entrepreneurs), the tax base shall consist of earnings paid by the NCO.

In accordance with part 4 of Article 213 of the TC RT, the following cannot comprise the tax base:

- amounts paid under civil contracts, which specify the transfer of title or other proprietary interests in property (property rights), as well as the contracts associated with assignment of property (property rights) for use;
- amounts paid to individuals who are foreign citizens or stateless persons under employment agreements (contracts) concluded with the affiliate and representative offices of a resident legal entity outside of Tajikistan;
- amounts paid to individuals who are foreign citizens and stateless persons for their activities outside Tajikistan under civil contracts, which specify performance of works or provision of services.

According to part 1 of Article 246 of the TC RT, the tax rate shall be determined in the amount of:

- 1) 25% for insurers (NCO); and
- 2) 1% for insured persons (resident individuals earning income from the NCO).

The social tax amount payable to the state shall be calculated by multiplying the tax base by the respective tax rate.²³⁸

Article 215 of the TC RT provides that the following income types are free from social tax:

- income of individuals who are not citizens of the RT, who perform works or provide services to RT diplomatic and consular missions abroad;
- income of foreign citizens for work under the investment projects of the RT Government; and
- income exempted from IIT according to Article 104 of the TC RT.

Article 217 of the RT TC states that the tax period for social tax shall be the calendar month.

Land Tax

The NCOs, as is the case for all other land users which are the transferees or lessees of land under lifelong inheritable unlimited or limited use terms or as the land users actually using the land, are

²³⁷ ICNL, *Guide to Taxation of NCOs in the Republic of Tajikistan*, 34.

²³⁸ Part 1 of Article 218 of the TC RT.

payers of the land tax.²³⁹ The tax committee annually publishes the indexed land tax rates for a current calendar year at its official website (www.andoz.tj).²⁴⁰

According to part 1 of Article 274 of the TC RT, the following shall be exempted from land tax, including:

- lands of organizations hosting any buildings used thereby and nationally protected as historical, cultural, and architectural monuments in line with the list of organizations and land plot dimensions as specified by the RT Government;
- lands for common-use in populated areas, and for public services, including for religious organizations, cemeteries, unless any entrepreneurial activity is being carried out thereat;
- lands of organizations (including NCOs) with at least 50% disabled employees of their total staff;
- one household plot and one land plot allocated to peacekeeper soldiers, veterans of World War II, and persons equivalent thereto for house construction;
- household plots allocated to any migrants from other RT regions for their permanent residence at areas specified by the RT Government – within 3 years upon such allocation; and
- household plots and lands allocated for residential house building to any unemployed disabled persons of any category, provided they do not have employable family members.

To apply tax benefits as provided for in Article 274 of the TC RT, the taxpayer shall submit relevant title documents to a tax authority at the local jurisdiction of the land plot.²⁴¹

Property Tax

NCOs, as is the case for all other owners (users) of property title, are payers of the property tax.²⁴²

Part 1 of Article 278 of the TC RT lists the property items, which, particularly, are not subject to any property tax:

- property objects of legal entities, including NCOs with at least 50% disabled employees of their total staff, provided those objects are directly used by such entities for their statutory objectives;
- property objects of religious organizations not used in any entrepreneurial activities; and
- land plots with state properties leased out in due order, for which the lease rent be fully paid to the state.

According to Article 279 of the TC RT, the property tax rate shall be calculated based on the area of land hosting such property and its intended use, as a percentage of an index for regional calculation ratios broken down by cities and regions. It may vary from 3 to 15 percent.

Vehicle Tax

²³⁹ *Ibid*, part 1 of Article 270.

²⁴⁰ *Ibid*, parts 1 and 2 of Article 273.

²⁴¹ *Ibid*, part 2 of Article 274.

²⁴² *Ibid*, Article 275.

According to Article 263 of the TC RT, NCOs, as is the case for other individuals and legal entities, which own and (or) use any vehicle, are payers of the vehicle tax. Tax rates shall be calculated per 1 horsepower of an engine per year and are specified in part 1 of Article 266 of the TC RT.

Article 267 of the TC RT lists the types of vehicles exempted from vehicle tax; however, they are not applicable to NCOs. Therefore, one may conclude that NCOs do not have any benefits against this particular tax in the RT.

TURKMENISTAN

General overview

It is difficult to highlight the main funding source for PAs in the Republic of Turkmenistan (hereinafter – RT) because none of the available sources provides any regular support to such organizations. Some organizations survive through membership fees and donations; most often members and employees work for free or for a low salary. Few PAs receive foreign aid. Only a few select organizations receive government support.

State funding is available only for certain organizations, as a rule, GONGOs (Government-Organized Non-Governmental Organizations). In practice, the government finances these organizations through subsidies by nominally listing them in the state budget. For example, youth and women's organizations are funded from the state budget. Legislation foresees state grants and SSCs, but in practice these mechanisms do not work. In theory, NCOs can participate in tenders for state procurement of services along with other business entities. However, they do not participate in such opportunities, because they lack the means to pay either for participation in bids, or for enforcement of contracts. In general, summarized information on state and foreign funding, as well on other sources of NCO funding, is not available.

The adoption of the Presidential Decree on State Registration of Foreign Projects and Programs for Gratuitous Technical and Financial Support, Humanitarian Aid and Grants in 2013 resulted in a significant reduction in foreign aid, since the procedure for grant registration became extremely complex. Organizations that had attempted to register grants in accordance with the new rules faced a number of difficulties. For example, a registration procedure consists of several stages, each of which requires the participation of a certain state authority, which has to consider the application and give its opinion. The MFA's participation as a mediator is required; one or more authorized bodies, possessing competency in the area for which the grant registration is sought, have to issue a conclusion; a State commission has to issue a decision, and the Ministry of Adalat (MoA) serves as a registering authority. Additionally, legislation does not establish a clear timetable for consideration of applications and decision-making, and also does not provide any procedure for appealing a denial.

Individual donations do not provide any tangible support to NCOs, as they are both irregular and insufficient as a source. Support from businesses is also sporadic and usually affects only those NCOs that are working on business-related initiatives. This is because RT legislation does not have any tax benefits and other incentives for donors. More developed NCOs continually seek opportunities to diversify their resources, trying to attract contributions and donations, and providing paid services. Some professional NCOs provide services to state authorities in areas where they have expertise. As a rule, such NCOs typically receive in-kind payment for their services.

Legislation allows NCOs to engage in entrepreneurial activity, but only a small number of organizations started using this opportunity to enhance their financial stability, as income from entrepreneurial activity is subject to income tax. In 2015 the Law on State Support of Small and Medium-Sized Enterprises was modified aiming to support PAs of small and medium-sized businesses.²⁴³ Due to these changes, the government provides support to associations engaged in entrepreneurship through soft loans, land plots, and other preferences.

²⁴³ The Law on Introducing Amendments and Additions into the Law of Turkmenistan on State Support of

Thus, the financial sustainability of the majority of Turkmen NCOs remains weak. It is very difficult for independent NCOs to get funding, because government does not support them, while foreign funding has been reduced. Only GONGOs can be called financially sustainable, as they regularly get support from government.

Further, we consider legislation on various funding sources for NCOs in a priority order for the majority of NCOs in Turkmenistan, as well as tax legislation for NCOs and their donors:

1. Funding from local non-governmental sources
2. Foreign funding
3. State funding
4. Income from entrepreneurial activity
5. Volunteers
6. Tax benefits for NCOs and their donors

NCOs in Turkmenistan mainly exist as PAs. Therefore, when considering correspondent legislation, we will mainly review legal regulation applicable to PAs.

1. Funding from local non-governmental sources

According to Article 27 of the Law on Public Associations²⁴⁴ (hereinafter - Law on PAs), the following sources of funding are available to PAs:

- 1) entry and membership fees (if this is stipulated by the charter of a PA);
- 2) income from lectures, exhibitions, lotteries, auctions, sports and other events held for statutory purposes;
- 3) income from entrepreneurship and civil transactions;
- 4) target funding and incomes prescribed by law from different legal entities, including foreign non-commercial and budget organizations (in a form of grants);
- 5) voluntary donations; and
- 6) other sources not prohibited by Turkmenistan's legislation.

Next, we consider the most common sources of local funding, such as entry and membership fees, and voluntary donations.

1. Entry and membership fees

Turkmenistan legislation does not define entry and membership fees.

It must be noted that not all forms of PAs can get entry and membership fees. According to the Law on PAs in Turkmenistan, PAs can be established in one of the following legal forms:

- public organization;
- social movement;
- public foundation;
- body of public initiative; and
- unions (associations) of PAs.

Small and Medium-Sized Enterprises dated 28 February 2015 № 193-V.

²⁴⁴ The Law of Turkmenistan on Public Associations dated 3 May 2014 №253.

Based on the definitions of the above organizations, only a PA and a union (association) of PAs are considered to be membership organizations, and therefore, can establish entry and membership fees. As for other organizations, they are eligible to set only entry fees, the amount of which should be stipulated in their charters.

Law on PAs states that charters of respective PAs should determine the conditions and procedure for acquiring or discontinuing membership in a PA (for those associations, the charters of which stipulate membership).²⁴⁵

The Civil Code²⁴⁶ (hereinafter – CC RT) and the Law on PAs²⁴⁷ stipulate an additional requirement for public foundations: to establish in their charters the minimum size and the type of donations, as well as instruction on use of donations. It should be noted that, although the term “donation” is used in relation to foundations, it can be regarded as an equivalent of an entry fee because of the obligatory form of the donation, and the requirement to establish a minimum size of a donation in a charter of a public foundation. Additionally, the CC RT obliges founders to make a contribution to the foundation, which would mean that the founders make a commitment to input assets to the foundation in an amount needed for achievement of the purpose of the foundation.²⁴⁸

2. Voluntary donations

The CC RT gives a definition of a “donation,”²⁴⁹ in accordance with which a donation is a kind of gift, the distinctive feature of which is an additional stipulation in an agreement of the intended utilization of the property being transferred.

Donation is defined, as the gratuitous transfer of property to a donee’s ownership upon his consent.²⁵⁰ In a donation agreement, the parties can stipulate that the agreement’s validity depends on the fulfillment of a certain condition of an agreement, or upon reaching a specific goal. Besides a donor, each party in whose interests in such condition are stipulated, can request performance according to the terms of the agreement. In case of a breach of the agreement by the donee, the donor has a right to withdraw from the agreement.

2. Foreign funding

In this section, materials are partially used from ICNL’s 2015 publication, *Some Issues of Legal Regulation of NCOs’ Activities in Countries of Central Asia*, in particular section 1, “Legal regulation of foreign aid,” subsections 1.1, 1.2, and 1.3. (Chapter “Turkmenistan”). The text was edited and updated in accordance with current legislation.

Article 29 (Sources of funding of PAs) of the Law on PAs allows PAs of Turkmenistan to get grants along with other sources of PA funding. This Article states that funding sources of PAs can include “targeted funding and contributions from legal entities, including foreign non-commercial and budgetary organizations, in the order stipulated by Turkmenistan’s legislation (in the form of grants).”

²⁴⁵ *Ibid*, Subparagraph 4) paragraph 2 of Article 19.

²⁴⁶ Paragraph 4 of Article 58 of the Civil Code of the RT dated 17 July 1998 # 294-I.

²⁴⁷ Paragraph 3 of Article 19 of the Law on PAs.

²⁴⁸ Paragraph 1 of Article 72 of the CC RT.

²⁴⁹ *Ibid*, Article 552.

²⁵⁰ *Ibid*, Article 548.

A procedure for receipt of foreign funding by organizations in Turkmenistan is governed by the Decree of the President of Turkmenistan on State Registration of Foreign Projects and Programs for Gratuitous Technical and Financial Support, Humanitarian Aid and Grants (hereinafter – the Decree).²⁵¹ This Decree stipulates the Procedure of State Registration and Maintenance of a Unified Registry in Turkmenistan of Projects and Programs of Gratuitous Foreign Technical and Financial Support, Humanitarian Aid and Grants (hereinafter - the Procedure), which defines the procedure of state registration of projects and foreign aid programs and grants, as well as the Unified State Registry of Foreign Technical and Financial Support, Humanitarian Aid and Grants.

In order to achieve goals of the Decree, the State Commission for Coordination and Control over the State Registration of Projects and Gratuitous Foreign Aid Programs, as well as Grants in Turkmenistan was established. The Decree assigned the MoA as the authority for registration of foreign aid and grants, given to Turkmenistan's PAs and religious organizations. The MFA was assigned to conduct negotiations between foreign donors and national beneficiaries and grantees. The MFA shall ensure the receipt of applications of foreign states, international organizations, and other foreign legal entities and individuals associated with the provision of projects and programs of gratuitous foreign aid and grants to the state bodies of Turkmenistan, PAs, and other legal entities and individuals. After that, the MFA forwards received applications to the authorized state bodies in charge of certain areas in order to determine the need of all kinds of foreign aid, and also to the legal entities and individuals listed therein. The authorized state bodies review them for compliance with the law and notify relevant state authorities via the MFA, carrying out registration (the MoA for PAs) on their expert conclusion about the need for all kinds of foreign aid.

Types of foreign aid

The Procedure regulates all kinds of foreign aid, but does not provide a definition of all forms.

In Paragraph 3 of the Procedure, there is a definition of projects and programs of all kinds of foreign aid and grants as “projects, programs, grants, as well as cash and non-cash funds allocated for their implementation, including foreign currency, goods and means, performed works and rendered services carried out in Turkmenistan in different directions and at the expense of aid and funds provided gratuitously by foreign countries, international organizations, financial institutions, foreign companies and foundations, public associations and religious organizations as well as individuals to the ministries, departments of Turkmenistan, public associations and religious organizations, as well as individuals and legal entities.”

There is no definition of a grant in the Procedure. The only definition of a grant is available in Article 1 of the Budget Code as “non-compulsory current and capital transfers received by budget authorities from corresponding state bodies, foreign governments, international organizations, as well as interbudget transfers from one budget level to the budget of another level of the budgetary system of Turkmenistan on a voluntary basis.”²⁵²

Article 105 of the Budget Code contains the following classification of grants, according to which grants are divided depending on a source of income:

- grants from governments of foreign states;

²⁵¹ The Decree of the President of Turkmenistan on State Registration of Foreign Projects and Programs for Gratuitous Technical and Financial Support, Humanitarian Aid and Grants dated 18 January 2013 № 12792, Ashgabat.

²⁵² Subparagraph b) paragraph 25 of Article 1 of the Budget Code of Turkmenistan, dated 1 March 2014.

- grants from international organizations; and
- grants from other units of state administration.

Depending on the purpose of use, grants are divided into current (provided for current expenses); and capital (provided for the acquisition or creation of fixed assets or reconstruction of existing assets.)

Funds specified in grants are provided for a particular purpose and activities to achieve this purpose are undertaken based on a contract with a particular PA, a legal entity or an individual. In accordance with Paragraph 19 of the Procedure, a foreign aid recipient is obliged to use all types of foreign aid only for specified purposes. Violation of this requirement shall result in the suspension or termination of all kinds of foreign aid, as well as impose liability on the legal entity or individual in accordance with Turkmenistan's legislation.

The sequence of activities under a grant, periodic reports on works carried out and utilization of funds, and reports on the implementation of a grant are provided to a donor in accordance with the terms of an agreement and to the MoA as proscribed in the Procedure. In accordance with Paragraph 6 of the Procedure, NCO-recipients of foreign aid have to provide their periodic and final reports on projects and programs, and on utilization of grants to the MoA.

It should be kept in mind that any foreign aid, including monetary funds, goods and services, regardless of its size or cost, is subject to registration.

Registration and reporting requirements for foreign aid recipients

As noted above, at the initial phase potential donors should contact the MFA,²⁵³ which serves as a mediator, i.e, sends donors' applications for evaluation to relevant state authorities (for example, if an application is associated with medical institutions, it sends materials to the Ministry of Health and Medical Industry of Turkmenistan; for the aid related to a conservation area, it sends them to the State Committee of Turkmenistan for Environmental Protection and Land Resources). The authorized bodies examine the donor's application for compliance with legislation, review state interests in receiving such assistance, and via the MFA, notify the relevant state bodies responsible for registration (the MoA, when a prospective recipient is a PA) on the results of their review and their conclusion about the necessity of the proposed foreign aid.²⁵⁴ At the second phase, once the relevant body issued its positive conclusion on the foreign aid's necessity, the MoA, which carries out registration, should consider the applications from the potential recipients, i.e., organizations wishing to receive foreign aid, and then forwards them together with its conclusion for the further consideration at a meeting of the State Commission for Coordination and Control over the State Registration of Projects and Programs of Gratuitous Foreign Technical and Financial Support, Humanitarian Aid, and Grants²⁵⁵ (hereinafter - State Commission). After considering the application of a foreign aid recipient, the State Commission informs the recipient about its decision to permit or to deny the receipt of aid. The State Commission meets once a month. If needed and if the State Commission has any questions for clarification, the final decision on this issue can be postponed.²⁵⁶ There is no appeals procedure for decisions of the State Commission.

²⁵³ Article 5 of the Procedure.

²⁵⁴ *Ibid*, Article 6.

²⁵⁵ *Ibid*, Article 7.

²⁵⁶ *Ibid*, Article 15.

The following can be a reason for rejection for all types of foreign aid:

- provision of false information about a recipient of foreign aid;
- provision of false information about foreign donors;
- if a foreign aid recipient lacks opportunities to implement the proposed program or project; or
- in other cases stipulated by Turkmenistan legislation.²⁵⁷

PAs have to register received foreign aid with the MoA through the respective velayat (regional) departments of Adalat, and if based in Ashgabat City, then directly through the Ministry.²⁵⁸ In case of a positive decision by the State Commission permitting the receipt of foreign aid, the MoA carries out the state registration procedure of projects and programs of all kinds of foreign aid and grants. This includes the insertion of information about a project, program, or grant into the Registry with the assignment of an identification number or a symbol. The MoA issues a conclusion on state registration to an NCO in a form specified by the law.²⁵⁹

After receiving a conclusion on state registration, foreign aid recipients must send the MoA information on all types of foreign aid provided by foreign donors, including information on the approved proposed activity, as well as reports on current and completed foreign aid.²⁶⁰

Banks and the tax authorities exercise control over the use of foreign aid by tracking foreign aid and grants transactions. Upon receipt of assistance in the form of any property from abroad, the customs authorities exercise control over the legality of property crossing the customs border.

The banking regulation is done under the general procedure established by the Law of Turkmenistan on Currency Regulation and Currency Control in Foreign Economic Relations. In accordance with Article 16 of this Law, foreign currency transactions between residents and non-residents related to a transfer of property and performance of works (provision of services) in the territory of Turkmenistan shall be performed in national currency only. However, the Law allows for payments in foreign currency in cases when foreign currency transactions related to the transfer of property and performance of works or provision of services by residents to non-residents, are conducted in a non-cash form.²⁶¹ Thus, this norm allows Turkmenistan's PAs to receive funds in foreign currency in a non-cash form when performing works or providing services related to a received grant. It is not possible to make anonymous bank transfers.

Sporadic cases of minor cash donations do not substantially affect the financial stability of PAs. We are not aware of any practice of PAs giving or receiving large donations in cash. This follows from the "Procedure for opening and maintaining accounts in foreign currency by authorized banks on a territory of Turkmenistan," approved by the Central Bank of Turkmenistan on 22 March 1995. In accordance with Paragraph 1 of this procedure, all legal entities, irrespective of their ownership type, are required to keep funds in foreign currency in accounts of authorized banks of Turkmenistan. The same procedure establishes the regime of current foreign currency accounts and the order of admission of foreign currency into the current currency account. In addition, in Article 8 of the Law

²⁵⁷ *Ibid*, Article 16.

²⁵⁸ *Ibid*, Article 23.

²⁵⁹ *Ibid*, Article 25.

²⁶⁰ *Ibid*, Article 27.

²⁶¹ Part 3 of Article 16 of the Law on Currency Regulation and Currency Control in Foreign Economic Relations.

on Currency Regulation and Currency Control in Foreign Economic Relations, the procedure for registration of foreign currency transactions is set for cases provided by law.”²⁶²

3. State funding

There is no specific legislation in Turkmenistan stipulating state funding for NCOs. According to the rules stated in the Law on Tenders for Supply of Goods, Performance of Works, and Provision of Services for State Needs²⁶³ (hereinafter – Law on Tenders), NCOs can participate in competitions and tenders for state procurement of goods and services along with commercial organizations and other economic entities. However, in practice, NCOs do not participate in these competitions, because they cannot compete with commercial organizations due to a lack of necessary resources to pay for the participation in tenders and pledge collateral.

On additional forms of state funding, please see section “4. Income from entrepreneurial activity” below.

State procurement

Planning for state procurement is carried out at the stage of developing projects of the state budget of Turkmenistan and the Investment Program for next year by considering proposals from ministries and departments funded from the budget.

Depending on the composition of participants and forms of conducting the tenders, they can be:

- open or closed; and
- primary or recurrent.

The main tender participants are a buyer (customer), a tender organizer, a potential supplier (contractor), a tenderer, and a tender commission.

Below we describe the procedure of conducting tenders in accordance with the new Law on Tenders.

According to Article 17 of the Law on Tenders, a tender organizer must conduct a tender for selection of a supplier (contractor) of goods, works or services for state needs in accordance with the Procedure on Conducting Tenders for Selection of Suppliers of Goods, Works and Services for State Needs, including budgetary institutions, as well as the requirements and conditions imposed on a supplier (contractor) for providing supplies of innovative and high-tech goods, works and services, approved by the Cabinet of Ministers.

The functions of a tender organizer include the following:

- preparation of tender documentation, publication of an announcement, and distribution of proposals;
- determination of a tender’s form, amount of special (tender) fee, as well as the amount of the collateral for performing a procurement agreement (contract);
- organization of the meetings of a tender commission;
- control over the activities of a tender commission;

²⁶² ICNL, *Some Issues of Legal Regulation of NCOs’ Activities in Countries of Central Asia*, 84.

²⁶³ Law of Turkmenistan on Tenders for Supply of Goods, Performance of Works, and Provision of Services for State Needs dated 20 December 2014 # 158-V (Vedomosti of Turkmenistan Mejlis, 2014, # 4, p. II, 159).

- decision on concluding a procurement agreement (contract); and
- consideration of appeals against the decisions of a tender commission.²⁶⁴

A tender commission selects suppliers (contractors) based on the results of a tender. In order to conduct a tender, a tender organizer creates a tender commission consisting of at least five persons.

The tender commission's functions include the following:

- approval of tender documentation;
- distribution of tender documentation;
- control over the compliance of conditions of tender documentation to the conditions of a buyer (customer);
- familiarization of applicants with tender documentation and its clarification and explanation;
- carrying out a tender procedure and execution of its results; and
- selection of a winner or decision on the results of a tender.²⁶⁵

Submission of an application by a customer for procurement of goods, works, and services is done according to the order established by a tender organizer.

The procedure for considering applications is described in Article 24 of the Law on Tenders, in accordance with which envelopes with tender applications are opened at a time and place indicated in the tender documentation. At the same time, tenderers or their representatives are entitled to attend the procedure of opening the envelopes. Thereafter, the most important conditions of each tender application are declared, such as the tender price, form, and the amount of the collateral for performing a procurement agreement (contract).

"A tender application (quotation) is recognized as winning (the most economically favorable and matching the conditions of the procurement), if the proposed offer meets the requirements of the tender and qualification documentation, as well as is the most economically favorable, including for a number of criteria (qualification, price, schedule of works and payments, quality and others) and also is the most advantageous in comparison with other tender offers."²⁶⁶

"A notice on recognizing a tender application (quotation) as winning – on acceptance of the offer, is sent to the tenderer within three working days from the day of making a decision on the selection of this offer. Within the same timeframe, other tenderers are notified on the rejection of their offers."²⁶⁷

The Law on Tenders establishes the right of the tender participants to appeal actions or decisions of a tender commission and (or) of a tender organizer during the tender process and procurement.²⁶⁸ Article 31 of the Law on Tenders stipulates the disputes settlement procedure, in accordance with which all disputes are resolved through consideration of complaints on tender procedures or in court.

²⁶⁴ Please, see the full list in Article 8 of the Law on Tenders.

²⁶⁵ Please, see the full list in part 2 of Article 9, *ibid*.

²⁶⁶ *Ibid*, part 3 of Article 25.

²⁶⁷ *Ibid*, part 4 of Article 25.

²⁶⁸ *Ibid*, part 2 paragraph 22 of Article 21.

Despite quite clear regulation of tender procedures, PAs do not participate in competition due to the lack of necessary resources to pay for participation in tenders and to pledge the collateral for performing a procurement agreement.

Grants and subsidies

According to budget legislation of Turkmenistan, the state may provide subsidies and grants to organizations if they were pre-planned in state and local budgets, as a rule, by nominally listing the recipients. Since in practice, the state provides subsidies only, we will consider them in more detail. Please see the section “Types of foreign aid” above about the procedure of grants regulation (due to lack of specificity in legislation with the definition of grants from local sources, including from the state, and from abroad).

The Budget Code contains the following definitions of a subsidy:

subsidies - are current gratuitous payments to legal entities at the expense of budget funds to influence the level of production, as well as to compensate for the losses generated in connection with the state regulation of prices and tariffs;²⁶⁹

Article 110 of the Budget Code regulates subsidies and conditions of their granting, according to which subsidies are granted to legal entities based on the agreed terms and in the amounts approved by the appropriate budget for the implementation of certain targeted costs for the implementation of the current budget programs.²⁷⁰

Subsidies are transferred on the basis of:

- 1) normative legal acts providing relevant services on preferential terms;
- 2) individual funding plan of the appropriate budgetary program on payments, approved in the established order, and the agreement on the results;
- 3) confirming documents on validity of payments of the budgetary program administrator.²⁷¹

Subsidies must be utilized in accordance with their purpose, defined in the relevant budgetary programs.

The Ministry of Finance determines the procedure for granting subsidies, and preparing and submitting a report on the results of the implementation of a respective budgetary program.

In practice, financial support in the form of subsidies is usually provided to youth and women's organizations, which are nominally listed in the state budget. Thus, youth PAs are supported on the basis of Article 35 of the Law of Turkmenistan on State Youth Policy,²⁷² which states that one of the mechanisms of the implementation of the state youth policy is to provide subsidies (on a competitive basis) to fund projects of governmental and non-governmental organizations of Turkmenistan, aimed at realization of the state youth policy.

4. Income from entrepreneurial activity

²⁶⁹ Subparagraph a) of paragraph 25 of Article 1 of the Budget Code of Turkmenistan.

²⁷⁰ *Ibid*, paragraph 1 of Article 110.

²⁷¹ *Ibid*, paragraph 2 of Article 100.

²⁷² The Law of Turkmenistan on State Youth Policy dated 29 August 2013 №423-IV.

Article 30 of the Law on PAs recognizes that PAs can engage in entrepreneurial activity, if such income is used for statutory objectives only. A PA's entrepreneurial activity is undertaken in accordance with the CC RT and other legislative acts of Turkmenistan.²⁷³

PAs can establish enterprises and acquire property designated for entrepreneurial activity.²⁷⁴ Income from PAs' entrepreneurial activity cannot be distributed among members or participants of these associations, but should be used only to achieve their statutory objectives. The income from entrepreneurial activity shall be taxable and subject to payment of pension contributions in accordance with legislation.²⁷⁵ Some organizations, such as those engaged in rehabilitation and recruitment of disabled persons are fully exempt from income tax. (See. Section 5. Tax benefits for NCOs and their donors.)

In their entrepreneurial activity, PAs should keep separate registers on taxable income and profit that is exempt from taxation.

It should be noted that there are measures foreseen in Turkmenistan's legislation to support entrepreneurship among some NCOs. In 2015, the Law on State Support of Small and Medium-Sized Enterprises was amended²⁷⁶ to include a new Article 18, titled "State support of PAs, of small and medium-sized enterprises."

In accordance with this Article, state support of PAs and small and medium-sized enterprises is carried out by state authorities and local authorities as follows:

- 1) if necessary, providing PAs, their members, and businesses with premises and means of communication for their public events on the development of private entrepreneurship;
- 2) engaging PAs and their members in the preparation of draft laws and regulations, and programs of socio-economic development of regions;
- 3) letting PAs and their members access mass media to promote ideas of small and medium-sized enterprises; and
- 4) engaging PAs and their members to participate in conferences, seminars, and other public events, including abroad.²⁷⁷

Such support may be granted only to those PAs that are working in the field of promotion of business interests, when businessmen and commercial organizations are united into PAs. For example, the state has supported the Union of Industrialists and Entrepreneurs of Turkmenistan. The state has granted soft loans, land plots for construction of office and shopping centers, as well as the rights to build living houses for commercial purposes.

Despite the existing benefits for some categories of organizations and types of income, the vast majority of PAs have to pay income tax on income received from entrepreneurial activity in accordance with established procedure, and also have to keep separate records of income and have

²⁷³ The Law of Turkmenistan on Entrepreneurial Activity, dated 1 October 1993 №863-XII; the Law of Turkmenistan State Support of Small and Medium-Sized Enterprises, dated 15 August 2009 № 57-IV; and a number of other laws in this sphere.

²⁷⁴ Paragraph 2 of Article 30 of the Law on PAs.

²⁷⁵ *Ibid*, paragraph 3 of Article 30.

²⁷⁶ The Law of Turkmenistan on Introducing Amendments and Additions into the Law of Turkmenistan on State Support of Small and Medium-Sized Enterprises, dated 28 February 2015.

²⁷⁷ Paragraph 2 of Article 18 of the Law of Turkmenistan on State Support of Small and Medium-Sized Enterprises.

to provide fairly complex reporting statements. Therefore, only a small number of NCOs undertake business in Turkmenistan.

5. Tax benefits for NCOs and their donors

Income tax of NCOs

The rate of the income tax for all resident legal entities of Turkmenistan, including for NCOs, is established in Paragraph 1 of Article 172 of the Tax Code of Turkmenistan²⁷⁸ (hereinafter – TC RT), at the rate of 8%.²⁷⁹ The rate applies to the gross income of NCOs, which includes income from sale of goods, performing works and provision of services, and income from non-sale activities.

There are a number of benefits for NCOs regarding income tax in the TC RT. For example, certain types of NCO income are not subject to income tax. Paragraph 3 of Article 149 of the TC RT defines what types of income are not included in the gross income. Below, we list only those types of income that are relevant for NCOs only, i.e., income received by NCOs and not subject to income tax:

- contributions of participants (founders, stakeholders, and members) to the statutory fund, including income in the form of exceeding the offering price of shares over their nominal value (original size);
- funds and other property received by a taxpayer as a part of targeted funding through budget allocations, state funds, grants, and other sources;
- investment income of legal entities, obtained in accordance with the Law on Pensions, and directed to individual pension accounts;
- targeted income for maintenance and management of NCO statutory activities, including membership and charitable contributions, donations, and inheritance;
- property (works and services) received under donation contracts or gratuitously by budget organizations and non-entrepreneurial legal entities, as well as bodies of state power and administration, local executive authorities, and local self-administration;
- property received gratuitously by legal entities in accordance with the acts of the President of Turkmenistan, decisions of the Cabinet of Ministers, and local executive authorities and local self-administration, as well as in accordance with the decisions of the ministries and departments under intra-branch gratuitous transfer; and
- property (works and services), obtained in the framework of projects and programs of international humanitarian, financial, and technical assistance provided to Turkmenistan by foreign states or international organizations.

²⁷⁸ Extracts from the Tax Code of Turkmenistan dated 25 October 2005 № XM-80 (a collection of official acts of XVI Halk Maslakhat of Turkmenistan, 2005, XM-80, 81; a collection of official acts of Halk Maslakhat of Turkmenistan, 2008 г., XM-96, Vedomosti of Mejlis of Turkmenistan, 2005, № 3-4, Art. 37; 2006, № 3, Art. 12; 2007, № 1, Art. 20, Art. 24; № 2, Art. 48; № 4, Art. 68, Art. 74; 2008, № 1, Art. 7, Halk Maslakhat of Turkmenistan, 2008, XM-96; Vedomosti of Mejlis of Turkmenistan, 2008, № 3, Art. 41; 2009, № 2, Art. 41, № 3, Art. 59; 2010, № 1, Art. 19; № 2, Art. 34; № 3, part III, Art. 64; 2011, № 1, Art. 5; Art. 24; № 2, Art. 45; № 3, Art. 59; 2012, № 1, Art. 48; № 3-4, part II, Art. 68; 2013, № 1, Art. 7; № 2, part II, Art. 26; 2014, № 1, part II, Art. 24; № 1, part II, Art. 49; № 3, Art. 112; № 4, part II, Art. 149; 2015, № 2, Art. 48, 71; 2015, № 3, part II, Art. 111; *Neitralnyi Turkmenistan*, № 324-325 (27962-27963) dated 3 December 2015).

²⁷⁹ Except for legal entities, where more than 50% of the founders' capital belong to a state, as well as entities, performing activities in accordance with the Law of Turkmenistan on Hydrocarbon Resources, - in part related to the income from this activity and non-operating transactions.

In addition to exemptions for certain types of NCO income, Article 170 of the TC RT provides for full exemption from income tax, including income from entrepreneurial activity, for certain types of PAs. Part 1 of Article 170 of the TC RT the following NCOs exempts from income tax:

- organizations engaged in rehabilitation of disabled persons; and
- religious organizations.

Part 2 of this Article provides for a reduction of taxable income for other organizations that are not exempt from paying income tax (referred to in part 1 of Article 170), in the amount of:

- income received from activities in the field of education; and
- income received from the production of prosthetic and orthopedic products and special vehicles for the disabled.

At the same time, we must understand that this refers to making profits from entrepreneurial activities in these areas.

Additionally, NCOs are obliged to keep separate records of income that is exempt from income tax. If unable to determine certain deductions needed for the calculation of profit, they can be determined using the ratio of income from sale of goods (works, services) received for calculation of benefits, to the total amount of gross revenue from sale of goods (works, services).²⁸⁰

Benefits for local donors

There are no special norms in Turkmenistan's tax legislation regarding benefits for local (national) donors. However, philanthropists or others donors (including local ones), who donate goods (performing works or providing services) as humanitarian and (or) charitable aid, will be exempt from VAT, as this operation does not apply to the taxable operations in accordance with Article 96 of the TC RT.

In accordance with Article 122 of the TC RT, transactions for transfer of excisable goods as humanitarian and (or) charitable aid based on inter-governmental agreements, as well as decisions of the bodies of state power and administration, are exempt from paying excise duty. Hence, an exemption from excise duty can be obtained only on the basis of inter-governmental agreements and by intergovernmental agreements.

VAT for NCOs

According to Article 95 of the TC RT, NCOs, as well as other legal entities, are subject to VAT, when they carry out taxable transactions referred to in Article 96 of the TC RT. Article 103 of the TC RT establishes the VAT rate at 15%. Article 105 of the TC RT also provides for a zero rate on certain types of taxable transactions. However, due to the fact that these transactions do not apply to NCOs' activities, we will not list them in this review.

Article 106 of the TC RT stipulates exempted taxable transactions. Part 1 of Article 106 of the TC RT lists the following taxable transactions on which VAT shall not be paid:

- veterinary and sanitary-epidemiological services; and

²⁸⁰ Part 3 of Article 170 of the TC RT.

- services for nursing of sick, disabled and elderly, rehabilitation services for persons with disabilities;
- services for the education system;
- services of religious organizations, including rites and ceremonies, as well as sale of objects of worship and religious purpose;
- sale of goods produced by educational and industrial enterprises of the societies of blind and deaf persons and other PAs of disabled persons;
- activity for the protection of health; veterinary activity;
- performance of works and provision of services related to the construction and installation works of the complex of monuments and construction of its infrastructure;
- sale of goods (services) produced (provided) by enterprises of PAs of disabled persons;
- sale of carpets and other handmade tapestries; and communal housing, public utilities, and maintenance services, provided to the population (including public utilities payment), as well as services for the outdoor lighting of streets, parks, etc.

Amount of calculated VAT is the amount of the tax paid by a taxpayer to suppliers of goods (works, services) in the relevant tax period.²⁸¹ The invoice, issued in accordance with Article 107 of the TC RT, and documents proving payment to the suppliers (contractors) are the basis to offset the VAT paid to suppliers of goods (works, services).²⁸²

In accordance with Article 49 of the TC RT, if the amount of tax paid exceeds the amount set by law, a tax office at an NCO's place of tax registration (and, where appropriate, customs services) offsets the overpaid tax amount towards covering the debt for any other type of tax, financial sanctions, and penalties, with a written notification to the taxpayer. In the absence of debt on any other taxes, financial sanctions, and penalties, the tax office submits a conclusion to the financial authority to return the overpaid tax amount to the taxpayer within ten days of the taxpayer submitting a written application. The taxpayer is entitled to claim an offset and (or) a refund of overpaid tax within five years from the date of paying (withholding) the tax. For cases of appealing a decision of the tax office, this period shall be suspended for the period of consideration of the complaint.²⁸³

Land, property and other taxes and obligatory payments affecting NCOs

PAs do not pay property tax, if they possess property in accordance with Article 143 of the TC RT.

There are no other benefits on taxes and obligatory payments for PAs in the TC RT. However, the following types of PAs, in addition to the above mentioned benefits, are also exempt from the targeted collection fee for the maintenance of cities, towns, and villages:²⁸⁴

- National Red Crescent Society of Turkmenistan;
- organizations engaged in rehabilitation of disabled persons;
- enterprises of PAs of disabled persons; and
- religious organizations.

²⁸¹ *Ibid*, part 1 of Article 110.

²⁸² *Ibid*, part 2 of Article 110.

²⁸³ *Ibid*, parts 3 and 5 of Article 49.

²⁸⁴ *Ibid*, part 2 of Article 207.

6. Volunteers

Turkmenistan's legislation on voluntary activity is based on the Constitution of Turkmenistan and consists of the Law of Turkmenistan on Volunteering²⁸⁵ (hereinafter - Law on Volunteering), as well as other normative legal acts of Turkmenistan regulating volunteering issues.

The Law on Volunteering defines volunteering as "a form of social service, social relations arising in connection with the implementation of gratuitous activities by citizens (volunteers) on their own initiative for provision of services, knowledge and skills, or participation in the activities of public benefit in the interests of recipients of volunteer assistance." Volunteers can be both citizens of Turkmenistan and foreign citizens, or persons without citizenship.²⁸⁶

Article 6 of the Law on Volunteering lists 23 major types of volunteer activities. These include social support and protection of citizens, charity, activities in the areas of health protection, education and science, culture and art, tourism and sport, environmental protection, and other areas of public importance.

Volunteer activities may be carried out individually or through a volunteer organization in Turkmenistan. The status of a volunteer organization is given to a PA by the authorized state body in the sphere of volunteering (hereinafter - authorized state body²⁸⁷), based on a written application from a PA. The application should be supported by the necessary documents attached therein, referred to in part 1 of Article 15 of the Law on Volunteering. A volunteer organization is an organizer of a volunteer activity.

PAs may involve volunteers, both based on a volunteering contract (based upon civil law) and without entering into a contract. An obligation to conclude a contract for a PA occurs only when a volunteer is engaged in volunteering activity for more than 20 hours per month. Regardless of the duration and type of volunteer activities, it is obligatory to sign a contract with a foreign volunteer.²⁸⁸ Part 3 of Article 9 of the Law on volunteering lists the obligatory conditions of the contract.

For recording volunteer activities, PAs have to keep a personal volunteer book signed and sealed by an employing organization. It shall contain information on volunteer's activities, his promotions, additional training, level of qualification, and retraining. A personal book is issued only to those persons who have undergone the registration procedure. A personal volunteer's book is a form of strict reporting and must have an identification number and series, as well as a system of protection against unauthorized fabrication and forgery.²⁸⁹ Besides a personal book, the head of a PA may issue a letter of recommendation at a volunteer's request. The content of the recommendation letter is confirmed by the enclosed personal book of a volunteer.²⁹⁰ In addition, a volunteer organization should keep personal data accounting logs for volunteers.

²⁸⁵ Adopted on 12 January 2016; published in the newspaper *Neitralnyi Turkmenistan*, № 18 (28011) dated 20 January 2016.

²⁸⁶ Foreigners and persons without citizenship must legally stay on the territory of Turkmenistan during an uninterrupted period of time – not more than 12 months – for a purpose of performing volunteer activity based on a volunteer contract with a volunteer organization in Turkmenistan in accordance with the provisions of the Law on Volunteering. See the Law on Volunteering, Article 1.

²⁸⁷ An authorized state body is not yet determined by the legislation.

²⁸⁸ Part 2 of Article 9 of the Law on Volunteering.

²⁸⁹ *Ibid*, Article 10.

²⁹⁰ *Ibid*, Article 11.

Rights and responsibilities of volunteers are stipulated in Article 13 of the Law on Volunteering. Among basic rights, the most significant ones are the right to a free choice of a type of volunteer activity that meets their interests; the right to participate in the development and implementation of volunteer programs which form the basis of a volunteering contract; as well as obtaining protective clothing, reimbursement of travel, accommodation, meals, purchase of necessary personal protective equipment, tools, and other costs associated with the implementation of volunteer activities.

At a same time, volunteers must fulfill certain obligations, such as, to comply with safety regulations; not cause harm to a volunteer organization, recipients of a volunteer assistance, their property, or damage to the environment by their volunteer activities; obey the instructions of the heads of a volunteer organization, a party to the volunteer contract; and to respect the confidentiality of information, which they had access to during his volunteering activity.

Article 14 of the Law on Volunteering stipulates the rights and duties of a volunteer organization. For example, a volunteer organization has the right to obtain necessary funds and other property to carry out volunteer activities; to appoint a volunteer coordinator; to demand timely and qualified performance of obligations by the volunteers; and to receive information or reports on performed work from them.

At the same time, a volunteer organization is obliged to conclude an agreement with the volunteers; to explain volunteers' rights and duties and to instruct them; to provide health insurance and liability insurance for volunteers, in accordance with legislation; to reimburse expenses of volunteers; to keep personal books of volunteers; to issue letters of recommendation to volunteers; and to submit a list of candidates for promotion among the most distinguished volunteers to the authorized state bodies, among others.

As mentioned above, volunteers are entitled to reimbursement of expenses associated with the implementation of volunteer activities within the norms of reimbursement established for civil servants at the expense of volunteer organizations. Namely, upon submission by a volunteer of supporting documents, the following expenses shall be reimbursed:

- 1) transportation (including baggage allowance) to the place of volunteering;
- 2) food, if volunteer activity lasts more than four hours a day; accommodation costs during business trips to another location for volunteering for more than 8 hours;
- 3) post and phone expenses, if a volunteer carries out volunteer activity outside of the location of the volunteer organization; and
- 4) a medical examination, vaccination, and other preventive and treatment measures that are directly related to the implementation of volunteer activities.²⁹¹

Volunteer organizations have the right to attract funds and other property for its volunteer activities from individuals and legal entities and independently determine how to use these funds, except for cases of targeted provision of funds for a particular type of volunteer activity, but in any case within its statutory activities. Additionally, volunteer organizations have to report on utilization of such funds within the timeframe and form established by these individuals. These funds should be accounted for on separate balance sheet accounts.²⁹²

²⁹¹ *Ibid*, Article 23.

²⁹² *Ibid*, Article 24.

Support to volunteer activities is given through measures such as logistical support and subsidizing of volunteer organizations, funding of volunteer program or volunteer actions on a competitive basis, and social support of volunteers.²⁹³ Thus, a volunteer activity, confirmed by a personal volunteer book and letters of recommendation, is taken into account as an experience in socially useful activities, which can be a pre-requisite for employment or admission for study. Volunteering carried out by students shall be included into an internship or training or undergraduate practice, if students worked at least 40 hours and if there is an agreement (contract) on cooperation between the institution of professional education and the volunteer organization.²⁹⁴ Additionally, individuals and legal entities can be awarded in accordance with Turkmenistan's legislation for their successes in volunteering.

²⁹³ *Ibid*, part 5 of Article 18.

²⁹⁴ *Ibid*, parts 3 and 4 of Article 18.

UZBEKISTAN

General overview

Sources of NCO²⁹⁵ funding in the Republic of Uzbekistan (hereinafter - RUz) are entry and membership fees, regular and one-time contributions from founders and members, voluntary property contributions and donations, income from entrepreneurial activity, SSCs, grants, foreign aid, and other types of income allowed by legislation.²⁹⁶

State funding is provided in the RUz in a form of subsidies, grants, and SSCs. A specially assigned authority, the Public Fund for Support of NCOs and Other Civil Society Institutions under the Oliy Majlis of the RUz (hereinafter – Fund or Public Fund) is a main funding mechanism at the national level in Uzbekistan. Its function is the accumulation of budget funds and funds from non-government sources to allocate and finance NCO projects. For the transparency of the Fund's activities, a Commission was established for management of resources of the Public Fund to Support NCOs and Other Civil Society Institutions under Oliy Majlis of the RUz (Parliamentary Commission). There are annual allocations from the state budget to the Fund; for example, 12.5 billion soms (approximately \$4 million) were allocated for NCO financing in 2016. The Parliamentary Commission selects and determines winners among projects submitted to the contest. Every year, around 300-350 NCOs from a total of 8,500 NCOs in the republic (4%²⁹⁷) benefit from government financing through the Public Fund. As a rule, the amount allocated is about 10-25 million soms for a project (\$3,000-\$6,500).

At the same time, it should be noted that NCOs that receive public funding are more exposed to inspections by the state authorities. Many organizations complain about the extremely complicated reporting system related to obtaining state funding. According to some NCOs, the process of allocation of state support is not sufficiently transparent.

Foreign aid to NCOs is mostly provided in the form of grants received from international organizations, such as UNDP, UNICEF, and OSCE, as well as from some embassies. However, due to its limits and the complexities involved, giving and receiving of foreign aid does not appear to have a significant impact on the overall situation of NCO financing. Official data on the number of grants awarded, types, and volumes of foreign funding is not available.

Obtaining foreign aid in the RUz is an extremely complex process. This process involves a number of government agencies, such as the Ministry of Justice (hereinafter - MoJ), MFA, Ministry of Finance (hereinafter - MoF), banks, the Banking Commission, and law enforcement authorities have very broad power to grant or deny permission of aid. In addition, they have the right to inspect and audit utilization of these funds. After getting permission to receive foreign aid, NCOs are subject to strict control, first of all by the MoJ and the MoF, as well as law enforcement authorities. First, an NCO

²⁹⁵ Uzbekistan's legislation uses a term "non-governmental non-commercial organization" (hereinafter - NNO), but hereinafter generally the term "NCO" is used. "NNO" term shall be used only in the names of legal documentation, as well as in the texts taken from official publications.

²⁹⁶ Article 29 of the Law of the RUz on Non-governmental Non-commercial Organizations dated 14 April 1999, # 763-I.

²⁹⁷ Information is taken from the publication *Activities of Public Fund and Parliamentary Commission for the Implementation of the "Concept of Deepening of Democratic Reforms and Formation of Civil Society in the Country," in graphs and statistical data* (A. H. Saidov and A.T. Turaev eds., Tashkent 2015).

agrees with justice authorities to obtain foreign aid and during the approval process, provides explanations about the donor, amount, and purpose of financing. Further, a packet of documents is submitted to the MFA, and then to the Banking Commission. Even if an NCO has already received permission from the Banking Commission to receive a grant, it must still wait for permission from its private bank to receive the funds. If an NCO receives technical assistance, a grant, or humanitarian assistance, it must report to the MoF's Treasury at each step of the monetary transaction (flow) for these funds within 24 hours.

Help from businesses is minor due to lack of tax incentives for donors. Individual monetary donations are very rare. The most common donation types are in-kind contributions. For example, some NCOs attract volunteers and in-kind support from their local communities. Despite the availability of opportunities to engage in entrepreneurship, only a small number of NCOs are involved in such activities due to complex reporting requirements and high taxes on profits.

In general, the financial stability of the majority of NCOs in Uzbekistan is underdeveloped. Even those NCOs that were able to receive state funding cannot be considered completely stable, due to their inability to diversify their funding sources.

Next, we consider legal regulation of various sources of funding of NCOs in priority order for the majority of NCOs in Uzbekistan, as well as legislation on the taxation of NCOs and their donors:

1. State funding
2. Foreign funding
3. Funding from local non-governmental sources
4. Income from entrepreneurial activity
5. Volunteers
6. Tax benefits for NCOs and their donors

1. State Funding

In this section, materials from ICNL's 2015 publication, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia* are partially used.

Financing for NCOs from Uzbekistan's state budget is arranged by provision of subsidies, grants, and SSCs.

Legislation for government support of NCOs is established in the Law of the RUz on Guarantees of NNOs' Activity²⁹⁸ (hereinafter - the Law on Guarantees of NNOs' Activity).

This law establishes the possibility of state support to NCOs in the form of subsidies, grants, and SSCs, as well as explains that the Public Fund and the Parliamentary Commission are created under the Olij Majlis of the RUz for management of Fund's resources.²⁹⁹

In addition, this law gives the definitions of the main funding mechanisms:

²⁹⁸ The Law of the RUz on Guarantees of NNOs' Activity, dated 03.01.2007.

²⁹⁹ Article 14 of the Law on Guarantees of NNOs' Activity.

- A state subsidy is financial or other material assistance at the expense of the state budget of the RUz and state trust funds, provided to support NNOs and not related to any special projects.³⁰⁰
- A state grant is monetary and material resources provided at the expense of the state budget of the RUz to NCOs on a competitive basis for projects designed to achieve social goals.³⁰¹
- An SSC for NNOs is a public task to perform activities or events for the realization of socially significant projects by concluding a contract between a governmental agency and an NNO.³⁰²
- Terms and conditions for the allocation of subsidies, grants, and SSCs are determined by the Parliamentary Commission.³⁰³

For the implementation of these provisions, the Kengash of the Legislative Chamber and the Senate of Olij Majlis of the RUz adopted a joint resolution on the Regulation on the Public Fund for Support of NCOs and Other Civil Society Institutions under the Olij Majlis of the RUz (Regulation on the Public Fund) and the Regulation on the Parliamentary Commission on Management of the Fund's Resources.³⁰⁴

According to the Regulation on the Public Fund, the Fund is a non-membership non-governmental NCO, and is an independent legal entity holding bank accounts in national and foreign currency. In its activities, the Public Fund is guided by the principles of publicity, transparency, and openness, as well as the targeted use of allocated resources to NNOs and other civil society institutions. The aim of the Fund is to contribute to the further development and active participation of independent NCOs and civil society institutions in implementation of democratic reforms and liberalization of society, and creation of objective conditions for the formation of their funding sources.

The main objectives of the Fund are:

- accumulation of funds received from the state budget of the RUz and other sources not prohibited by law, and organization of their utilization for the implementation of programs aimed at stimulating development and support of civil society and independent NCOs, and their active participation in addressing existing social, economic, and humanitarian problems; and
- assistance in the implementation of projects and programs reinforcing the logistical base of NCOs, providing them with legal, consultative, organizational, technical and other assistance, extension of contacts with foreign partners (conduct of joint conferences, seminars, roundtables, trainings, and implementation of joint projects, among others) on the development of NCOs' activities, institutions of civil society, and their participation in the processes of democratic renewal and modernization of the country.³⁰⁵

³⁰⁰ *Ibid*, Article 12.

³⁰¹ *Ibid*, Article 13.

³⁰² *Ibid*, Article 14.

³⁰³ *Ibid*, Para. 2 of Articles 12-13.

³⁰⁴ Joint Decree of Kengash of the Legislative Chamber of Olij Majlis of the RUz and Kengash of the Senate of Olij Majlis of the RUz "On approval of normative legal acts necessary for the implementation of tasks of the Public Fund for support of [NNOs...] and other civil society institutions under the Olij Majlis of the [RUz...], and the composition of the Parliamentary commission on management of Public Fund's resources for support of [NCOs...] and other civil society institutions under the Olij Majlis of the [RUz...]," dated 03.07.2008, № 843-I/515-I.

³⁰⁵ *Ibid*, Article 2-2.

The sources of the Fund are funds from the state budget of the RUz, sponsored voluntary contributions of legal entities and individuals (both residents and non-residents of the RUz), grants, and donated funds from international organizations and financial institutions, and other sources not prohibited by law.³⁰⁶

The work of the Parliamentary Commission³⁰⁷ is aimed at ensuring more transparent, targeted, and democratic distribution of funds allocated from the state budget to support the "third sector," which affects strengthening of the technical and economic bases of NCOs' activities.

The main tasks of the Parliamentary Commission are:

- distributing effectively the Fund's resources to support NCOs, studying in-depth proposals from NNOs and other civil society institutions funding programs, social and socially significant programs, and projects aimed at addressing specific socio-economic problems of the regions, and further enhancing the social activity of citizens;
- ensuring openness and transparency of allocation of the Fund's resources, public involvement in discussion of development, efficiency, and improvement of NCOs' activities and other institutions of civil society, their active participation in ongoing socio-economic and socio-political reforms, ensuring the protection of democratic values, rights, freedoms, and the legitimate interests of the person;
- monitoring targeted and effective use of the Fund's resources, financed projects, and programs, including those aimed at strengthening the financial independence and sustainability of NCOs and other civil society institutions;
- promoting cooperation of local NCOs with the state authorities in the implementation of priority and other social and socially significant programs, projects, and processes, strengthening NCOs' role and other civil society institutions in democratization of public life; and
- developing recommendations to improve the legislative base, and economic and legal guarantees, to ensure the free and independent development of NCOs and other civil society institutions.³⁰⁸

The authorities of the Parliamentary Commission include the following:

- making decisions on priorities of the Fund's activities, and identifying the resources allocated to each of the forms of support to NCOs and other civil society institutions - subsidies, grants and SSC;
- assigning expert groups for the qualitative selection of projects and programs of NCOs and other civil society institutions; and also holding grant competitions;
- monitoring the Fund's activity and its compliance with legislation, the Regulation on the Public Fund, and decisions of the Parliamentary Commission;
- making proposals to the Legislative Chamber and the Senate of Oliy Majlis of the RUz on amendments and additions to the Regulation on the Public Fund;

³⁰⁶ *Ibid*, Article 4-2.

³⁰⁷ The Regulation on the Parliamentary Commission for Management of Resources of the Public Fund for the Support of [NNOs...] and other Civil Society Institutions under the Oliy Majlis of the RUz (Appendix #2) to the Joint Decree of Kengash of the Legislative chamber of Oliy Majlis of the RUz and Kengash of the Senate of the Oliy Majlis of the RUz, dated 10.07.2008, № 843-I/515-I.

³⁰⁸ *Ibid*, Para. 4

- assigning the Executive Office and the Audit Commission of the Fund to monitor effective utilization of funds and other assets of the Fund;
- reviewing and approving estimated budgets for income and expenses of the Fund for the year, with quarterly breakdown by type of support to NCOs, as well as the budget, annual accounts, annual financial reports, and reports of the Executive Office of the Fund on its activity;
- making decisions on auditors to conduct an annual routine or extraordinary audits of the Fund's activities;
- claiming and getting documents related to the Fund's activity from the authorities;
- cancelling or suspending execution of the Executive Office's decisions and other authorities' decisions of the Fund that contradict the purposes and objectives of the Fund; and
- voting for candidates for the post of the Fund's Director.³⁰⁹

A special norm in the Law of the RUz on Social Partnership³¹⁰ was adopted for monitoring the allocation of government funds at the local level. According to this norm, "public funds can be created in accordance with the legislation by Jokargy Kenes of Karakalpakstan, and Kengash of people's deputies in the regions and Tashkent city, in order to develop initiatives and strengthen NCOs' and other civil society institutions' roles, as well as promoting their involvement in social and important public issues on a local level."

Local public funds perform the following functions:

- collecting resources received from the local budget and Public Fund under the Olij Majlis, charity donations of legal entities and individuals, and other means not prohibited by law;
- organizing utilization of received resources to support NNOs and other civil society institutions' activity, and their participation in local social and socially significant issues; and
- facilitating the development and implementation of socio-economic development programs, solving humanitarian issues and protecting the rights, freedoms, and legal interests of citizens.³¹¹

1. The procedure for allocating resources to NCOs from the state budget

In accordance with the Law on Guarantees of NNOs' Activity, a Procedure on the Public Fund's Resource Allocation to Support NNOs and Other Civil Society Institutions under the Olij Majlis of the RUz (hereinafter - the Procedure) was designed.³¹²

According to this Procedure, support of NCO activities at the expense of the state budget of the RUz takes the form of subsidies, grants, and SSCs through the Fund. The Fund's resources may be allocated to NCOs that have passed state registration as legal entities in accordance with legislation.

"An annual budget allocation to the Fund for its further support of NCOs and other civil society institutions is processed upon submission of a proposal by the Parliamentary Commission within timeframes of consideration, discussion, and approval of the state budget of the RUz. Volumes of financing from the state budget of the RUz and the government trust funds for support of NCOs' activity is approved on an annual basis and as a separate line of expenditures of the state budget of

³⁰⁹ *Ibid.*

³¹⁰ Article 17 of the Law of the RUz on Social Partnership, dated 25.09.2014 № ZRU – 376.

³¹¹ *Ibid.*

³¹² Appendix to the Protocol of the meeting of the Parliamentary Commission # 1 dated 11.07.2008 with amendments and changes as of 02.10.2008. Minutes of the meeting of the Parliamentary Commission #2.

the RUz upon the proposal by the Parliamentary Commission. [...] The Parliamentary Commission, within the approved parameters of the state budget, determines volumes of resources directed to each form of support mentioned in the Procedure. Allocated monetary resources for NCOs are credited to their accounts in their servicing banks. Annually, the Fund publishes a report on its activities in mass media, including distribution and implementation of the funds allocated for support of activities of NCOs and other civil society institutions.”³¹³

2. Subsidy

Support of NCOs’ activities in the form of subsidies is provided according to a scheme, stipulated in Appendix #1 to the Regulation.³¹⁴ Subsidies are allocated and utilized exclusively for the execution of statutory goals and objectives of NCOs, including current maintenance, strengthening logistical resources, and conduct of socially significant events.³¹⁵

Only those NCOs that are engaged in socially significant activities and/or involved in the formation of civil society in the RUz, can apply for subsidies, and the Parliamentary Commission makes a decision on subsidy allocations based on NCOs’ applications.³¹⁶

Some NCOs are financed by general subsidy allocation procedures, as they are considered as an independent object for financing - namely, the National Association of NNOs, the Institute of Civil Society Studies, the National Association of Electronic Mass Media, the Foundation for Regional Policy, the Public Fund for Support and Development of Independent Print Media and News Agencies, and the Ecological Movement of Uzbekistan. The budget allocated to these institutions is used for their administrative needs, as well as implementing their statutory objectives.³¹⁷

The general order of distribution of subsidies is as follows: the Parliamentary Commission, after examining an NCO’s proposal and the Fund’s analysis report, shall make a decision on feasibility and subsidy volumes for the NCO. After making a decision, it sends the Cabinet of Ministers of the RUz (hereinafter – CM RUz) its budget request for the next year (until June 20)³¹⁸ to include the project amounts in the state budget.

The CM RUz considers the application within one week and then makes a decision whether to include these amounts in the state budget for the next year or not. Within ten days of the approval of the state budget of the RUz, the Fund presents its proposals for allocation of subsidies for each NCO within the approved budget to the Parliamentary Commission. Within five days of receiving proposals of the Fund, the Parliamentary Commission determines the amount of subsidies allocated to each NCO.³¹⁹

The Fund allocates subsidies to NCOs quarterly, on the basis of their written applications.³²⁰ The process of allocation of subsidies to NCOs is covered in mass media.

³¹³ ICNL, *Some Issues of Legal Regulation of NCOs’ Activities in Countries of Central Asia*, 113-114.

³¹⁴ Appendix # 1. Scheme of subsidies allocation.

³¹⁵ Article 3.2. of the Regulation.

³¹⁶ *Ibid*, Article 3.3.

³¹⁷ *Ibid*, Article 3.4.

³¹⁸ *Ibid*, Article 3.6.

³¹⁹ *Ibid*, Articles 3.7. – 3.9.

³²⁰ Appendix № 4 to the minutes of the meeting of the Parliamentary Commission dated October 2, 2008 “The Sample Application for the Allocation of Subsidies of the Public Fund for Support of [NNOs...] and other Civil Society Institutions in Uzbekistan.”

3. Grant

The scheme for grants allocation from the state budget is specified in Attachment #2 to the Regulation.³²¹

The Parliamentary Commission investigates opinions and public proposals, and NCOs' and other civil society institutions' opinions and proposals on supporting NCOs' activities through grant competitions (until 15 June of the current year).³²²

Based on this investigation, the Parliamentary Commission generates and sends to the CM RUz its budget request for the inclusion of amounts of funds into a draft state budget of the RUz for the next year (until 20 June).³²³

The CM RUz considers the budget request within one week and decides whether to include the requested resources to the draft state budget of the RUz for the next year.³²⁴

Within ten days of the approval of the state budget of the RUz, the Fund submits to the Parliamentary Commission its proposals on organization of grant competitions and allocation of grants to NCOs within the approved budget.³²⁵ Within five days of receiving the Fund's proposals, the Parliamentary Commission determines the priorities, conditions, and amount of financial resources allocated for organizing grant competitions.³²⁶

The Fund organizes grant competitions according to the Regulation on Competition Procedure and Selection of Projects (hereinafter - Regulation on Competition),³²⁷ which stipulates competition procedures. According to the Regulation on Competition, the selection of projects submitted to a contest and winners are determined by the Parliamentary Commission.³²⁸

For the preliminary review, selection, and evaluation of projects received from NCOs and other civil society institutions, the Parliamentary Commission forms expert groups, with experts specializing in relevant areas, and extensive professional and life experience.³²⁹

The competition is open to NCOs and other civil society institutions, meeting the competition requirements. After publication of an announcement, NCOs and other civil society organizations wishing to participate in the contest apply for a grant. Applicants can apply to the executive office of

³²¹ Appendix №2. The grants allocation scheme.

³²² Article 4.2. of the Regulation.

³²³ *Ibid*, Article 4.3.

³²⁴ *Ibid*, Article 4.4.

³²⁵ *Ibid*, Article 4.5.

³²⁶ *Ibid*, Article 4.6.

³²⁷ Regulation on the Procedure of Conducting the Competition and Selecting Projects of [NNOs...] and other Civil Society Institutions in Uzbekistan. (Appendix № 3 to the minutes of the meeting of the Parliamentary Commission dated October 2, 2008).

³²⁸ Article 3 of the Regulation on Competition.

³²⁹ The Regulation on the Independent Expert Group on the Qualitative Selection of Projects of [NNOs] and other Civil Society Institutions (Appendix № 2 to the minutes of the meeting of the Parliamentary Commission dated October 2, 2008).

the Fund for further clarification and information about the competition and samples of competition documents.³³⁰ Grant applications may be submitted in an electronic form.³³¹

The preliminary screening of applications for a grant for compliance with established documentation is carried out by the Executive Office of the Fund. The Executive Office of the Fund does the following:

- publishes an announcement of a competition in mass media;
- accepts applications of NCOs and other civil society institutions to receive a grant, and provides for their accountability, security, and confidentiality;
- organizes collection, compilation, and execution of the necessary documentation for preliminary screening and evaluation results by the expert commission;
- coordinates activity of attracted experts;
- transmits all necessary tender documentation to the Parliamentary Commission for its final decision; and
- executes contractual work with a winner.³³²

A competition publication (announcement) in the mass media must contain the following information:

- subject and priorities of submitted projects;
- form of conducting the competition;
- size of allocated grants;
- conditions of registration for participation of NCOs and other civil society institutions in the competition, as well as the procedure for its conduct; and
- time and place of the competition.³³³

The Regulation on Competition determines the rules of competition, according to which there are defined terms for considering applications for grants and projects by NNOs and other civil society institutions, and execution of necessary documentation by the Executive Office of the Fund. Applications for grants and related projects are accepted in accordance with the requirements of the Regulation and announced conditions of the competition. Failure to comply with the requirements of the Regulation and announced conditions of the competition results in the submitted documents being discarded without consideration. The Executive Office of the Fund records grant applications in a laced and numbered registration book. A written notice is sent to applicants and project implementers that they are not admitted for participation in the competition because of the delayed submission of necessary documents.

The procedure for evaluation of competitive projects is defined as follows:

- In carrying out preliminary screening and evaluation of projects, the Parliamentary Commission may form expert groups.
- Evaluation and selection of competing projects by the Parliamentary Commission is executed transparently and openly. If needed, the Parliamentary Commission is entitled to hold a private discussion. For each competition project, a reasoned decision is taken by open vote.

³³⁰ Articles 7-8 of the Regulation on Competition.

³³¹ See "The Sample Application for Participation in the Competition for a Grant to Support [NNOs...] and other Civil Society Institutions in Uzbekistan." (Appendix №2 to the Regulation on Competition)

³³² Article 13 of the Regulation on Competition.

³³³ *Ibid*, Article 14.

- During the selection and assessment of applications for the grant, project review, the Parliamentary Commission may involve applicants, request additional information, and receive further clarifications.
- Having considered conclusions of the expert groups, the Parliamentary Commission determines winners of the competition and decides on financing for NNO projects and other civil society institutions.
- The decision of the Parliamentary Commission on winners of the competition is recorded in a protocol and is sent to the Executive Office of the Fund for financing of the projects.
- Within three days from the date of the determination of winners by the Parliamentary Commission, the Executive Office of the Fund publishes the results of the competition in mass media and on its official website.

The Executive Office of the Fund, based on the Parliamentary Commission's decision, ensures the preparation and conclusion of agreements on grant allocation to support NNOs and other civil society institutions.³³⁴

According to grant competitions' results, a grant agreement is concluded between the Fund and an NCO. The results of grant competitions are covered in mass media. The Fund finances winners of grant competitions according to the terms and conditions laid down in a grant agreement.³³⁵

4. SSC

Support of NCOs' activities in the form of SSCs is carried out under the scheme according to the Attachment #3³³⁶ to the Procedure.³³⁷

The procedure for the distribution of SSCs is governed by the Regulation on the SSC Allocation Procedure among NNOs and Other Civil Society Institutions³³⁸ (hereinafter – Regulation on the SSC).

The Parliamentary Commission investigates opinions and public offerings of NCOs' and other civil society institutions, as well as bodies of state power and control on the implementation of socially important projects in localities (until June 15).³³⁹ Based on this investigation, the Parliamentary Commission determines the amount of funds, generates the budget request, and sends it to the CM RUz by 20 June for including it into the draft state budget of the RUz for the next year.³⁴⁰ The CM RUz considers the application for one week and decides whether to include in the state budget of the RUz the volume of project funds for the following year (until 1 July).³⁴¹

Within ten days of the approval of the state budget of the RUz, the Fund submits to the Parliamentary Commission its offers on SSC allocation among NCOs within the limits of the approved budget.³⁴² The Parliamentary Commission, five days after the receipt of Fund's proposals, approves the priorities,

³³⁴ ICNL, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*, 114-116.

³³⁵ Articles 4.7. – 4.9. of the Regulation.

³³⁶ Appendix №3. The scheme of SSC allocation.

³³⁷ Regulation on competition (Appendix № 3 to the minutes of the meeting of the Parliamentary Commission dated October 2, 2008).

³³⁸ Regulation on the SSC (Appendix № 3 to the minutes of the meeting of the Parliamentary Commission dated 3 December 2008).

³³⁹ Article 4 of the Regulation on the SSC.

³⁴⁰ *Ibid*, Article 4.3.

³⁴¹ *Ibid*, Article 6.

³⁴² *Ibid*, Article 9.

conditions, and amount of funding, as well as determines to which NNOs SSCs are allocated. The Fund concludes contracts with selected NNOs.³⁴³

Based on a contract signed with an NCO, the Fund finances the SSC implementers. SSCs implemented by NCOs are covered in mass media.³⁴⁴

The Regulation on the SSC describes the responsibility of NCOs which receive SSCs. The leaders of NCOs which received an SSC are responsible for the proper and intended utilization of allocated funds, as well as for qualitative and timely execution of socially important works and activities, stated in the contract. Those who violate the requirements of this Regulation are liable in accordance with legislation.³⁴⁵ The liability depends on the type of offense committed. Negligence without causing much damage leads to a disciplinary sanction, material damage leads to a liability under civil law, and criminal liability is invoked for embezzlement of funds.

NCOs that have received funds for the implementation of SSCs report to the Fund on utilization of allocated resources according to the order and terms specified in their contract. Each quarter, the Fund submits reports on utilization of allocated funds to the MoF in accordance with the reporting order for budget organizations. Resources, which were allocated but not used for the implementation of the SSC, are returned to the Fund at the end of the performance period.

Responsibility to control the targeted and proper use of allocated funds belongs to the Fund.³⁴⁶

Reporting and monitoring of targeted use of funds is stipulated in the Regulation.³⁴⁷ Quarterly, NCOs that were granted budget funds report to the Public Fund in terms and in a due manner, on the implementation of events at the expense of grants and SSCs, as well as the utilization of funds received. In its turn, the Fund, after summarizing the reports submitted by NCOs, submits its report to the MoF on the use of budgetary funds in terms and a due manner, as prescribed for the budgetary organizations.³⁴⁸

Control over the revenues and the targeted use of funds allocated to support NCOs' activities may also be carried out by the Accounting Chamber of the RUz upon a claim brought by a group of deputies numbering not less than one-tenth of the total number of deputies of the Legislative Chamber.³⁴⁹

Control over compliance of NCOs' activities with legislation and their statutory obligations is performed by the MoJ.³⁵⁰

The annual budget allocation of funds necessary to support the NCOs and civil society institutions is carried out upon a request form the Parliamentary Commission during the preparation, review, discussion, and approval stage of the state budget. At the same time, at the end of the reporting year, the remaining unused funds allocated to NCOs are not returned to the budget, but used for their

³⁴³ *Ibid*, Article 10.

³⁴⁴ *Ibid*, Article 11.

³⁴⁵ *Ibid*, Article 12.

³⁴⁶ *Ibid*, Article 15.

³⁴⁷ Regulation on competition (Appendix to the minutes of the meeting of the Parliamentary commission # 1 dated 11.07.2008 with amendments and changes as of 02.10.2008. Minutes of the meeting of the Parliamentary commission # 2).

³⁴⁸ Article 6.1. of the Regulation.

³⁴⁹ Article 6.3. of the Regulation.

³⁵⁰ Article 6.4. of the Regulation.

intended purpose in the following year. When allocating funds from the state budget, the MoF is entitled to take into account budget funds which remained unused by the end of the fiscal year.³⁵¹

2. Foreign Funding

In this section, we partially used materials from ICNL's 2015 publication, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*, in particular section 1, sub-sections 1.1, 1.2 and 1.3. (chapter "Uzbekistan"). The text has been edited and amended in accordance with current legislation.

In general, RUz law does not prohibit NCOs to receive funding from foreign sources. Article 29 of the Law on NCOs³⁵² allows NCOs to receive foreign aid, if it is not prohibited by other legislative acts of the RUz.

A ban on foreign funding exists only for political parties and mass movements that pursue political goals. They are forbidden to receive financial or other material assistance from foreign governments, international organizations, legal entities of foreign states and their representative offices and branches, enterprises with foreign investment, foreign citizens, persons without citizenship, citizens' self-government bodies, religious organizations, anonymous persons, or persons using a pseudonym. Upon receipt of these funds, they should be returned, and if an attempt to return them fails, they should be transferred to the state.³⁵³

1. Types of foreign aid

According to RUz legislation, foreign aid arriving into the RUz for non-commercial purposes, is defined as "cash and material resources directed towards the implementation of scientific research, scientific-technical and innovation programs and projects, received by legal entities and individuals in the form of grants from international and foreign organizations and foundations, as well as in the form of gratuitous humanitarian and technical assistance in the framework of international agreements in the field of scientific and technical cooperation."³⁵⁴

Grants, humanitarian aid, and technical assistance are the kinds of foreign aid, stipulated in Uzbekistan's legislation. Other types of foreign aid are not defined in the legislation, but are also subject to registration and reporting by their recipients. According to the Order of Minister of Justice №157 (registered by the MoJ on 15 June 2016 №2802), all types of monetary funds and property received by NNOs from foreign countries, international and foreign organizations, foreign citizens, or other persons at their direction, are subject to approval, registration, and reporting.

Definitions of a grant and a humanitarian aid are stated in the Tax Code of the RUz³⁵⁵ as follows:

- a grant is property provided gratuitously by countries, governments, international and foreign government agencies, as well as international and foreign non-governmental

³⁵¹ Article 7.2. of the Regulation.

³⁵² See footnote 2 above.

³⁵³ Article 18 of the Law on Public Associations dated 15 February 1991, # 223-XII.

³⁵⁴ The Procedure on Issuing Conclusions on Monetary Funds and Equipment, Imported from Abroad in the Framework of Grants from International and Foreign Organizations, Foundations and International Agreements on Scientific and Technical Cooperation // registered at the MoJ of the RUz on 18 May 1998 N 438 (hereinafter - the Procedure on Issuing Conclusions).

³⁵⁵ The Tax Code of the RUz is approved by the Law of the RUz on 25 December 2007 # ZRU-136.

organizations, included in the list established by the Government of the RUz, to the RUz, the Government of the RUz, bodies of citizens' self-governance, legal entities and individuals, as well as property, provided gratuitously by foreign citizens and persons without citizenship, to the RUz and the Government of the RUz.³⁵⁶

- humanitarian aid is targeted gratuitous assistance in order to provide medical and social assistance to socially vulnerable groups, support to social institutions, prevention and elimination of consequences of natural disasters, accidents and catastrophes, epidemics, epizootics, and other emergencies. Humanitarian aid is provided in the form of medicines and medical supplies, food, consumer goods and other goods, including equipment, vehicles and machinery, as well as voluntary donations, works performed, and services rendered, including transportation, maintenance and storage of humanitarian aid, and is distributed by the Government of the RUz through its authorized bodies.³⁵⁷

The legislation provides for 15 kinds of humanitarian aid, but we list only those that are pertinent to NCOs:

- informational support;
- social help; and
- educational, religious activity.

With regard to technical assistance, there are more than 10 types, but the most important for NCOs are:

- consulting services (expert work); and
- education/training.³⁵⁸

2. Registration and reporting requirements for foreign aid recipients

“To receive grants the NCOs need to go through the following procedures:

1. A donor must approve its project officially through the MFA with the government agencies, which have competency in the sphere of grant implementation and get their due permission via the MFA. Documents shall be submitted to the MFA by the donor according to a procedure specified in an intergovernmental agreement, or in a corresponding memorandum concluded between an international organization and a state authority (CM RUz, ministry, department).
2. Then all the documents from the donor (the project and its justification, consent [of government] bodies) are sent to the Banking Commission (a state collegial body, whose legal status and operational procedure are not regulated by normative legal acts which are openly accessible). It considers a request within the period from one to eight months. If the Banking Commission agrees (confirms the feasibility of the project), the donor is entitled to transfer money to the account of a grantee. If the Banking Commission rejects the request, the grantee shall be notified by the Banking Commission about the refusal, with the formulation that the grant acquisition and implementation is "inappropriate."

³⁵⁶ Article 22 of the Tax Code of RUz.

³⁵⁷ *Ibid.*

³⁵⁸ Rules for completing the reporting forms to be submitted by recipients of humanitarian aid and means of technical assistance to the Treasury of the MoF of the RUz // registered at the MoJ on 02.02.2009 N 1892.

3. The recipient (NCO) can open a special grant account only in the offices of the National Bank of the RUz for foreign economic activity or state joint-stock commercial bank "Asaka."³⁵⁹

Judicial or administrative procedures for challenging a decision of the Banking Commission is not provided by legislation, as the refusal is given in the form of a notice from the commission, which does not possess a status of a legal entity."³⁶⁰

According to the recent changes introduced in some normative legal acts regulating NCO activity, there is enhanced control over foreign aid.³⁶¹ As a result, an NCO has to approve the receipt of money and property from foreign states, international and foreign organizations, and foreign nationals or by other persons on their behalf with the MoJ.³⁶² This is not about providing notification, but obtaining approval for the receipt of aid (i.e., getting permission). In addition, if they do not fulfill this requirement, NCOs can be the subject to administrative liability in the form of imposition of a fine on the NCO's officials from 15 up to 30 times the official minimum wage.³⁶³ If an NCO receives assistance from foreign donors, it should continue to inform the judicial authorities of its activity at the expense of foreign funds and grants on a quarterly basis, or more frequently at the request of the MoJ or its territorial departments.³⁶⁴

After getting approval from the justice authorities, receiving the consent of the Banking Commission, and transfer of grant funds to its bank account and prior to the start of activities under this grant, a grant recipient should obtain a conclusion for compliance of received monetary, material, and technical resources to the goals and objectives of the grant from the Committee on Coordination of Development of Science and Technology under the CM RUz (hereinafter – Committee).³⁶⁵ The conclusion is issued by the Committee based on the written request of a grant recipient (executor of the scientific research, scientific-technical and innovative programs and projects). The grant recipient must attach the following documents to the application:

- copies of the documents certifying the allocation of grants from international and foreign organizations and foundations (contract, scientific research project submitted for the conclusion of the grant, estimated schedule of work, cost estimates, and other documents defining the purpose of the work);
- extracts from the approved international scientific-technical and innovative programs, for the performance of which funds or equipment (equipment, materials, systems and means of informational and office equipment) were received; and

³⁵⁹ Decree of the CM RUz on Measures to Improve the Effectiveness of Registration of Financial Resources of Technical Assistance, Grants and Humanitarian Aid, Received from International, Foreign Governmental and Non-governmental Organizations, dated 4 February 2004 № 56.

³⁶⁰ ICNL, *Some Issues of Legal Regulation of NCOs' Activities in Countries of Central Asia*, 98.

³⁶¹ The Law of the RUz on Introducing Amendments and Additions to Some Legislative Acts of the Republic of Uzbekistan, adopted on 26 April 2016.

³⁶² Article 8 of the Law on NCOs; The Order of the Minister of Justice of the RUz on Approval of the Regulation on the Order of Coordinating the Receipt of Money and Property from Foreign States, International and Foreign Organizations, Foreign Nationals or on their Behalf by Other Persons by NNOs with the Registration Authority dated 06.15.2016 №157-MH.

³⁶³ Part 5 of Article 239 of the Code of the RUz on Administrative Liability, approved by the Law of the RUz dated 22 September 1994 № 2015-XII.

³⁶⁴ The Decree of the President of the RUz on Measures to Further Improve the Activity of the Ministry of Justice of the RUz dated 23.08.2011 N PP - 1602 (as amended on 15.05.2015); Regulation on the Ministry of Justice of the RUz (Appendix to the Decree of the President of the RUz dated 23.08.2011).

³⁶⁵ The Procedure on Issuing Conclusions.

- other documents, certifying and allowing to conduct a review of received monetary, material, and technical resources for research works for their compliance with the goals and objectives of the grants or international scientific and technical programs and projects of international agreements on scientific and technical cooperation.³⁶⁶

The applicant is responsible for the accuracy of the information and the documents submitted to the Committee to issue the conclusion.

Within 15 days from the date of the submission of the application, the Committee conducts the scientific and technical review of the submitted documents, resulting in an issuance of the conclusion.³⁶⁷ The Committee examines the submitted documents to determine if the stated resources and equipment correspond the aims and objectives of the grants from international and foreign organizations and foundations, and international scientific-technical and innovation programs. Experts of the specialized agencies and organizations of the RUz may be involved in the review. The applicant shall bear the costs for the conduct of the review, and preparation and issuance of the conclusion, in the amount of ten times the minimum monthly wage.³⁶⁸

Based on the results of the review, the conclusion is issued on letterhead of the Committee, and signed by an authorized person, not later than ten working days from the date of the receipt of the complete application with the required documents for the examination (for legal entities and individuals).³⁶⁹

The MoF is assigned to coordinate the delivery of humanitarian aid and the means of technical assistance, and its timely clearance, as well as to arrange accounting and control over their intended utilization. Within the MoF, a Department was created for coordination, accounting, and control over the targeted utilization of humanitarian aid and the means of technical assistance (hereinafter – the Department).³⁷⁰

In accordance with its assignment, the Department performs the following functions:

- formation of a unified database of humanitarian assistance and means of technical assistance for funding priority projects and activities together with the Ministry of Economy, the Ministry of Foreign Economic Relations, Investment, and Trade, and other interested ministries and departments;
- development of an effective coordination mechanism for the formation of applications and inclusion of humanitarian aid and means of technical assistance in a unified database ;
- creation and regular update of the database of donor organizations that provide humanitarian aid and means of technical assistance together with the Ministry of Economy and Ministry of Foreign Economic Relations, Investment, and Trade;
- development of comprehensive measures to enhance cooperation with donors, in cooperation with the relevant structures of concerned ministries and departments;

³⁶⁶ *Ibid*, Article 2.1.

³⁶⁷ *Ibid*, Article 2.2.

³⁶⁸ *Ibid*, Article 2.3.

³⁶⁹ Appendixes 2 and 3 to the Procedure on Issuing Conclusions.

³⁷⁰ The Decree of the President of the RUz on the Establishment of the Department on Coordination, Accounting and Control of Targeted Use of Humanitarian Aid and Means of Technical Assistance of the Ministry of Finance of the Republic of Uzbekistan, dated 24.11.2008 № PP-1005.

- coordination of formation and direction of requests for humanitarian aid and means of technical assistance for the ministries, departments, organizations, and institutions;
- development and approval of the reporting forms on humanitarian aid and means of technical assistance;
- collection of information on humanitarian aid and means of technical assistance arriving into the country through the Treasury of the MoF, its analysis and synthesis, and preparation of analytical and reference materials;
- implementation (systematically) of the effective monitoring of targeted use of humanitarian aid and means of technical assistance; and
- provision of practical assistance to the ministries and departments with the clearance of humanitarian aid and means of technical assistance arriving into the RUz.³⁷¹

The Treasury of the MoF is assigned to perform complete and systematic registration and accounting of all humanitarian aid and means of technical assistance, including in non-material form, arriving into the RUz.³⁷²

The Main Control and Review Department of the MoF is assigned to audit and control the targeted use of resources, and prevent financial irregularities in the attraction and utilization of humanitarian aid and means of technical assistance.³⁷³

There is a fixed procedure, according to which the recipients of humanitarian aid and technical assistance have to submit to the Treasury of the MoF statements for their personal bank accounts, as well as information on humanitarian aid and means of technical assistance, including in non-material form, according to forms and within timeframes established by the MoF. This procedure is defined in the Rules of Submission of Bank Statements and Information about Humanitarian Aid and Means of Technical Assistance by the Recipients of Humanitarian Aid and Technical Assistance to the Treasury of the MoF (hereinafter - the Rules).³⁷⁴

The recipients of humanitarian aid and means of technical assistance (hereinafter - grantees) have to submit bank statements and information about humanitarian aid and technical assistance (hereinafter - information) to the Treasury of the MoF in a specific format.³⁷⁵ For humanitarian aid, information to the Treasury of the MoF must be submitted by the humanitarian aid grantees, who are directly defined in the programs and agreements with foreign states, international and foreign organizations, and other legal entities and individuals, or in the decisions of the Head of the Complex for Education, Health, and Social Protection of the CM RUz, responsible for the coordination of

³⁷¹ Paragraph 5 of the Regulation on the Department on Coordination, Accounting and Control of Targeted Use of Humanitarian Aid and Means of Technical Assistance of the MoF of the RUz (Appendix № 2 to the Decree of the President of the RUz dated 24 November 2008 № PP-1005).

³⁷² Paragraph 4 of the Decree of the President of the RUz on the Establishment of the Department on Coordination, Accounting and Control of Targeted Use of Humanitarian Aid and Means of Technical Assistance of the MoF of the RUz.

³⁷³ *Ibid.*

³⁷⁴ Rules for Completing the Reporting Forms that are Submitted by Recipients of Humanitarian Aid and Means of Technical Assistance to the Treasury of the MoF of the RUz (Appendix № 3 to the Decree dated 24 December 2008, approved by the MoF # 119, Central Bank of the # 307-B, the State Statistics Committee # 6, the Ministry of Foreign Economic Relations, Investment, and Trade # EG-01/14-8052 and the State Customs Committee # 01-02/5-61, (registered at the MoJ on 2 February 2009 № 1892) (hereinafter - the Rules for Completing the Reporting Forms).

³⁷⁵ *Ibid*, paragraph 1.

activities related to humanitarian aid. For technical assistance, the grantees specified in the decision of the international financial and economic institutions and international governmental organizations on provision of technical assistance must submit the information.³⁷⁶

The following information is provided to the Treasury of the MoF by the grantees:

- Information about the attracted humanitarian aid and means of technical assistance, including humanitarian aid and means of technical assistance in the natural form (Annex 1 to the Rules), submitted by post or courier to the relevant department of the Treasury of the MoF at the location of a grantee on the day after the approval of the program and donor agreements or decisions of the Head of the Complex for Education, Health, and Social Protection of the CM RUz, responsible for the coordination of activities related to humanitarian aid, as well as the decisions of the international financial and economic institutions and international governmental organizations on provision of technical assistance.³⁷⁷
- Information about arrival of the humanitarian aid and means of technical assistance, including humanitarian aid and means of technical assistance in the natural form (Annex 2 to the Rules), submitted by post or courier to the relevant department of the Treasury of the MoF at the location of a grantee on the day after the arrival of humanitarian aid and means of technical assistance.³⁷⁸
- Information on utilization of humanitarian aid and means of technical assistance, including humanitarian aid and means of technical assistance in the natural form (Annex 3 to the Rules), submitted by a courier to the relevant department of the Treasury of the MoF at the location of a grantee on the day after the utilization of humanitarian aid and means of technical assistance.³⁷⁹

Managers and chief accountants of the grantees are responsible for the completeness and accuracy of the information provided to the Treasury of the MoF.³⁸⁰

3. Funding from local non-governmental sources

1. Entry and membership fees

There are no concepts defining entry and membership fees in the RUz legislation.

Membership and entry fees exist as a source of funding for organizational-legal forms of NCOs which have memberships. Membership organizations in the RUz are public associations, religious organizations, associations (unions), and parties. According to Article 29 of the Law on NCOs, membership and entry fees are recognized as sources of NCO property, "if they are provided for in the charter," which in turn stipulates the necessity to introduce relevant provisions in the charter. The charter may contain such provisions as timing, amount, and order of paying membership fees. Payment of membership fees in the form of financial means and as property in the natural form can be stipulated in a charter, by an executive body, or by a general meeting of members of an NCO. The

³⁷⁶ *Ibid*, paragraph 2.

³⁷⁷ *Ibid*, paragraph 7.

³⁷⁸ *Ibid*, paragraph 9.

³⁷⁹ *Ibid*, paragraph 13.

³⁸⁰ *Ibid*, paragraph 5.

property transferred as a fee belongs to an NCO, i.e., NCO members lose ownership rights over the property transferred as membership and entry fees.

2. Voluntary contributions and donations

The concept of a "donation" is defined in Article 511 of the Civil Code of the RUz, according to which a donation is recognized as giving something away for commonly useful purposes. Further, this Article states that donations may be made to citizens, medical and educational institutions, institutions of social protection and other similar institutions, charitable and educational institutions, foundations, museums and other cultural institutions, PAs, and religious organizations, as well as the state and other subjects of civil law. At the same time, there is no need for anyone's permission or consent to accept donations.

Donation of property to a citizen must be, and to a legal entity, may be, due to the use of the property for a specific purpose. In the absence of such condition, donated property is considered to be an ordinary gift, while in other cases, the donated property is used by a recipient in accordance with its purpose.³⁸¹

A legal entity receiving a donation, which is given for a certain purpose, should keep separate records of all transactions on utilization of donated property.³⁸²

Improper use of donated property, not in accordance with a purpose intended by a donor, or change of a purpose while violating the rules stipulated by law, entitles the donor, their heirs, or other legal successor to demand the abolition of such donation.³⁸³

Sources of donations are not limited, i.e., that donations may be accepted from any legal entities and individuals. A donation recipient may refuse a donation. When giving a donation, a donor may specify a purpose and an order of the use of property, donated to an NNO, but donations can be made for overall statutory objectives as well.

3. Charity

The concept of "charity" exists in the Law of the RUz on Charity³⁸⁴ (hereinafter – Law on Charity) as "voluntary disinterested assistance (activity) of legal entities and individuals, expressed in the form of gratuitous transfer or transfer on preferential terms of property, including money, to other legal entities and individuals, or in the form of performance of works for them, rendering services, and providing support for charitable purposes."

Both individuals and legal entities (including NCOs) can be engaged in charity in the RUz. At the same time, the Law on Charity specifies that the transfer of financial and other material resources, and providing assistance in other forms to commercial organizations, political parties, and movements, is not considered as charity.³⁸⁵

Additionally, the Law on Charity defines a charitable organization as "a non-governmental non-commercial organization, established for performing charitable activity in the public interest and for

³⁸¹ Article 511 of the Civil Code of the RUz (part two).

³⁸² *Ibid.*

³⁸³ *Ibid.*

³⁸⁴ Law of the RUz on Charity dated 2 May 2007 # ZRU-96.

³⁸⁵ *Ibid.*, Article 4.

certain categories of legal entities and individuals”³⁸⁶ and sets up certain peculiarities in the formation of property of such organizations. For example, unlike other forms of NCOs, charitable organizations have the right to collect funds through the conduct of campaigns attracting philanthropists and volunteers, including the organization of recreational, cultural, sporting, and other events in order to collect donations, and also to receive income generated from lotteries and auctions in accordance with legislation.³⁸⁷

The legislation has established a number of requirements for charitable organizations. A charitable organization is entitled to use not more than 20% of its funds spent in one fiscal year for the maintenance of the organization (including all costs associated with its activity). This restriction does not include remuneration for persons, participating in the implementation of charitable programs.³⁸⁸ A charitable organization can reimburse volunteers’ expenses related to their activity with the organization (business travel, transportation, and other expenses). Charitable donations transferred to charitable organizations should be used only for charity purposes and cannot be used for their maintenance. The property of a charitable organization cannot be sold or transferred to the founders or members of the organization on more profitable conditions than for other persons.³⁸⁹

In order to ensure control over the activities of charity organizations, the Law on Charity has set the following rules:

- Donors, transferring property, including money, to a charitable organization, have the right to demand a report on the intended utilization of such property.
- A charity organization has to provide access to its annual reports.
- Information on the size and structure of income and expenses of a charitable organization, all assets, number of employees, their salaries, and attracted volunteers should not be confidential.
- Judicial officials are eligible to send their representatives to participate in the events held by a charitable organization, and receive explanations from members of the organization and other citizens on matters related to compliance with the charter of the charitable organization.³⁹⁰

It should be noted that in practice, NCOs are usually not created in the form of charitable organizations. This is due to the absence of preferences for charitable organizations and their donors that would justify restrictions on the activities and special requirements for reporting and internal management of charitable organizations.

4. Income from entrepreneurial activity

The concept of “entrepreneurial activity” is defined in Article 3 of the Law of the RUz on Guarantees of Freedom of Entrepreneurship³⁹¹ as “an initiative activity carried out by subjects of entrepreneurial activity in accordance with legislation, aimed at generating income (profit) at their own risk and on

³⁸⁶ *Ibid*, Article 3.

³⁸⁷ *Ibid*, Article 10.

³⁸⁸ *Ibid*, Article 9.

³⁸⁹ *Ibid*.

³⁹⁰ *Ibid*, Article 16.

³⁹¹ The Law of the RUz on Guarantees of Freedom of Entrepreneurship dated 25 May 2000, # 69-II.

their own financial responsibility.” This law defines subjects of entrepreneurial activity as “legal entities and individuals registered in an established way and executing entrepreneurial activity.”³⁹²

The legislation allows NCOs to engage in entrepreneurial activity.³⁹³ However, there are certain conditions that must be taken into account. According to Article 31 of the Law on NCOs, NCOs have the right to engage in entrepreneurial activity within the limits set by their statutory objectives. In our opinion, this provision can be interpreted in such a way that the charter should contain all intended types of entrepreneurial activity, and the direction of this activity should be linked with the main statutory objectives of an NCO.

Article 17 of the Law of the RUz on Public Associations of RUz gives the following definition of an entrepreneurial activity: “Public associations shall carry out production and other entrepreneurial activity in accordance with the procedure determined by law and create enterprises and self-supporting organizations that have the rights of a legal entity only for the purpose of fulfilling statutory tasks. Income from production and other entrepreneurial activity of PAs cannot be redistributed among the members (participants) of these associations and shall be used only to carry out statutory tasks; it is allowed for PAs to use their funds for charitable purposes, even if it is not specified in their charters.”

The Law on NCOs defines an NNO³⁹⁴ as an organization that cannot distribute any income (profit) between its participants (members).

5. Tax benefits for NCOs and their donors

The Tax Code of the RUz (hereinafter - the TC RUz)³⁹⁵ gives the following definition of an NCO: “legal entities that do not have making a profit as the main objective of their activity and do not distribute income among their participants (members).” The TC RUz lists the following organizations as NCOs: “budget organizations, including bodies of state power and administration, non-governmental non-commercial organizations, including international organizations, that have passed state registration in the [RUz...], as well as citizens’ self-government bodies and other organizations in accordance with legislation.”³⁹⁶

NCOs pay all taxes, but they enjoy certain preferences.

The legislation provides for tax preferences for recipients of foreign aid:

- The total annual income of individuals for tax purposes does not include the amount of money received as grants from international and foreign organizations and foundations, as well as in the framework of international agreements in the field of scientific and technical cooperation on the basis of the Committee's conclusions. This preference also applies to grant performers: individuals, who received income from grantees, and legal entities, on the basis of contracts concluded with grantees to perform works and provide services on project implementation.³⁹⁷

³⁹² *Ibid*, Article 4.

³⁹³ Article 31 of the Law on NCOs.

³⁹⁴ *Ibid*, Article 2.

³⁹⁵ The Tax Code of the RUz (approved by the Law of the RUz dated 25 December 2007 № ZRU-136).

³⁹⁶ *Ibid*, Article 17.

³⁹⁷ Paragraph 3.1 of the Procedure on Issuing Conclusions.

- Equipment (tools, materials, systems, and means of information and office equipment), delivered in the framework of the scientific-technical and innovation programs and projects carried out in the RUz from grants of international and foreign organizations and foundations, as well as international agreements on scientific and technical cooperation is exempt from customs duties, VAT, and excise tax, imposed at customs clearance.³⁹⁸

1. Income tax

The rate of the income tax is approved by Government decree on an annual basis. In 2016, the base rate of income tax for legal entities (with the profitability of up to 20%) is 7.5% on taxable income.³⁹⁹ When the profitability is over 20%, legal entities must pay 50% of the profit that exceeds the 20% level of profitability.

Under this type of tax, the TC RUz provides a number of benefits for NCOs. According to Article 129 of the TC RUz, the following types of income shall not be regarded as taxpayer income:

- received grants and humanitarian aid; and
- funds received by NCOs for the maintenance and implementation of statutory activities, received with an intended purpose and (or) gratuitously.

In addition, Article 132 of the TC RUz lists "other income," which are also not subject to taxation for NCOs, such as income from participation in joint ventures (Paragraph 11), dividends and interest (Paragraph 14), and royalties (Paragraph 15).

Article 159 of the TC RUz also provides that the taxable profit of legal entities may be reduced by the sum of deductions from profit of enterprises owned by religious and public associations (except for trade unions, political parties and movements), and charitable foundations, directed at the implementation of statutory activities of these associations and foundations.

2. Benefits for donors

As we pointed out above, RUz legislation provides for a reduction of taxable income of legal entities, which provide sponsored and charitable help. Thus, Paragraph 1 of Article 159 of the TC RUz allows legal entities to reduce their taxable income by the amount of "contributions and funds in the form of sponsored and charitable help to ecological, recreational, and charitable foundations, institutions of culture, health, labor and social protection, physical culture, and sports, educational institutions, bodies of state power at the local level, [and] bodies of citizens' self-administration, but not more than two percent of the taxable income."⁴⁰⁰

3. VAT for NCOs

NCOs do not pay VAT, with the exception of turnovers from the sale of goods (works, services) within the framework of entrepreneurial activity.⁴⁰¹

The taxable base is determined based on the costs of sold goods (works, services) without including the VAT into it. When selling goods (works, services) below their production cost or purchasing price

³⁹⁸ *Ibid*, paragraph 3.2.

³⁹⁹ Appendix № 8 to the Decree of the President of the RUz dated 22 December 2015 № PP-2455.

⁴⁰⁰ This paragraph as edited by the Law of the RUz dated 30.12.2009 N ZRU-241.

⁴⁰¹ Article 197 of the TC RUz.

of goods (including costs associated with the acquisition of goods), and when transferring goods (performing works, rendering services) for the needs of a taxpayer, as well as when transferring goods (works, services) gratuitously, the taxable base - for the purposes of taxation - is determined based on the cost of goods (works, services) or the purchasing price of goods (including costs associated with the acquisition of goods).⁴⁰²

The following turnovers, particularly relevant to some NCOs, are exempt from VAT:

“15) sanatorium, spa, wellness, tourist, and excursion services, as well as services of institutions of physical culture and sports ...

sanatorium, spa and wellness services include services provided by sanatoriums, health centers, resorts, boarding houses, guesthouses and recreational areas, children's holiday camps and other organizations of rest in the framework of their core activity, regardless of whether they are legal entities or structural units of legal entities;

tourist and excursion services include a complex of tourist and excursion services as part of a travel voucher for the provision of travel services, included in the tour. The complex of tourist services include transportation services, services for accommodation, meals, excursions, organization of cultural, sporting programs and other services specified in the contract for their provision;

services of institutions of physical culture and sports include services for the conduct of sporting events, festivals, sport and entertainment events, calendar and match competitions, held in sport facilities, classes of physical culture and sport in training groups and sport teams, schools, health-oriented clubs, general fitness, health promoting, swimming, jogging and hiking, athletic, rhythmic and therapeutic exercises, and services for provision of sporting technical equipment, trainers, training equipment, forms and other services provided to visitors of such sport facilities, included in the cost of admission tickets (seasonal tickets);

23) goods (works and services) acquired by legal entities at the expense of loans (credits), provided by international and foreign governmental financial organizations under the international treaties of the RUz, and also those received at the expense of grants.”

Additionally, the following import is exempt from VAT:

- “3) goods imported as humanitarian aid, in the order determined by the CM RUz;
- 4) goods imported for the purpose of charitable help, including technical assistance, by states, governments, and international organizations;
- 5) goods imported by legal entities at the expense of loans (credits), provided by international and foreign government financial organizations under international treaties of the RUz, and also imported at the expense of grants;
- 6) medicines and medical (veterinary) products, as well as raw materials imported for the production of medicines and medical (veterinary) products according to a list established by legislation. This exemption does not apply to the medicines and medical (veterinary) products, which are also produced in the RUz, according to the list approved by the CM RUz.”⁴⁰³

⁴⁰² *Ibid*, Article 204.

⁴⁰³ *Ibid*, Article 211.

The VAT rate is 20%.⁴⁰⁴

4. Land, property and other taxes and obligatory payments, affecting NCOs

Articles 257, 265, 279, 295, 312, 316 and 325-1 of the TC RUz, under a general group of “taxpayers,” release NCOs from paying the following taxes:

- tax for the use of water resources (Article 257);
- property tax of legal entities (Article 265);
- land tax (Article 279);
- tax on improvement and development of social infrastructure (Article 295);
- compulsory contributions to the Pension fund (Article 312);
- compulsory contributions to the Republican road fund (Article 316);
- compulsory contributions to the extrabudgetary Fund of reconstruction; refurbishment and equipment of secondary schools, professional colleges, academic lyceums and medical institutions (Article 325-1).

However, if NCOs are engaged in entrepreneurial activity, they pay all generally established taxes, and they do not enjoy the abovelisted benefits.

In addition to the abovementioned taxes, Article 329 of the TC RUz provides for exemption from paying state fees in courts of general jurisdiction for the following legal entities:

- 18) non-governmental non-commercial organizations - when appealing in court against the unlawful decisions of state bodies, and acts (or inaction) of their officials that violate their rights and legitimate interests;
- 19) PAs of disabled persons, as well as their institutions, or educational and industrial enterprises and associations - on all types of claims.

However, there are certain problems that somewhat contradict these benefits.

As we have already pointed out, NCOs have the right to engage in entrepreneurial activity (Article 31 of the Law on NCOs), and to direct profit received to the statutory objectives (Article 29 of the Law on NCOs). However, when engaging in entrepreneurial activity, NCOs are required to pay generally established taxes and to submit appropriate reports required for large-scale enterprises. Even if the number of an NCO’s employees is three or five persons, and the income from entrepreneurial activity comes once or two times a year and is fully directed at the statutory non-profit activity.

At the same time, there is a simplified taxation procedure for commercial organizations in the TC RUz, which applies to microbusinesses and small enterprises. Thus, in accordance with Article 350 of the TC RUz, “microbusinesses and small enterprises are defined as legal entities with a number of employees meeting the criteria established by law” (i.e., with a number of employees up to 25 people).

This situation puts NCOs in disadvantageous position in comparison with other legal entities. In performing entrepreneurial activity, an NCO acts as a subject of small-scale entrepreneurship, because the staff of an NCO generally does not exceed 5 persons. However, according to the explanatory letter of the MoF (№SB / 04-01-32-14/642), the State Statistics Committee of the RUz (№18-01-10/145), and the State Tax Committee (№13/1-8833 dated 20.08. 2007), “legal entities,

⁴⁰⁴ https://www.mf.uz/media/file/mf_news/stavki_nalogov_2016.pdf.

not related to the subjects of small-scale enterprise (business), have to submit financial statements in accordance with the established procedure and represent statistical reports in their full volume in accordance with the Program of state statistical works.”

As a result of this approach to the taxation, in contrast to subjects of small-scale entrepreneurship, NCOs pay all generally established taxes and submit reports in accordance with the established procedure, i.e., on a monthly and quarterly basis. This hugely increases the tax burden and reporting requirements on NCOs, although NCOs direct all their received income from entrepreneurial activity to support their statutory activities (rent, compulsory payments, office supplies, and similar expenses).

When engaging in entrepreneurial activity, NCOs pay the following taxes and other compulsory payments, including:

- 1) corporate income tax of legal entities;
- 2) individual income tax;
- 3) VAT;
- 4) excise tax;
- 5) taxes and special payments for users of mineral resources;
- 6) tax for the use of water resources;
- 7) property tax;
- 8) land tax;
- 9) tax on improvement and development of social infrastructure; and
- 10) tax for individuals for consumption of gasoline, diesel fuel and gas for vehicles.

Other compulsory payments include:

- 1) compulsory payments to social funds: single social payment; insurance contributions to the Pension fund; compulsory payments to the Pension fund;
- 2) compulsory payments to the Republican road fund: compulsory contributions to the Republican road fund; fees to the Republican road fund;
- 3) state fee;
- 4) customs duties;
- 5) fee for the right of retail trade of certain types of goods and for provision of certain services; and
- 6) compulsory contributions to the development of school education.

In the simplified taxation procedure, which is set for subjects of small-scale entrepreneurship (unlike the NCOs), the following taxes are applied:

- unified tax payment;
- unified land tax;
- fixed tax on certain types of entrepreneurial activity.

Taxes payable under the simplified taxation procedure are paid in exchange for the aggregate of all generally established taxes and other obligatory payments.

The simplified taxation procedure is set only for subjects of small-scale entrepreneurship, to which NCOs are not subject; the NCOs are included into the group of payers of generally established taxes on income from entrepreneurial activity.

Thus, upon receipt of income from entrepreneurial activities, NCOs pay the same generally established taxes as large commercial organizations with a number of employees of more than 50 persons.

6. Legal regulation of volunteers

There is no legislation on volunteering in Uzbekistan. The Law on Charity includes the term “volunteers” as “individuals engaged in charity in the form of gratuitous performance of works, [and] rendering of services for the benefit of a beneficiary or a charitable organization.”⁴⁰⁵ In other words, volunteering is related to charitable activity, and it is subject to all guarantees and limitations provided for charity. However, this law does not solve the problem of lack of a clear legal status of volunteers, as well as the requirements for their performance and procedures for granting them relevant benefits.

⁴⁰⁵ Article 3 of the Law on Charity.