

Survey of Tax Laws Affecting NGOs in Newly Independent States

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Survey of Tax Laws Affecting NGOs in The Newly Independent States

Introduction

This report surveys current tax laws governing not-for-profit, non-governmental organizations (“NGOs”) in twelve Newly Independent States of the former Soviet Union (“NIS”). Specifically, this report covers Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine. The report is based on responses to a survey questionnaire regarding tax laws and regulations pertaining to NGOs provided by experienced attorneys in each of the subject countries.

Section I of this report summarizes the tax treatment of NGOs in the NIS. Section II compiles survey responses for each country, providing information on income/profits tax exemptions for NGOs; the tax treatment of income from NGO economic activities; the applicability of other taxes, such as the Value Added Tax (VAT) and taxes on real property; as well as incentives for individual and corporate philanthropy. Section III of this report contains charts encapsulating the foregoing information.

The purpose of this publication is not to provide legal advice or to present a comprehensive analysis of taxes in NIS; rather it is to provide the reader with a comparative perspective on the situation concerning the taxation of NGOs in this region.

I. Overview of Tax Laws Affecting NGOs in the Newly Independent States Region

After the collapse of the Soviet Union, the Newly Independent States granted benefits and freedoms to freshly privatized government-organized NGOs or “GONGOs.” Extensive tax benefits, however, were eliminated as soon as more independent self-governing NGOs started to appear. The survey reveals that since the end of the “golden age for a few” most countries in the region have made some progress towards modernizing their tax laws and creating an enabling fiscal environment for NGOs. For example, in all countries donations, entry and membership dues are tax-exempt for at least some types of NGOs. The most remarkable progress has occurred in Ukraine, Kyrgyzstan, and Kazakhstan, where a broad variety of organizations are benefiting from tax exemptions provided on income from a variety of sources. However, in several countries, tax legislation has deteriorated. For example, in Russia the 2000 Tax Code eliminated benefits previously provided to NGOs. Other countries, like Belarus and Turkmenistan, have not progressed in recent years.

The survey reveals the need for further reforms of the existing tax laws in order to ensure the continuing financial sustainability of NGOs in all NIS countries. This overview will discuss the trends in taxation of NGOs in the region.

1. *The types of organizations permitted to seek tax exemption.*

In all countries NGOs are considered taxpayers of profits (income) tax. For example, Kyrgyzstan and Ukraine provide that only legal entities whose activities are for the purposes of obtaining profits or that are carrying out economic activities are considered taxpayers. However, the notions of “activities aimed at obtaining profits” or “economic activities” are defined so broadly that even maintaining a bank account may bring an NGO into the ambit of this law.

In establishing the legal requirements for tax-exempt status, some countries extend the exemption to different types of organizations (*i.e.*, foundations, associations, and other types of not-for-profit legal entities)¹ provided that they are duly registered, they adhere to the non-distribution constraint, and they have primary goals other than obtaining profits.² In Ukraine, for example, the profits tax law establishes eight categories of non-profit organizations which enjoy various types of benefits.

Most countries establish “charitable organizations” but do not provide them with “special” tax treatment. Laws in most countries (with the exception of Kazakhstan, Belarus, and Turkmenistan) define “charitable” (“public benefit”) organizations either in a special law (Armenia, Kyrgyzstan, Ukraine, Moldova, Russia and Tajikistan), or in the

¹ The three most common organizational forms used to establish NGOs in the region are the association, the foundation, and the institution, although several countries authorize other forms. For example, Kazakhstan allows NGOs to be incorporated as joint stock companies.

² The nondistribution constraint prohibits an NGO from distributing its profits, as such, to any person. Thus, all profits must be used to support the NGO’s operations. This feature distinguishes NGOs from for-profit businesses.

tax code (Georgia, Kyrgyzstan, Azerbaijan and Ukraine). Only Moldova provides “charitable organizations” with benefits that are greater than the benefits for other NGOs. In some countries (for example, in Georgia) benefits related to “charitable organizations” are more difficult to implement in comparison with benefits for other NGOs as the laws lacks clear procedures for identifying charities.

Organizations of the disabled enjoy special status entitlements in most countries, including greater tax benefits, if they meet certain legal requirements.

Some countries, for example, Turkmenistan, Belarus, and Uzbekistan, reserve special benefits for NGOs specifically named in the tax laws, in addition to general benefits which are accessible to a broader category of NGOs. These are usually “all-national” GONGOs often left over from the Soviet era and subsidized from the state budget.

2. The sources of tax-exempt income.

(a) Taxation of Revenues Obtained on Gratuitous Basis

All countries in the region treat income from grants, donations, fees and dues as tax-exempt. Sometimes imprecise definitions impede the applicability of these benefits. For example, it was a challenge for Kyrgyz NGOs to claim an exemption for “humanitarian assistance” and “grants” until these terms were more fully defined in amendments to the tax code of March 2003.

Several countries (Georgia, Azerbaijan, Kyrgyzstan, Kazakhstan, Russia, and Ukraine) specifically distinguish between grants and donations. While the definition of grants varies, generally, these countries require that a grant must be provided for a specified purpose, and that there must be a written agreement between the donor and the recipient. Two countries, Georgia and Azerbaijan, even have special laws regulating grants. In some countries, donations or grants from local and foreign donors are treated differently, with a greater scrutiny for foreign donations (for example, in Belarus, Azerbaijan, and Kazakhstan).

(b) Taxation of Income from Entrepreneurial Activities

In most countries, carrying out entrepreneurial activities is permitted for all NGOs. The only exceptions are Armenia and Ukraine, where public associations are permitted to carry out economic activities only through a separate subsidiary, although in Ukraine, this requirement is not enforced.

In all countries, NGOs can carry out only those entrepreneurial activities that relate to (or help to advance) their statutory purposes. An NGO that carries out unrelated economic activities as a rule does not lose exempt status. However, the profits generated through such unrelated activities are subject to a tax at the general rate.

While in most countries income from entrepreneurial activities is taxed at the general rate applicable to legal entities, some countries exempt income from such activities from profits tax, provided certain requirements are met. For example, in Kazakhstan, the income of “social service organizations” is exempt from profits tax if such organizations derive no less than 90 percent of their gross annual income from the provision of services or conduct of activities in enumerated fields specified in the tax code (healthcare, child care and education, science, sports, culture, library services and social welfare).³

In Georgia, income from scientific and educational activities, even if obtained through sales of goods or services, is exempt from profits tax, as are all other incomes of non-entrepreneurial organizations from charitable activities.

In Ukraine, the notion of income from “primary activities” which is exempt from profits tax for charitable organizations and public associations, also includes income from some entrepreneurial activities as long as they are related to statutory purposes of an NGO. “Primary activities” are charitable activities, provision of educational, cultural, scientific, informative and other similar services for public consumption, and provision of services in connection with the establishment of the social security system (pension funds, credit unions and similar organizations). Additionally, “primary activities” include the sale of goods and services that promote principles and ideas for which the NGO was established and which are closely related to its primary activities, provided that the price for such goods and services is lower than the market price or subject to state regulation.⁴

A different approach to exemption of income from entrepreneurial activities has been chosen in Uzbekistan, where one hundred percent of income generated from an entrepreneurial activity of a business subsidiary set up by a public association is exempt from profits tax if transferred back to the public association.

(c) Exemptions for Passive (Investment) Income

Most countries in the region tax the passive income of NGOs at a general rate. The only exceptions from this rule are Ukraine, where revenues received as interest, dividends, insurance benefits and indemnities, as well as royalties⁵ are exempt from profits tax for all types of NGOs; and Kazakhstan, where NGOs are exempt from taxation of “premium,” defined as interest earnings from loans, bank deposits, and debt securities (discount or coupon), as well as financial leasing payments, payments for property transferred into trusts, and payments under certain insurance agreements.⁶ In Armenia and Kyrgyzstan certain passive incomes (for example, dividends and interest from privatization certificates) are exempt from profits tax for any recipient of such income,

³ Section 121 (1) of the Tax Code of the Republic of Kazakhstan as of June 12, 2001 (with subsequent amendments as of August 1, 2003.).

⁴ Section 7(11) (13) of the Law on Taxation of the Profits of Enterprises of Ukraine, as of December 28, 1994 (with subsequent amendments as of December 24, 2002).

⁵ Id.

⁶ Section 10(1) (2) of the Tax Code of the Republic of Kazakhstan as of June 12, 2001 (with subsequent amendments as of August 1, 2003.)

either an NGO or a business. In Azerbaijan, the tax code provisions are not clear and are implemented inconsistently on whether passive income for NGOs is exempt.

None of the countries in the region have laws which specifically address the creation of endowments or taxation rules for income earned from endowments. The concept of an endowment as a means to finance grantmaking has not, by and large, taken hold in the region.

(d) Value Added Tax (VAT)

All countries in the Newly Independent States region impose a value added tax upon the sale or transfer of goods and services including imported goods. None of the countries exempt NGOs per se from VAT. However, in most countries the majority of NGOs fall under the registration threshold for VAT. For example in Ukraine the threshold is \$11,500 for twelve consecutive months. In Georgia the threshold is \$14,000. An NGO that does not register need not collect and pay VAT on goods and services that it provides and thus does not incur compliance costs (*i.e.*, for accounting and reporting). Unfortunately, it is unable to obtain rebates for the VAT that it pays for goods and services. As a result, this is not an approach that is particularly beneficial to NGOs.⁷

Another option is to “zero-rate” goods and services. Under this option, an NGO must pay the VAT on goods and services that it purchases, but it may seek rebates for those amounts. This is generally considered a preferable option for NGOs. NGOs in Georgia, in Azerbaijan (for supplies under grants agreements), and in Armenia (for supplies under charitable humanitarian aid agreements), are eligible for a VAT rebate, the equivalent of a zero rate.

The most common approach taken in the region, however, is not to exempt any particular type of organization, but instead to exempt transactions in certain goods and services. The VAT laws in each of the countries in this category contain a list of the types of goods and services that are exempt, and the list varies from country to country. For example, in Ukraine, charitable aid or free of charge transfers of goods and services to NPOs listed in the Registry are exempt from VAT, as are other transactions listed in the law.

(e) Exemptions from Other Taxes

The most significant taxes for NGOs following VAT and income (profits) tax are the real estate tax and payroll taxes.

⁷ See International Center for Not-for-Profit Law, “Economic Activities of Not-for-Profit Organizations,” in *Regulating Civil Society*, conference report, Budapest 1996, at Appendix I – Value Added Tax (VAT) [reprinted at www.icnl.org]; Tax Preferences, *supra* note 4.

All countries in the Newly Independent States region exempt at least some NGOs from taxes on real estate, including land and buildings.⁸ Usually, NGOs are exempt from real estate taxes to the extent that property is used to advance the organization's statutory purposes and is not used for unrelated business.

In some countries (for example, Armenia, Azerbaijan, and Georgia), NGOs enjoy a reduced rate on payroll taxes.

(f) Availability of Tax Benefits to Donors for Contributions to NGOs

Most countries in the region grant at least some benefits, generally in the form of a tax deduction, to donors for contributions that they make to particular NGOs. Benefits may be available to both business and individual donors.⁹ The average taxable profit for legal entities (or personal income for natural persons) can be reduced anywhere between 1-7 percent of profit, if donations are made to qualified NGOs (for example, in Ukraine, Kyrgyzstan, Moldova, Armenia, Uzbekistan, and Tajikistan).

However, several countries do not provide for tax deductions for some or all donors. For example, there are no tax benefits for either corporate or individual donors in Georgia or Belarus. No deductions are provided for natural persons who support NGOs in Kazakhstan and Turkmenistan.

⁸ The laws pertaining to value added, property, land, and other taxes are summarized in Section III (3) and (4).

⁹ The laws pertaining to the availability of tax benefits for donations by individuals and legal entities are summarized in Section III (2).

ARMENIA

A. Income (Profits) Tax

1. Basic Notions

Profits tax is regulated in the Republic of Armenia by the Law on Profits Tax (“Profits Tax Law”).¹⁰ Under this law, all residents of the Republic of Armenia, with the exception of state-run budget-financed organizations, and all non-residents are taxpayers for purposes of the profits tax.¹¹ Organizations established, registered or accredited in the Republic of Armenia, except separate structural units of non-residents, are considered residents, and thus taxpayers.¹²

Residents are taxed on taxable profits received within and outside the territory of the Republic of Armenia.¹³ Taxable profit is the positive difference between the gross income of the taxpayer and deductions defined by the Profits Tax Law,¹⁴ with “gross income” defined as the total amount of income received by the taxpayer in the reporting year, regardless of the source.¹⁵

2. Profits Tax Rates

Profits tax rate for residents is 20 percent.¹⁶

3. Wholly or Partially Exempt Organizations

Noncommercial organizations (NCOs) enjoy exemptions for revenues obtained on a gratuitous basis, as discussed below.¹⁷

The legislation of the Republic of Armenia¹⁸ provides for various legal forms for NCOs: public organizations, and foundations. The Law of on Public Organizations¹⁹ addresses a sub-category of public association, the public organization, which shall not pursue political, religious, professional objectives. Finally, the recently adopted Law of the

¹⁰ The Law of the Republic of Armenia on Profit Tax was adopted as of September 30, 1997 (with subsequent amendments as of 01.01. 2002) (Profits Tax Law).

¹¹ Section 4 of the Profits Tax Law. This survey does not address taxation of non-residents.

¹² Id.

¹³ Section 5 (1) of the Profits Tax Law.

¹⁴ Section 6 of the Profits Tax Law.

¹⁵ Section 36 of the Profits Tax Law. Among deductions available under the Profits Tax Law is a deduction of an amount equal to 150 percent of salaries and similar payments made to handicapped employees.

¹⁶ Special rates are available for taxpayers that elect to be taxed under the simplified taxation regime; non-commercial organizations are ineligible for this regime.

¹⁷ Section 8 of the Profits Tax Law.

¹⁸ The Law of the Republic of Armenia on Public Organizations was adopted as of December 4, 2001 (*Law on Public Organizations*); and the Law of the Republic of Armenia on Foundations as of December 24, 2002 (*Law on Foundations*).

¹⁹ The Law on Public Organizations.

Republic of Armenia on Charity (the “Charity Law”)²⁰ created the category of “charitable organizations,” defined as “non-commercial organizations that carry out charitable activities.”

4. Taxation of Revenues Obtained on a Gratuitous Basis

Under Section 8 of the Profits Tax Law, “assets (including membership fees) and services received by non-commercial organizations on a gratuitous basis are not considered “income” for taxation purposes.

5. Taxation of Income from Entrepreneurial Activities

Public organizations “may engage in entrepreneurial activities only through creating a commercial organization or through participating in one.”²¹

Foundations, however, are permitted under the Law on Foundations to carry out entrepreneurial activities without establishing a separate commercial entity if (and only if) such activities (i) further the statutory purposes of the organization, (ii) correspond to those purposes and (iii) are envisaged in the charter.²²

Profits from entrepreneurial activities are fully taxed.

“Entrepreneurial activity” is not defined by the Profits Tax Law, but is defined in the Law of the Republic of Armenia on Value Added Tax²³ as: “economic activities implemented regularly for the purpose of deriving income. The economic activity is any activity performed for compensation.”²⁴ The Civil Code also defines entrepreneurial activity, but its definition lacks the criteria of regularity, providing that the activity is considered entrepreneurial when the person engaging in it “aims at gaining profit by using his/her property, selling goods, performing works or services, at his own risk.”²⁵ The discrepancy between the two definitions of entrepreneurial activities creates uncertainty as to the permissibility of occasional entrepreneurial activity by public organizations.

Direct engagement of a public organization in entrepreneurial activities, is prohibited by law and may lead to actions by registering authorities. Though, such engagement does not appear to jeopardize tax benefits applicable to income obtained on a gratuitous basis. The same applies to conduct by foundations of unrelated entrepreneurial activities.

6. Taxation of Passive (Investment) Income

²⁰ The Law of the Republic of Armenia on Charity was adopted as of October 8, 2002 (*Charity Law*).

²¹ Section 4 (3) of the Law on Public Organizations.

²² Section 19 of the Law on Foundations

²³ The Law of the Republic of Armenia on Value Added Tax was adopted as of May 14, 1997 (*VAT Law*).

²⁴ Section 2 of the VAT Law.

²⁵ Section 2 of the Civil Code of Republic of Armenia.

Resident organizations, regardless of their nature as commercial or non-commercial, are exempt from tax on the following types of income:

- ? dividends;²⁶
- ? income from privatization certificates;²⁷
- ? residual property received from liquidation of a legal entity;²⁸ and
- ? income from investment in foreign currencies and securities.²⁹

7. Regulation of Expenditures

The civil legislation imposes no requirements or limitations on the expenditures of NCOs.

The Charity Law states that charitable organizations must use no less than 80 percent of monetary donations and endowments within one year of receipt, unless the donor or the charitable program stipulates otherwise. In-kind donations and endowments shall be fully allocated for their charitable purposes no later than a year after receipt, unless the donor or the charitable program stipulates otherwise.³⁰ Further, no less than 80 percent of income earned during the fiscal year shall be used for financing charitable programs.³¹

8. Charitable Deductions

Under the Profits Tax Law, monetary and in-kind contributions and services rendered to NCOs, libraries, museums, public schools, asylums, residential homes, orphanages, and psycho-neurological and tuberculosis treatment infirmaries and hospitals, are deductible up to 0.25 percent of the donor's gross income.³² Amounts in excess of this annual limit cannot be carried over.

Under the Law of the Republic of Armenia on Personal Income Tax,³³ monetary and in-kind contributions as well as services rendered to the following organizations can be deducted from the individual's taxable income for that year, up to a maximum of five percent of the taxable income:³⁴

- ? public and religious organizations, political parties of the Republic of Armenia;
- ? condominiums;
- ? organizations which do not pursue a profit-making goal and operate exclusively for the following purposes:

²⁶ Section 26 of the Profits Tax Law.

²⁷ Section 29 of the Profits Tax Law.

²⁸ Section 28 of the Profits Tax Law.

²⁹ Section 8 of the Profits Tax Law.

³⁰ Section 12(3) of the Law on Charity.

³¹ Section 13 (5) of the Law on Charity. The Law does not specify the period of time in which such earned income must be spent.

³² Section 23 of the Profits Tax Law.

³³ The Law of the Republic of Armenia on (Personal) Income Tax Law was adopted as of December 27, 1997. (*Law on Income Tax*)

³⁴ Section 13 of the Law on Income Tax.

- ? religious;
- ? charitable;
- ? scientific;
- ? [conduct of] tests for purposes of public security;
- ? protection of the environment;
- ? development and promotion of literature, culture and education;
- ? protection of consumers rights;
- ? promotion and organization of amateur sports;
- ? protection of human rights, rights of women, children, and the elderly
- ? libraries, museums, public schools, boarding schools, nursing homes, and orphanages;
- ? psychiatric and tuberculosis treatment infirmaries and hospitals.

B. VAT

1. Basic Notions

Legal entities engaging in “taxable transactions or operations” as defined by Section 6 of VAT Law are taxpayers for the purpose of VAT, unless their revenues in the preceding year fall below a threshold of 30 million drams (about US \$51,800).

Under Section 6 of the VAT Law, “taxable transactions or operations” include the following.³⁵

1. “delivery (supply) of goods – a transaction that is implemented by transferring the ownership right of goods (including output and real estate) to another person for compensation;”³⁶
2. “rendering of services – a transaction or operation other than delivery of goods, implemented for any form of compensation, including the sales (transfer) of intangible assets;”³⁷
3. delivery of goods or provision of services by VAT payers for free, partially free, or at significantly lower than market prices, with some exceptions;³⁸
4. “import of goods under the “Importing for Free Circulation” customs regime, with certain exceptions as designated by law.”³⁹

³⁵ References are to numbers of Subsections of Section 6.

³⁶ Section 6 (1) of the VAT Law.

³⁷ Section 6 (2) of the VAT Law. Under this subsection, that the lease of goods and real estate shall be also considered as rendering of services.

³⁸ Section 6 (3) of the VAT Law.

³⁹ Section 6 (4) of the VAT Law. It is further clarified by this Subsection that for goods imported into the territory of Armenia VAT is calculated and collected on the border by customs officials, with the exception

Section 6 goods and services are subject to VAT whether supplied gratuitously or for compensation, unless supplied within a warranty period defined by public contracts.⁴⁰

The tax base is the total value of all taxable transactions performed by the taxpayer within the territory of Armenia. In the case of goods and services provided free of charge or below market value, the basis for taxation is the market value as found in similar transactions in the commercial sphere under comparable circumstances.⁴¹

Persons importing goods into the territory of RA pay import VAT.

2. VAT Rates

The standard rate of 20 percent applies to most transactions. A zero rating applies to certain international transactions only. No reduced rates are available under Armenian legislation.

3. Registration

Legal entities with revenues from transactions listed in Section 6 (1), (2), and (3) of the VAT Law of less than 30 million drams (about US \$51,800) for the previous calendar year, do not have to register as taxpayers of VAT.⁴² A taxpayer's import volume is not taken into account in meeting this threshold.

A legal entity may voluntarily join the VAT system even if not defined as a taxable person (i.e., one below the 30 million dram threshold) through submission of an application.⁴³

4. Exemption for Turnover and Import for Specific Categories of Organizations

Armenia provides few VAT exemptions for specific kinds of persons or organizations, other than those privileges granted by international treaties or agreements.⁴⁴

However, NCOs may enjoy VAT privileges with regards to goods imported by them from abroad, or acquired in Armenia, if used within the framework of "humanitarian assistance and charity programs" under the procedure specified in certain governmental

of goods included in the list defined by law, the customs duty for import of which is defined as 0 percent and which are not excise taxable.

⁴⁰ Section 6 of the VAT Law.

⁴¹ Section 8 (6) of the VAT Law.

⁴² Section 3 of the VAT Law. Note that the threshold is linked to revenues, not turnover.

⁴³ Section 3 of the VAT Law.

⁴⁴ For example, "Agreement between RA Government and US Government on Cooperation for simplifying control over humanitarian and technical aid" signed as of December 15, 1992, exempts from VAT all organizations and citizens implementing US governmental programs.

regulations⁴⁵ and the budget legislation. Under these programs, VAT becomes reimbursable when (and only when) the government elects to “co-finance” a humanitarian or a charitable program. To receive the reimbursement, an organization must obtain humanitarian or charitable status by applying to the Central Commission on Humanitarian Assistance (which provides reductions on customs duties and other fees). Upon approval of a humanitarian or charitable program by the Central Commission and procurement of government “co-financing,” the initiator of the program must obtain a “voucher” for each transaction (for both import operations or domestic acquisition) from the Ministry of Finances, which is subsequently tendered to the customs authorities or to the domestic supplier in lieu of VAT payment.⁴⁶

5. Exemption for Specific Categories of Goods and Services

Certain transactions and operations are always exempt from VAT in Armenia, regardless of the commercial or non-commercial nature of the organization:⁴⁷

- ? educational fees payable to secondary, vocational schools, specialized secondary and higher educational institutions;
- ? sales of copy-books and music books, albums for drawing, children’s and school literature, school educational publications; sales of scientific and educational editions published by higher educational institutions, specialized scientific organizations and the National Academy of Sciences of the Republic of Armenia;
- ? scientific and research work;
- ? services related to the care of children in preschool institutions, care for persons in boarding schools, children’s homes, institutions caring for disabled children and handicapped persons, nursing homes, as well as sales of goods produced and services rendered by the persons living at the expense of these institutions;
- ? sales of newspapers and magazines;
- ? services and sales related to funerals and burials;
- ? religious ceremonies, sales of religious items to and by religious organizations;
- ? sales of lottery tickets at face value; and
- ? sales of donor blood, breast milk, prosthetic and orthopedic items, medical assistance services (including prophylactic diagnostic measures), goods related to the treatment and prepared within the frames of medical assistance by the patients in preventive-care enterprises and organizations, and services rendered by them.

6. VAT Rebate Procedure

⁴⁵ Resolution of the Government of the Republic of Armenia # 136 of February 13, 2002 On Humanitarian Assistance and Charity Programs (Section 2) and Regulation for the Compensation of the Amounts of the Value Added Tax subject to payment within the Framework of Humanitarian Assistance or Charity Programs, endorsed by the mentioned Resolution.

⁴⁶ Section 1(d) of Resolution #136 reads as follows: “In accord with the work plans of the government of the Republic of Armenia and in the event of humanitarian assistance or charity programs of essential public significance the government of the Republic of Armenia, in conformity with the law of the Republic of Armenia on the National Budget, may act as a co-financer, implementing the co-financing in a procedure stipulated by the law. Procedure and within the time-frames stipulated by this regulation.”

⁴⁷ Section 15 of the VAT Law.

Overpayment of VAT shall be credited to other tax liabilities or reimbursed within 30 days of the end of the given reporting period.⁴⁸

C. Property Tax, Real Estate, and Land Tax

1. Applicable Taxes

Property tax is levied on buildings and means of transportation on an annual basis.⁴⁹

2. Tax Benefits

There are no special exemptions regarding property tax for non-commercial organizations.

D. Miscellaneous

1. Other Exemptions and Benefits

In accordance with Section 5 of the Law on Compulsory Social Insurance Contributions,⁵⁰ social taxes paid for full-time employees by their employers at non-commercial organizations as well as at cultural, educational, scientific, and medical institutions, are lower than for employers of other legal entities. Non-commercial organizations pay a fixed monthly contribution per employee in the amount of 5,000 drams, regardless of the amount of the salary. Commercial entities must make higher contributions for employees receiving more than 20,000 drams per month are higher.

In accordance with the Law on State Duties,⁵¹ decreased fees apply to NCOs as follows:

- ? state registration and registration of amendments to charters;
- ? legal actions involving protection of entity's name.

⁴⁸ Section 25 of the Law on VAT.

⁴⁹ Section 4 of the Law on Property Tax.

⁵⁰ The Law of the Republic of Armenia on Compulsory Social Insurance Contributions as of December 26, 1997.

⁵¹ The Law of the Republic of Armenia on State Duties as of December 27, 1997.

AZERBAIJAN

A. Income (profits) tax

1. Basic notions

Profits of “enterprises” are taxed under the Tax Code (Tax Code) of the Republic of Azerbaijan.⁵² The term “enterprise” is used to refer, *inter alia*, to legal entities established under the laws of Azerbaijan that conduct entrepreneurial activities and are established for such activities.⁵³ While this may suggest that non-entrepreneurial organizations (i.e., non-commercial organizations created for non-commercial purposes) are not taxpayers, in practice, non-commercial organizations engaging in entrepreneurial activities are subject to profits tax.

“Profit” is defined as the difference between non-exempt income of a taxpayer and the deductions allowed by the Tax Code.⁵⁴

2. Profits tax rates

The tax rate is 25 percent⁵⁵. Certain types of passive income addressed further below are taxed at different rates.

If the turnover of taxable operations of a taxpayer engaged in entrepreneurial activity in any preceding three-month period exceeds 1250 times the “monthly non-taxable minimum income”, this person is eligible for simplified taxation system. Any taxpayer providing transportation services, regardless of the turnover is subject to simplified tax⁵⁶.

Tax rates for the simplified tax system are⁵⁷:

- ? In Baku city – four percent;
- ? In other cities including Naxchivan Autonomic Republic- two percent;
- ? Persons conducting transportation services of customers and goods- ten percent;
- ? If manufacturing facilities, property and human resources of the taxpayer are located and operated in regions other than Baku city - two percent.

⁵² Section 103(1) of the Tax Code adopted July 11, 2000, came into effect on January 1, 2001.

⁵³ Section 13(2) (39) of the Tax Code. Enterprises also include non-resident legal entities established under foreign law their branches and permanent establishments, and branches structural sub-divisions of resident.

⁵⁴ Section 104 (1) of the Tax Code.

⁵⁵ Section 105 of the Tax Code.

⁵⁶ Section 218 of the Tax Code. According to Section 218 (3) of the Tax Code the following persons can apply to be within the simplified tax system: persons producing goods with the use of excise-duty goods; credit and insurance companies, investments funds, securities business professionals, pawn-shops; non-state pension funds; persons having property valued 50 000 times exceeding “monthly non-taxable minimum income.”

⁵⁷ Section 220 of the Tax Code.

- ? If taxpayer is registered in other regions but functions in Baku city then four percent simplified tax will be applied.

3. Wholly or partially exempt organizations and income

NCOs and charitable organizations, as defined in the Tax Code, enjoy some exemptions on certain kinds of income.

A non-commercial organization (NCO) is defined in the Tax Code as

“a legal entity that conducts a non-commercial activity and neither distributes profits received amongst its founders (stakeholders), nor uses any profits for commercial purposes.”⁵⁸

“Non-commercial activity” is defined as:

“any activity not prohibited by law that is not aimed at the generation of profits, and, in the event profits are earned, they are used solely for non-commercial purposes, including for its statutory purposes. Otherwise the activity is deemed commercial.”⁵⁹

NCOs are exempt from profits tax on income derived from gratuitous transfers, membership fees, and charitable contributions.⁶⁰

A “charitable organization” is defined in the Tax Code as a “non-commercial organization conducting charitable activities.”⁶¹

“Charitable activity,” in turn, is defined as:

“activity, conducted by an individual and (or) charitable organization, consisting of direct and disinterested aid (support), including the gratuitous transfer of money to individuals in need of such material or other aid (support) or to organizations directly providing such aid (support), including charitable organizations, or, unless other circumstances are provided for by this Tax Code, scientific, educational or other activities in the public interest.”⁶²

⁵⁸ Section 13(2) (28) of the Tax Code.

⁵⁹ Section 13(2) (27) of the Tax Code.

⁶⁰ Section 106(1) (2) of the Tax Code.

⁶¹ Section 13(2) (36) of the Tax Code.

⁶² Section 13(2) (35) of the Tax Code. Certain limitations apply. Aid (support) is not considered “charitable” if any reciprocal obligations arise on the part of the recipient (except as regards the purpose-oriented utilization of such funds), if the provider and recipient are interdependent, or if the aid is provided for use in an electoral campaign.

Charitable organizations are exempt from profits tax, except with respect to income received from entrepreneurial activities.⁶³

No other laws in Azerbaijan address charitable organizations in any further detail. No objective criteria or procedures exist in the Tax Code or elsewhere for identifying an organization as “charitable” on the basis of its intended and/or actual activities. Note that under the Tax Code’s definition, it is unclear whether an NCO must conduct only charitable activities to be treated as charitable, or, on the other hand, whether any NCO conducting charitable activities (in addition to any other activities) should qualify.

The income of specialized educational facilities for the education of those with health impairments is also exempt, except income received from entrepreneurial activities.⁶⁴

Finally, profit tax reduction of 50 percent applies to enterprises owned by public organizations at which no less than 50 percent of the employees are disabled persons.⁶⁵

4. Taxation of Revenues Obtained on a Gratuitous Basis

As noted above, three types of income received by non-commercial organizations are exempt from taxation under the Tax Code: charitable monetary transfers, membership fees, and donations. These types of income are not defined within the framework of the Tax Code. In addition, Azerbaijan’s Civil Code does not define “donations.”

A fourth type of income -- grants -- is, in practice, exempted from profits taxation, although the Tax Code does not specifically exempt grants. Under the Law on Grants,⁶⁶ a “grant” is described as purpose-oriented, gratuitous, non-repayable assistance provided under the procedure in the Law on Grants for preparation and implementation of projects beneficial to state and society.⁶⁷ To qualify as a recipient of a grant, a domestic legal entity must have as its primary statutory purpose either of the following: (1) charitable activity; or (2) the implementation of projects and programs – eligible for a grant – that do not pursue the direct derivation of profit from the grant.⁶⁸

A prior version of the Law on Grants exempted grants from profits taxation,⁶⁹ but the current law notes that “issues of taxation, connected with the obtaining ... of a grant, or of other monetary or material assistance are regulated by the Tax Code of the Republic of

⁶³ Section 106(1)(1) of the Tax Code.

⁶⁴ Section 106(1)(7) of the Tax Code.

⁶⁵ Section 106(2) of the Tax Code.

⁶⁶ Section 1 of the Law of Azerbaijan Republic on Grants as of April 17, 1998. (*Law on Grants*)

⁶⁷ E.g., humanitarian, social, and ecological projects; restoration projects aimed at repairing industrial and social facilities and infrastructure damaged as a result of war or natural disaster; programs in support of education, healthcare, culture, legal advising, information, publishing, sports, scientific, research and design and other programs of great importance for the state and society.”

⁶⁸ Section 3 of the Law on Grants.

⁶⁹ The Law on Grants used to provide in its Section 5(1) that monetary and other material assistance obtained in accordance with the stipulated procedure shall be exempted from all types of taxes, duties and obligatory payments to the state budget.

Azerbaijan.” Since the tax code does not specifically exempt grants, (and precludes inclusion of issues concerned with taxation and tax control into other legislative acts)⁷⁰, we may conclude that the practice of exempting grants is based on an understanding that “donations,” as used in the Tax Code, includes grants.

All income received by charitable organizations, except for income from entrepreneurial activities, is exempt. A charitable organization should thus enjoy exemptions for gratuitously obtained income (membership fees, donations, charitable money transfers) both by virtue of the overall exemption and as an NCO.

5. Taxation of Income from Entrepreneurial Activities (Business)

Entrepreneurial activity is defined by the Tax Code as the activity of a legal person, independently conducted by the person at his/her/its own risk, the primary purpose of which is derivation of profits from the use of property, provision of goods, performance of works or provision of services⁷¹.

Under the tax code, income from entrepreneurial activities by NCOs, including charitable organizations, is taxed. No distinction is made between income arising from activities related to and those unrelated to the statutory purposes of the NCO. Nor does the Tax Code condition any exemptions for other types of income (donations, fees, etc.) on non-conduct of entrepreneurial activities or unrelated activities.

Under the status legislation, however, NCOs are permitted to engage in entrepreneurial activities only if they are indicated in their charters as related to their statutory purpose.⁷² The Law on NGOs requires NCOs to conduct separate accounting for revenues and costs of entrepreneurial activity.⁷³

6. Availability of Exemptions for Passive (Investment) Income

The Tax Code does not contain any explicit exemptions for passive income of NCOs. However, the broad exemption for charitable organizations, which applies to all income except that from entrepreneurial activity, may operate to exempt them from profits tax on passive income. This conclusion is based on the facts that (a) the definition of “entrepreneurial activity” under the Tax Code,⁷⁴ does not seem to include passive income; and (b) according to Section 99 (3), which refers to income of individuals, “income from non-entrepreneurial activities” includes, *inter alia*, interest payments, dividends, income from renting out property, royalties, and gains from the sales of assets not used for entrepreneurial activities.⁷⁵ As a result, passive income received by charitable organizations should be tax exempt.

⁷⁰ Section 2(4) of the Tax Code.

⁷¹ Section 3(13) (2) (36) of the Tax Code.

⁷² Section 22 of the Law on Non-Governmental Organizations as of June 13, 2000 (NGO Law).

⁷³ Section 22(3)

⁷⁴ See A5.

⁷⁵ Section 99(3) of the Tax Code.

Regardless of whether or not passive income is exempt for the recipient of such income, dividends⁷⁶ and interest⁷⁷ are subject to a ten percent tax withheld at the source. Dividends of a resident legal entity taxed at the source are not subject to any further taxation when received by the legal entities and individuals.

When a resident legal entity receives interest payment that has been taxed at the source at a rate of ten percent, the amount of interest is included into the taxable income. In this case, the amount of tax withheld at the source can be deducted from the aggregate income tax obligation of the legal entity for the reporting period, provided withholding of interest tax is confirmed by appropriate documents.⁷⁸

7. Regulation of Expenditures

Neither framework legislation nor tax legislation contains any requirements regarding expenditure of funds or limitations on administrative expenses.

8. Deduction of Charitable Contributions

Neither legal entities nor individuals are entitled to any deductions for their contributions to charitable organizations or NCOs.

B. VAT

1. Basic Notions

Value added tax (VAT) is regulated by Chapter XI of the Tax Code and by the “Methodological Instruction on Registration of Taxpayers for the Purposes of VAT, Calculation and Payments of VAT” (hereinafter, the “VAT Instruction”), explaining the VAT provisions of the Tax Code.

“Taxpayers” for the purpose of VAT are persons importing goods into Azerbaijan;⁷⁹ and persons conducting entrepreneurial activity if the volume of their taxable operations in any preceding three-month period exceeds 1250 times the “monthly non-taxable minimum income.”⁸⁰

Subject to VAT are:

- ? taxable operations - supply of goods, fulfillment of works, provision of services;
- and

⁷⁶ Section 122 of the Tax Code.

⁷⁷ Section 123 of the Tax Code.

⁷⁸ This applies only to interest, not dividends. In the latter case, 10 percent withholding is final.

⁷⁹ Section 154(3) of the Tax Code.

⁸⁰ Section 155(1) of the Tax Code.

? taxable imports.⁸¹

Transactions conducted on a gratuitous basis or as barter are deemed taxable operations -- at the market value (not including VAT).⁸² However, gratuitous contribution of monetary assets, including membership fees, donations, and grants, are not subject to the VAT.⁸³ If a taxpayer acquires goods (works, services) subject to VAT and is entitled to VAT credit, the subsequent use of such goods (works, services) for non-commercial purposes is deemed a “taxable operation.”⁸⁴

“Taxable turnover” is the aggregate value of taxable operations during the reporting period. The reporting period for the purposes of VAT is one month.⁸⁵

2. VAT Rates

The Tax Code of Azerbaijan establishes a uniform VAT rate of 18 percent.⁸⁶

A zero rating is applicable to transactions listed in Section 165 of the Tax Code, which includes, *inter alia*:⁸⁷

“purchases of goods, performances of works, and provision of services [funded by] gratuitous financial assistance (grants) received from abroad, as well as importation of such.”⁸⁸

Zero rating is applicable only to foreign grants.⁸⁹ Therefore, zero rating applies to the purchase of goods (works, services) by recipients of foreign grants if the purchase is paid for out of grant funds. It should be noted that zero rate is in fact available to the *supplier* of such goods (works and services) and not to the grantee itself (if registered as a taxable person) if the latter provides goods (works, services) out of the grant funds.⁹⁰

In order to ensure the proper administering of such zero-rated transactions, the VAT Instruction envisages a burdensome procedure, according to which a number of documents have to be submitted first by the grant recipient to the supplier, and then by

⁸¹ Section 159 of the Tax Code.

⁸² Sections 159(4), 161(2) of the Tax Code; Section IV (4) “Object of Taxation” of the VAT Methodological Instructions on Registration of Taxpayers for the Purposes of VAT, Calculation and Payment of VAT (*VAT Instruction*).

⁸³ Though there is no provision on this issue in the Tax Code itself, it follows from Section IV (9) “Object of Taxation” of the VAT Instruction.

⁸⁴ Section 159(5) of the Tax Code, Section IV (5) “Object of Taxation” of the VAT Instruction.

⁸⁵ Section 178 of the Tax Code.

⁸⁶ Section 173(1) of the Tax Code. No reduced rates are available.

⁸⁷ The zero-percent rate also applies to: goods and services intended for embassies and diplomats, exports, international transportation, etc.

⁸⁸ Section 165(1) of the Tax Code.

⁸⁹ Section XV (2) of the VAT Instruction.

⁹⁰ *Id.*

both of them to the tax authorities.⁹¹ A grant recipient must submit to the local tax authorities a report on goods (works, services) purchased at the expense of foreign grants.

It is not unreasonable to suggest that in view of a burdensome procedure applicable to the sale of goods (works, services) at a zero rate, suppliers may be reluctant to sell goods at a zero rate. In this case, the grant recipient may purchase goods with the VAT included in the price and claim reimbursement from tax authorities later.

3. Registration

Persons conducting entrepreneurial activity are obliged to apply for registration as VAT-payers if the volume of their taxable operations in any preceding three-month period exceeds 1250 times the “monthly non-taxable minimum income.”⁹² The application must be submitted within ten days of the expiration of such period. Entities with income below this threshold may voluntarily register as VAT-payers.⁹³

4. Exemption for Turnover and Import for Specific Categories of Organizations

There are no exemptions from VAT linked to the non-commercial identity of an organization.

5. Exemption for Specific Categories of Goods and Services

The Tax Code in its Section 164 establishes a list of supplies and imports that are exempt from VAT, regardless of whether they are performed by commercial or non-commercial entities. Those exemptions are linked to the nature of services, which, *inter alia*, include the following:

- ? acquisition of goods, performance of works and provision of services and their import funded from loans and credits from international organizations, foreign governments, and foreign physical and legal persons in accordance with the international and intergovernmental agreements;⁹⁴
- ? turnover related to sales and purchase of mass media products, editorial, publishing and printing activities, connected with production of printed mass media products (except for advertisement services);⁹⁵

⁹¹ A grant recipient must submit to the supplier (a) a copy of the agreement confirming receipt of the foreign grant; and (b) a written request by the grant recipient on the application of zero rate to the purchase of goods (works, services). The supplier, in order to claim credit on VAT, must submit to the tax authorities the two documents specified in (a) and (b) above and copies of documents certifying receipt of goods (works, services) by the purchaser.

⁹² Section 155(1) of the Tax Code.

⁹³ Section 156 of the Tax Code.

⁹⁴ Section 164(1) (7) of the Tax Code.

⁹⁵ Section 164(1) (8) of the Tax Code.

- ? editorial, publishing, and printing activities, connected with production of schoolbooks for middle-schools, children’s literature and publications of national importance, subsidized from the budget;⁹⁶
- ? ritual services by funeral bureaus and cemeteries.⁹⁷

Under Section 164.2 of the Tax Code, appropriate executive bodies of executive authorities may provide exemptions for other types of import (in addition to those listed in Section 164 of the Tax Code).

6. VAT Rebate Procedure

The main rule applicable to reimbursement by the government for the excess of the input VAT over the output VAT (hereinafter, the “excess”) is as follows:⁹⁸

If at least 50 percent of the taxable turnover of the taxpayer during the reporting period is zero-rated, the excess is to be reimbursed within 45 days of submission of the application for reimbursement. According to the VAT Instruction, the amount of VAT reimbursement due to the taxpayer is first applied by tax authorities towards payment of any other taxes, interest, and financial sanctions due from the taxpayer; any remaining amount must be reimbursed within 45 days. For other taxpayers (i.e., who have less than 50 percent of zero-rated taxable turnover), the excess VAT is applied towards future VAT obligations over the period of the subsequent 5 months, after which any remaining excess shall be reimbursed within 45 days of submission of the taxpayer’s application.

A special procedure has been established for persons acquiring or importing⁹⁹ goods (works, services) funded by “gratuitous monetary transfers” from an international organization or foreign legal entity or individuals pursuant to an international agreement to which Azerbaijan is a part. The recipients must claim from the tax authorities any VAT they paid within the calendar month following the month in which the taxable operation or taxable import occurred. Reimbursement is due within 45 days of receipt of the application.

This procedure is also available to purchases made out of grants (subject to zero rate) if the VAT is included in the price, as described in B2 above.

C. Property, Real Estate, and Land Tax

There is a property tax and a land tax in the Republic of Azerbaijan. For the purposes of property tax, taxpayers are enterprises and individuals that own taxable objects.¹⁰⁰ The

⁹⁶ Section 164(1) (9) of the Tax Code.

⁹⁷ Section 164(1) (10) of the Tax Code.

⁹⁸ Section 179 of the Tax Code.

⁹⁹ Apparently, *import* is also covered, though it is only once mentioned in the VAT Instruction (not the Tax Code itself).

¹⁰⁰ In practice, this tax is imposed upon NCOs regardless of their engagement in entrepreneurial activities.

tax base for assessing property tax is, in the case of physical persons, the value of buildings and motor vehicles owned by them; and in case of enterprises, the annual average balance sheet value of fixed assets and balance sheet value of motor vehicles. Property tax on fixed assets of enterprises is one percent.

For the purposes of land tax, taxpayers are enterprises and individuals who own or use land plots on the territory of the Republic of Azerbaijan. Land tax is paid on an annual basis at various rates (ranging from 0.005 to 0.3 percent of non-taxable monthly income per square meter of land) based on the size of the land plot owned or used by the taxpayer.

3. Tax Benefits

Entities exempt from property tax include, *inter alia*, public organizations of the handicapped and budget-financed institutions. Property tax is not levied on buildings used as artists' workshops. The tax base for assessing the amount of property tax is reduced by the value of buildings (objects) used by institutions of education, health care, culture and sports, if used according to their primary purpose.

No benefits with respect to land tax are applicable to NCOs.

D. Other taxes

Excise tax, road tax and certain other taxes apply irrespective of an organization's status as commercial or non-commercial.

BELARUS

A. Income (Profits) Tax

1. Basic Notions

The Law on “On Income and Profits Taxes” (the Law on Income Tax)¹⁰¹ regulates payment of taxes on revenues of legal entities. In addition, rules established by the Law on Income Tax as well as by numerous presidential and governmental acts are compiled and detailed in a tax instruction (Income Tax Instruction).¹⁰²

A new Tax Code (General Part) was adopted by the Parliament of Belarus on December 19, 2002 and is expected to take effect as of January 1, 2004. The Tax Code (General Part) contains general provisions on tax system, establishes general principles of taxation, and includes definitions of major tax terms. Currently (and until Special Part of the Tax Code is adopted and takes effect), profits tax and other taxes are regulated by respective laws and regulations referred to in this report.

Taxpayers for purposes of the Law on Income Tax are legal entities (including foreign legal entities) referred to as “enterprises”. Non-commercial organizations (NCOs) are considered tax payers.

Taxable *profits* are determined as balance sheet profits received from the sale of goods (works, services), other assets (including fixed assets, material assets, non-tangible assets, securities), property rights and income from ‘non-realization operations’ decreased by the amount of expenses incurred in connection with such operations.¹⁰³ Income from ‘non-realization operations’ includes income other than that received from the sale of goods (works, services) and includes gratuitously transferred monetary funds and other assets (except transfer within the same ownership). Accounting for profits/costs from realization and non-realization operations must be performed separately.

2. Profits tax rates

The base profits tax rate is 24 percent.

Dividends and other similar income is taxed at its source by means of withholding, at the rate of 15 percent.

¹⁰¹ Section 1 of the Law on Income and Profits Taxes as of December 22, 1991 (with subsequent amendments, as of January 4, 2003.)

¹⁰² “Instruction on the procedure for calculating and remitting to the budget of the income and profits taxes,” approved by the Resolution of the Ministry for Taxes and Levies of the Republic of Belarus as of March 18, 2002 (with subsequent amendments as of February 7, 2003).

¹⁰³ Section 2 (2) of the Law on Income Tax.

A decreased rate of 15 percent applies to enterprises with balance sheet profits that do not exceed 5000 base units (approximately \$33,575 US)¹⁰⁴ per year, subject to limitations related to the average annual number of employees. These limitations differ depending upon the branch of economy to which the enterprise belongs.¹⁰⁵ Profits of public associations (the majority of which would fall into the category of ‘other non-manufacturing sectors’) enjoy the decreased rate of 15 percent, if the number of employees does not exceed 25.

3. Wholly or partially exempt organizations and income

The Law on Income Tax exempts “public and religious organizations (associations), and other non-commercial organizations (NCOs) established in accordance with legislation,” from paying profits tax on certain incomes defined by law.¹⁰⁶

In addition, NCOs may benefit from several exemptions applicable to income from specific sources, without regard to the commercial or non-commercial status of the taxpayer, as discussed below at A5.

Enterprises that employ handicapped individuals may benefit from the blanket exemption from profits tax, if handicapped employees account for no less than 50 percent of the total average number of employees for the reporting period.

A general exemption from the profits tax applies to 15 public associations and one association of public associations, all involved in the various arts, and named in the Presidential Decree.¹⁰⁷

Finally, exemptions are available for income obtained on a gratuitous basis from domestic sources (as discussed below in A4).

4. Taxation of revenues obtained on a gratuitous basis

The taxation and administrative treatment of funds and property obtained on a gratuitous basis depend on the origin of such resources (i.e., foreign or domestic). As discussed below, gratuitous aid obtained by NCOs from nationals of Belarus is generally tax exempt, while foreign funds are taxed, and are, moreover, subject to strict regulatory control.

¹⁰⁴ According to the Resolution of the Cabinet of Ministers of the Republic of Belarus as of May 12, 2003, the base unit is 14,000 Belarusian Rubles (BYR). This is approximately \$6.71 US (\$1 US = 2,085.00 BYR as of August 2003)

¹⁰⁵ Section 4 (8) of the Law on Income Tax. For instance, in *manufacturing*, the decreased rate is applicable if the average number of workers does not exceed 200; in science, the limit is 100 workers; in other non-manufacturing sectors - 25.

¹⁰⁶ Section 2 (2), Law on Income Tax.

¹⁰⁷ Decree of the President of the Republic of Belarus from July 9, 2001.

Gratuitous Aid from Domestic Sources. The Law on Income Tax exempts “public and religious organizations (associations), and other non-commercial organizations established in accordance with legislation,” from payment of tax on the following:¹⁰⁸

- ? entry, shareholder and membership fees, in the amounts provided for by charters;
- ? property and monetary funds received on the gratuitous basis from legal and physical persons of the Republic of Belarus and used in accordance with their designated purpose.

The law also provides that if gratuitously obtained property and monetary funds are used for other than their designated purpose, they are taxed on a regular basis.¹⁰⁹ If the funds’ purpose is not designated by the donor, they must be used “for implementation of tasks determined by charters.”¹¹⁰

Foreign Gratuitous Aid. Revenues obtained on a gratuitous basis from foreign sources are subject to the Presidential Decree on Foreign Gratuitous Aid,¹¹¹ unless they are provided pursuant to projects approved by the President of Republic of Belarus, or its government, or pursuant to international agreements.¹¹² The Presidential Decree on Foreign Gratuitous Aid is applicable to:

Monetary funds, including those in foreign currency, and goods gratuitously provided for use, possession, and disposition thereof to legal and physical persons of the Republic of Belarus by foreign states, international organizations, and foreign organizations and citizens, as well as those provided by stateless persons and anonymous donors.¹¹³

Pursuant to the Presidential Decree on Foreign Gratuitous Aid, foreign gratuitous aid provided to an NCO outside government channels must be registered with the state, which will issue a certificate upon registration.¹¹⁴ Use of the foreign gratuitous aid before obtaining the certificate is prohibited. The foreign gratuitous aid received in cash must be deposited by the recipient into a Belarussian bank within five days of receipt or import into the Republic of Belarus.¹¹⁵ In case of imports, cash “to be used as foreign gratuitous aid” must be declared in writing at customs.¹¹⁶

¹⁰⁸ Section 2 (2) of the Law on Income Tax.

¹⁰⁹ Id.

¹¹⁰ Id.

¹¹¹ Decree of the President of the Republic of Belarus as of March 12, 2001, “On Certain Measures to Improve Procedure for Obtaining and Using Foreign Gratuitous Aid”, as amended on August 30, 2002.

¹¹² Section 1 (1) (2) of the Presidential Decree on Foreign Gratuitous Aid.

¹¹³ Section 1(1) (1) of the Presidential Decree on Foreign Gratuitous Aid.

¹¹⁴ Registration is performed and its procedure is established by the Humanitarian Activities Department at the Administration of the President of the Republic of Belarus (Section 1(2) of the Presidential Decree on Foreign Gratuitous Aid).

¹¹⁵ Section 2(1) of the Presidential Decree on Foreign Gratuitous Aid.

¹¹⁶ Section 2 (2) of the Presidential Decree on Foreign Gratuitous Aid.

The Presidential Decree on Foreign Gratuitous Aid defines purposes for which foreign gratuitous aid may or may not be used, subject to enumerated sanctions that include confiscation of the funds, fines upon recipient organizations and their officers, and liquidation of recipient organizations. Generally, foreign gratuitous aid may be used only in connection with the public benefit issues enumerated in the Decree. The list is limited in scope, (disasters, historical/natural heritage, healthcare and social security), but may be expanded by authorities.¹¹⁷ Prohibited is use of the foreign gratuitous aid for any political purposes. This extends beyond the usual prohibition of donating to domestic political groups and appears to embrace financing of any efforts to promote political change.¹¹⁸ In addition to penalties on users, provision of foreign gratuitous aid for prohibited purposes may lead to imposition of administrative sanctions upon providers themselves.¹¹⁹

Compliance with these conditions is ensured by a broad range of governmental agencies vested with the authority to investigate and prosecute any violations, though courts are ultimately charged with adjudication of the majority of them.¹²⁰

Though the Presidential Decree on Foreign Gratuitous Aid refers to imposition of taxes in case of improper use of the foreign gratuitous aid, the tax regulations themselves do not provide for any actual tax benefits or exemptions in connection with receipt of the foreign gratuitous aid, treating it like any other income for tax purposes. In practice, the certificate of foreign gratuitous aid registration, issued upon the decision of the President of the Republic of Belarus, specifies what tax and customs privileges (if any) are granted to the recipient.

¹¹⁷ Section 4 (1) of the Presidential Decree on Foreign Gratuitous Aid allows for the following purposes:

- “liquidation of consequences of extraordinary situations of natural and mundane character”;
- “conduct of scientific studies, works, trainings, as well as implementation of scientific-research programs”;
- “assistance in protection, restoration and creation of historical and cultural treasures and in development of natural sanctuaries”
- “provision of medical assistance”;
- “provision of social assistance to poor and socially insecure citizens”;
- “other purposes, upon resolution of the Humanitarian Activities Department at the Administration of the President of the Republic of Belarus, reconciled with the President of the Republic of Belarus.”

¹¹⁸ Section 4 (2) and (4) of the Presidential Decree on Foreign Gratuitous Aid read as follows: “Foreign gratuitous aid may not be used to pursue activities aimed at changing the constitutional order of the Republic of Belarus, at seizure or overthrowing of the state power, at provocation to pursue such acts, for propagating war or violence in political purposes, for instigating social, national, religious or racial antagonism, as well as other deeds prohibited by law. Foreign gratuitous aid in any form may not be used for preparation or conduct of elections, referendum, recall of a deputy, a member of the Council of the Republic, for holding assemblies, meetings, street processions, demonstrations, picketing, strikes, preparation and distribution of propaganda materials or conduct of seminars and other forms of mass propaganda work with population.”

¹¹⁹ Provision of the Presidential Decree on Foreign Gratuitous Aid for prohibited purposes by foreign persons *may* lead, in case of “missions of foreign organization and international non-governmental organizations in the territory of the Republic of Belarus” – to “termination of activities of the said missions” (Section 5 (1) (4) of the Presidential Decree on Foreign Gratuitous Aid), and in case of individuals – to deportation (Section 5 (1) (5) of the Presidential Decree on Foreign Gratuitous Aid).

¹²⁰ Sections 5 (1) (6) and 5(5) of the Presidential Decree on Foreign Gratuitous Aid.

5. Taxation of income from entrepreneurial activities

Pursuant to the Civil Code, the NCOs may conduct entrepreneurial activity, “only to the extent it is necessary for the statutory purposes for which they are established, and conforms to such purposes.”¹²¹ The Law on Public Associations establishes the right of public associations “to conduct manufacturing and economic activity aimed at the accomplishment of statutory purposes and tasks.”¹²²

Revenues from NCO’s entrepreneurial activities are taxed in the same manner as those of commercial organizations, unless specific exemptions apply.

The Law on Income Tax includes several exemptions for socially-important entrepreneurial activities that apply without regard to organizational form or non-commercial status of the legal entity. Exempt are:

- ? Profits of enterprises employing a certain percentage of handicapped individuals, subject to certain limitations;¹²³
- ? Profits of pharmaceutical enterprises producing critical medications (for a period of two years following production);¹²⁴
- ? Profits of manufacturers of children’s food products;¹²⁵
- ? Profits of organizations serving the daily needs of rural populations (for a period of three years following state registration).¹²⁶

6. Availability of exemptions for passive (investment) income

Pursuant to Section 2(1) of the Law on Income Tax, “dividends and similar revenues”¹²⁷ are subject to a withholding tax (at the source) at the rate of 15 percent. Because

¹²¹ Section 46 (3) of the Civil Code. The Civil Code defines entrepreneurial activity as “independent activity of legal and physical persons, conducted by them [...], in their own name, and their own risk and for their own proprietary liability and aimed at systematic derivation of profits from the use of property, sale of objects manufactured, processed or acquired by the said persons for resale, as well as from performance of works and rendering of services, if such works and services are intended for sale to other persons and are not used for the own consumption.” The notion is not used in the Tax Code.

¹²² Section 22 (4) of the Law of the Republic of Belarus on Public Associations as of October 4, 1994.

¹²³ Section 5(5) of the Income Tax Law. Exemption applies to enterprises where handicapped individuals account for no less than 50per cent of the total average number of employees for the reporting period. Taxable profit of an enterprise may be reduced by 50 percent if handicapped individuals account for between 30 percent and 50 percent of the total average number of employees for the reporting period.

¹²⁴ Section 5(16) of the Income Tax Law. The list of such medications is determined by the government. *Id.*

¹²⁵ Section 5(17) of the Income Tax Law.

¹²⁶ Section 5(18) of the Income Tax Law.

¹²⁷ Section 2 (1) (2) of the Income Tax Law defines “dividends,” for the purpose of taxation, as “part of the profits of an enterprise, commercial society or commercial association, paid, respectively, to the proprietor (proprietors) of such enterprise or participants of such commercial society or commercial association in connection with the ownership rights to the property of the enterprise or participation in the commercial society or commercial association,” except for payments upon liquidation of the enterprise or exits of the shareholder (not in excess of the initial contribution) or increase of the par value or issuance of additional shares to shareholders (provided that the ratio among shareholders’ shares is not changed thereby). “Similar

dividends and similar revenues are taxed at the source, these forms of passive income are not taken into consideration in determining taxable profits.

Interest income from deposit of monetary funds in banks is exempt from profits tax if it emanates from funds generally exempt for non-commercial organizations (e.g., entry/membership fees, funds received on a gratuitous basis from nationals of the Republic of Belarus).¹²⁸ Otherwise, bank interest is fully taxed.

7. Regulation of expenditures

Organizations employing handicapped individuals must use the amounts saved by their tax exemptions (as discussed in A5 above) only on the development of production capacity and/or social development.¹²⁹

No other mandatory rules on expenditures appear to exist.

8. Charitable deductions

There are no deductions relating to donations to non-commercial organizations *per se*. Deductions are available to legal entities with respect to:

- ? amounts transferred (as well as value of works and services rendered) to “enterprises, institutions and organizations of healthcare, people’s education, social welfare, culture, fitness and sports, financed from the budget” - not in excess of five percent of balance sheet profits of the transferring legal entity;¹³⁰
- ? expenses on maintenance of certain social sphere organizations that are on the balance sheet of the [transferring] enterprise¹³¹ - not in excess of five percent of balance sheet profits of the transferring legal entity;
- ? costs of certain measures in ecological/scientific spheres (not in excess of 50 percent of balance sheet profits).¹³²

B. VAT

1. Basic notions

revenues” covers “income from agreements (debt obligations) providing for participation in profits.” Section 2 (1) (3).

¹²⁸ See A4.

¹²⁹ Section 5(11) of the Income Tax Law; Section 39 of the Income Tax Instruction.

¹³⁰ Section 5 (2)(H) of the Income Tax Law and 34 (8) of the Income Tax Instruction.

¹³¹ Section 5 (2)(D) of the Income Tax Law and 34 (4) of the Income Tax Instruction. It literally refers to “children preschool rehabilitations institution, institutions of people’s education, housing facilities for elderly and disabled, housing and healthcare facilities, children preschool institutions, institutions of culture and sports”. The clause applies to transfers by the enterprise to their own structural subdivisions and to institutions established by it, rather than to independent NGOs.

¹³² Section 5 (2) of the Income Tax Law.

VAT-payers include legal entities (referred to as “enterprises” in the VAT Law) as well as individual entrepreneurs (subject to certain conditions).¹³³ As legal entities, NCOs are subject to the VAT.

Enterprises and individuals are also deemed taxpayers of VAT in connection with movement of goods through the customs border of the country, if they are recognized as such under the customs regulations of the Republic of Belarus.¹³⁴

VAT applies to:¹³⁵

[1.1.] “turnover in connection with the sale of goods (works, services), property rights to [the objects of] intellectual property within the territory of the Republic of Belarus (except exempt operations);”¹³⁶

[1.2.] “turnover in connection with the sale of goods (works, services), property rights to [the objects of] intellectual property outside the territory of the Republic of Belarus;”

[1.3.] “goods, imported into the customs territory of the Republic of Belarus (except for exempt goods).”

2. VAT rates

The base rate is 20 percent.¹³⁷

A zero-rating applies to exports of goods;¹³⁸ to services/works related to the sale of exported goods; to exports of certain services and works;¹³⁹ and to works/services connected with transit of goods.¹⁴⁰

A decreased rate of ten percent applies to, *inter alia*, sale and import of foodstuffs and goods for children from a list determined by the government.¹⁴¹

Other decreased rates apply in special cases, unrelated to this analysis.¹⁴²

¹³³ Section 1 (1) (1) of the VAT Law.

¹³⁴ Section 1 (1) (4) of the VAT Law.

¹³⁵ References are to Clauses of Section 2 (1) of the VAT Law.

¹³⁶ Section 2 (1) (1) (1) to (7) further lists taxable operations (transfers of goods, property) such as transfers within the enterprise, transfers to its own employees, exchanges (barter), gratuitous transfers, transfers as settlement, return of pledged property from pledgee to pledgor and transfers of property into lease and rent.

¹³⁷ Section 11 (1) (3) of the VAT Law.

¹³⁸ Section 11 (1) (1) (1) of the VAT Law.

¹³⁹ Section 11 (1) (1) (3) of the VAT Law – construction, transportation services, etc. - under the procedure established by the government.

¹⁴⁰ Section 11(1) (1) (4) of the VAT Law.

¹⁴¹ Section 11 (1) (2) (2) and (5) of the VAT Law. If such imported items are then realized outside the Republic of Belarus, the 20 percent rate is reinstated.

¹⁴² Such as in case of supplies at governmentally regulated prices (Section 11 (1) (4) of the VAT Law).

The tax administration requires monthly submission of documents justifying application of the zero-rating or other decreased rates.

3. Registration

Registration with the tax administration by organizations is, generally, due within ten days of state registration (as a legal entity), and no special rules apply in case of VAT.

4. Exemption for turnover and import for specific categories of organizations

No exemptions for turnover or import of goods are linked to an entity's organizational form. Instead, exemptions are generally linked to specific goods, works, and services. Occasionally, other characteristics of the organization, usually providing services in social sphere, may be relevant (i.e., "healthcare institution" or "organizations of culture").

There is a blanket exemption from VAT for 15 public associations and one association of public associations, all involved in various artistic fields, by Presidential Decree.¹⁴³

5. Exemption for specific categories of goods and services

The following goods, services and works within the territory of the Republic of Belarus are exempt from VAT.¹⁴⁴

- ? [2.1.] "medication as well as medical technique, appliances and instruments, articles of medical (veterinarian) application";
- ? [2.2.] "medical (veterinarian) services [...] ¹⁴⁵, by enterprises with the status of medical (veterinarian) institutions [...] except for cosmetic services of non-medical character";
- ? [2.3.] "services for the care of the sick, handicapped and elderly";
- ? [2.4.] "services for maintaining children in preschool institutions, educating children in clubs, sections and studios, music and sports schools;"
- ? [2.5.] foodstuffs, produced by canteens at various educational and preschool facilities, healthcare institutions;
- ? [2.6.] "services in the field of education, connected with educational and productive as well as educative process, rendered by enterprises accredited (attested) under the established procedure as educational establishments of the educational system;"
- ? [2.7.] "services in the field of culture and art (including, realization of tickets and season-tickets for theatrical and entertainment as well as cultural and educative events) [...];"¹⁴⁶

¹⁴³ Decree of the President of the Republic of Belarus #374 as of July 9, 2001 (discussed in A3 above).

¹⁴⁴ Section 3 (2) of the VAT Law. References are to Clauses of Section 3 (2) of the VAT Law.

¹⁴⁵ Under the list, approved by the Council of Ministers of the Republic of Belarus.

¹⁴⁶ Under the list of such services, established by the Council of Ministers of the Republic of Belarus.

- ? [2.8.] “ritual services, works at maintenance of graves [...]”¹⁴⁷, services for manufacturing of gravestones, fences and other ritual articles, connected with burial;”
- ? [2.9.] “religious literature and (or) other articles of religious application (except for excised ones), as well as services for organization and conduct of ordinances, ceremonies, worship gatherings as well as other cult activities;”
- ? [2.13.] “works at reconstruction and restoration of historical and cultural treasures [...]”¹⁴⁸
- ? [2.16.] “articles of folk art (craft) of recognized artistic value (except for the excised) [...]”¹⁴⁹
- ? [2.17.] goods (works, services) of own production of taxpayers, in which the number of the handicapped averages no less than 50 percent of the employees during the respective tax period;¹⁵⁰
- ? [2.21.] “lottery tickets [...]”¹⁵¹
- ? [2.22.] provision of loans/credits and accumulation/management of money/securities for subsequent investment to derive profits – in case of banks and non-banking financial institutions only;¹⁵²
- ? [2.25.] “sanatorium and resort vouchers as well as vouchers to rehabilitation institutions [...]”¹⁵³
- ? [2.30.] “services of advocates and legal consultants bureaus to provide legal assistance to individuals;”
- ? [2.31.] “scientific-research, experimental and engineering works [...]”¹⁵⁴

Taxpayers may, however, opt out from exemption for operations listed above (under Section 3 (2) of the VAT Law).¹⁵⁵

The following imports of goods into the territory of the Republic of Belarus are exempt from VAT:¹⁵⁶

- ? [1.7.] “technical items, including such vehicles, as can not be used otherwise but for prophylactics and rehabilitation of the handicapped, medication, articles of medical (veterinarian) application, prosthetic and orthopedic articles and medical appliances, as well as raw materials and accessories for such, [...]”¹⁵⁷

¹⁴⁷ Under the list of such services and works, established by the Council of Ministers of the Republic of Belarus.

¹⁴⁸ Included into the State List of Historical and Cultural Treasures of the Republic of Belarus.

¹⁴⁹ Samples whereof have been approved under the procedure, established by the Council of Ministers of the Republic of Belarus.

¹⁵⁰ Except for excised goods, brokerage and other intermediary services.

¹⁵¹ In lotteries conducted under the procedure established by the President of the Republic of Belarus.

¹⁵² This point may be important from the prospective of micro-financing..

¹⁵³ In the list of such institutions approved by the Council of Ministers of the Republic of Belarus.

¹⁵⁴ Registered in the state register under the procedure established by the Council of Ministers of the Republic of Belarus.

¹⁵⁵ Section 3 (4) of the VAT Law.

¹⁵⁶ Section 4 (1) of the VAT Law. References are to Clauses of Section 4 (1) of the VAT Law.

¹⁵⁷ Pursuant to lists, established by the Council of Ministers of the Republic of Belarus.

- ? [1.8.] “goods (except for excised ones), acquired [...] using foreign gratuitous assistance provided by foreign states or international organizations, [...]”¹⁵⁸
- ? [1.9.] “goods (except for excised ones) imported as gratuitous technical assistance for joint scientific-research works pursuant to agreements, concluded with foreign educational and scientific organizations;”
- ? [1.10.] “equipment and devices, imported by organizations exclusively for scientific-research purposes, [...]”¹⁵⁹
- ? [1.12.] “*objects-d’art*, transferred as a gift to organizations of culture [...]”¹⁶⁰

The same Subsection stipulates that imports of other goods may be exempt “under the procedure and subject to the conditions established by the President of the Republic of Belarus.”¹⁶¹

Exempt imports may only be used (i) in the territory of the Republic of Belarus and (ii) for such purposes upon which exemption is conditioned. They can be used in a different way only upon consent of the relevant customs body and subject to payment of the tax and compliance with other requirements established by customs regulations of the Republic of Belarus.¹⁶²

6. VAT rebate procedure

The decision to offset or return excess VAT paid by the taxpayer shall be made by the tax authorities within ten working days from the application by the taxpayer, unless the amounts claimed exceed a certain threshold,¹⁶³ in which case a tax audit, to be performed within 60 days, must first be conducted.¹⁶⁴ In the event a positive decision is adopted by the tax authorities, excess VAT paid by the taxpayer is first credited towards the taxpayer’s current tax obligations to national and local budgets, secondly, towards payment of outstanding arrears or penalties accrued on taxes to national and local budgets. Any remaining amounts shall be remitted to the taxpayer within three calendar months from the adoption of the decision by tax authorities.

C. Property, real estate and land tax

1. Applicable Taxes.

¹⁵⁸ Under the procedure established by the Council of Ministers of the Republic of Belarus.

¹⁵⁹ Under the procedure established by the Council of Ministers of the Republic of Belarus.

¹⁶⁰ Under the procedure established by the Council of Ministers of the Republic of Belarus.

¹⁶¹ Section 4 (1) (18) of the VAT Law.

¹⁶² Section 4 (2) of the VAT Law.

¹⁶³ 3000 base units or \$20,142 US.

¹⁶⁴ Section 3 of the Regulation approved by Resolution of the Council of Ministers of the Republic of Belarus on July 31 2001 #1128 (as amended by December 30, 2002).

Pursuant to Section 1 of the Law of the Republic of Belarus “On Real Estate Tax” from December 23, 1991, payers of the real estate tax are legal entities¹⁶⁵ as well as individuals. NCO’s property is subject to this tax unless it falls into category of “legal entities financed from the budget,” which are exempt.¹⁶⁶

For legal entities, the real estate tax is imposed on the “value of fixed productive and non-productive assets owned or possessed by the taxpayers, and objects of unfinished construction.”¹⁶⁷

The annual tax rate on the real estate is one percent,¹⁶⁸ and the tax is determined and payable by the legal entities quarterly at a prorated basis.¹⁶⁹

Land tax is paid by legal entities and individuals who own, possess or use plots of land. NCOs as legal entities are payers of land tax pursuant to the Law of the RB “On Payments for Land” from December 18, 1991 (Land Tax Law).

2. Tax Benefits

Under Section 4 of the Real Estate Tax Law, the following, which may be relevant to this survey, are exempt from real estate tax:

- ? “objects of social and cultural designation and housing facilities of local Councils of deputies, and of legal entities, irrespective of the forms of property;”
- ? “fixed productive assets of legal entities of the Public Association “The Belarusian Fellowship of the Seeing Impaired,” of the Public Association “The Belarusian Association of the Deaf,” and of the Public Association “The Belarusian Association of the Handicapped,” as well as of separate subdivisions of these legal entities, provided that the average number of the handicapped employees in the said legal entities or in their separate subdivisions amounts to at least 50 percent of the listed number during the period;”
- ? “fixed assets of higher, secondary special and secondary education establishments with the status of institutions of the educational system;”
- ? “material and historical-cultural treasures included on the State List of Historical and Cultural Treasures of the Republic of Belarus, subject to compliance of their

¹⁶⁵ Subdivisions of legal entities with separate balance and a payment (current) account are also deemed taxpayers.

¹⁶⁶ Legal entities financed from the budget of the Republic of Belarus do not pay real estate tax. For the purposes of the Real Estate Tax Law, legal persons financed from the budget (budget organizations) means organizations established by state bodies, including by local Councils of Deputies, executive and administrative bodies, to carry out managerial, social and cultural, scientific and technical and other functions of non-commercial character (subject to some additional conditions). Technically, such organizations may be established as *institution* and be considered a non-commercial organization under the civil legislation.

¹⁶⁷ Section 2 of the Real Estate Tax Law.

¹⁶⁸ Section 3 of the Real Estate Tax Law. Yet the annual tax rate on certain specific forms of NCOs such as garage-construction cooperatives or gardening fellowships is set at 0.1 percent.

¹⁶⁹ Section 5 of the Real Estate Tax Law.

- owners with obligations, imposed by the legislation of the Republic of Belarus in force on protection of the historical and cultural heritage;”
- ? “fixed productive and non-productive assets of religious organizations.”

Renting out of exempt property either for consideration or on a gratuitous basis (except renting to organizations financed from the budget) will result in the imposition of tax.

No specific tax benefits are available to NCOs with respect to the land tax. Exemption is enjoyed by organizations financed from the budget¹⁷⁰ and “organizations of social and cultural sphere” wholly owned by legal entities and maintained at the account of such entities.”¹⁷¹

In addition, land tax does not apply to lands of wild life reserves, botanical gardens, lands of historical and cultural designation, lands on which historical and cultural treasures are located.¹⁷²

D. Other taxes

The tax regulations of Belarus do not contain many exemptions for public associations or other types of NCOs. There are, however, certain exceptions.

Public associations not conducting entrepreneurial activity are exempt from payment of the *uniform tax*.¹⁷³ Uniform tax is levied at the rate of five percent of aggregate payroll fund of the organization¹⁷⁴. If a public association starts engaging in entrepreneurial activity, it loses this privilege as regards the entire wages fund, beginning from the month when such activity begins.

There are two taxes associated with transportation: tax on acquisition of automotive vehicles and tax on road users. The only relevant exemption is one applied to public

¹⁷⁰ Section 18 of the Land Tax Law. Definition of *organizations financed from the budget* is identical to such, given in the Real Estate Tax Law, as explained in the footnote in C1.

¹⁷¹ The reference is to structural subdivisions of legal entities, rather than independent NGOs.

¹⁷² Section 17 of the Land Tax Law.

¹⁷³ This tax is regulated by the Instruction adopted by the Ministry of Finance and the Ministry of Taxes and Levies by Resolution #52/72, as of May 3, 2003. The tax generally applies to any legal entity engaging in entrepreneurial activity.

¹⁷⁴ Section 12.4 of the Instruction. Other exemption from this levy as may be relevant to the subject matter of this survey is for “legal entities, conducting social-cultural activity and receiving subventions (subsidies) from the republican and (or) local budgets as compensation for losses from such activity” (Section 12.3 of the Instruction); the Section further explains that *legal entities, conducting social-cultural activity* shall mean institutions and organizations of healthcare, tourism and recreation, physical culture and sports, social security, education, culture and art. Legal entities financed from the budget are paying the tax only on such part of the wages fund as is attributable to entrepreneurial activities.

associations of the handicapped and to legal entities established by them for conduct of their statutory activity.”¹⁷⁵

Employers, including NCOs, normally contribute to the social security system a percentage (35 percent) of the overall compensation they pay their staff. A decreased rate (4.7 percent) is available to “public associations of the handicapped and the pensioners as well as enterprises, associations, institutions wholly owned by such public associations,” provided that the percentage of the handicapped and pensioners of the respective organizations amounts to no less than 50 percent.¹⁷⁶

¹⁷⁵ Sections 9 and 11 of the Law of the Republic of Belarus “On Road Funds in the Republic of Belarus” as of December 23, 1991, #1339-XII (The usual requirement applies that 50 percent of the organization’s workforce must be handicapped).

¹⁷⁶ Section 2 of the Law of the Republic of Belarus on the Amounts of Mandatory Insurance Contributions to the Fund for Social Security of the Population at the Ministry for Social Security of the Republic of Belarus.” as of February 29, 1996 (as amended by January 6, 2000).

GEORGIA

A. Income (Profits) Tax

1. Basic Notions

Profits tax is regulated in Georgia by Chapter 5 of the Tax Code of Georgia (Tax Code)¹⁷⁷. Georgian legal entities “conducting economic activity or established to conduct such activities” are considered “enterprises” and as such, are taxpayers of the profits tax.¹⁷⁸ “Enterprises” are recognized as entities that perform economic activity or that are established to perform such activity¹⁷⁹.

Taxable income is calculated as gross income minus deductions allowed under the Tax Code. “Gross income” consists of all income affecting the taxpayer’s profits, including gratuitously received property and monetary funds, except that of the exempt income¹⁸⁰.

Deductions exceeding gross income can be carried forward for the next five fiscal years.¹⁸¹

2. Profits Tax Rates

Profits are taxed at the rate of 20 percent.¹⁸²

3. Wholly or Partially Exempt Organizations

Several groups of entities are exempt from profits tax partially or completely. These include budget-funded and charitable organizations, organizations, public associations and enterprises of disabled people, international organizations, among other entities.

Charitable organizations are exempt from profits tax, except for any profit from economic activity.¹⁸³ A charitable organization, for purposes of the Tax Code, is “recognized as an organization established for charitable purposes, registered consistent with the procedures determined by legislation that carries out charitable activities” and does not:

(a) pursue political goals or carry out political activities, including direct or indirect participation in the election campaign of any political party, public organization or movement, or physical person; or

¹⁷⁷ The Tax Code of the Republic of Georgia as of March 1, 2002.

¹⁷⁸ Sections 12 and 44 of the Tax Code.

¹⁷⁹ Section 12 of the Tax Code.

¹⁸⁰ Section 45 of the Tax Code.

¹⁸¹ Section 61 of the Tax Code.

¹⁸² Section 46 of the Tax Code.

¹⁸³ Section 47 of the Tax Code.

(b) use its income or assets to benefit any person, except for benefit gained as a result of the charitable activities.¹⁸⁴

The Code includes a list of recipients of charitable assistance,¹⁸⁵ and imposes three limitations on charitable activity. Assistance is not charitable activity if (1) the person receiving the assistance incurs an obligation to the donor (except for the obligation to use the assistance exclusively as targeted); (2) the persons receiving and rendering the assistance are related persons; and/or (3) the assistance is of a political nature, such as transfer of funds to a political party or election union.¹⁸⁶

Georgian legislation does not establish “procedure of registration for charitable organizations”. There is no mechanism to distinguish between charitable organizations and other non-profit organizations. In practice, this makes it difficult for organizations to take advantage of this benefit.

The Tax Code¹⁸⁷ also provides some exemptions to “organizations” which are defined as public or religious organizations (associations), funds, institutions, associations (unions) or other organizations that are non-entrepreneurial legal entities under the legislation of Georgia, or that have been established and are acting according to the legislation of a foreign state; as well as interstate and intergovernmental organizations. Hereinafter, such organizations are referred to as non-entrepreneurial organizations, (NEOs).

The grants, membership fees and donations received by an organization are exempt from profits tax. If an organization carries out economic activity, the part of its property and activities which is directly connected to its economic activity is recognized to be the activities and property of an enterprise¹⁸⁸.

The profit of public associations and enterprises of disabled people is exempt from profits tax if these entities satisfy certain requirements in the Tax Code¹⁸⁹.

¹⁸⁴ Section 21 of the Tax Code.

¹⁸⁵ Under Section 10(2) of the Tax Code, charitable activity includes the following assistance to (a) low income persons in need of social adaptation or protection; (b) orphans, preschool or children’s institutions and organizations providing care to children; (c) disabled or elderly person or organization providing care to them; persons who need medical care in the form of payment for treatment or to organizations with the status of medical institutions; (e) educational institutions, including setting up of scholarships; (f) R and D as well as cultural institutions; (g) gifted persons for developing their talents; (h) environmental protection; (i) religious organizations; (j) penitentiary institutions for improving medical or care services.

¹⁸⁶ Section 10.3 of the Tax Code.

¹⁸⁷ Section 19 of the Tax Code.

¹⁸⁸ Section 19 of the Tax Code.

¹⁸⁹ Section 47 (f) of the Tax Code provides that in order to be eligible for this exemption, the number of the disabled engaged in these enterprises shall be at least 70 percent (at least 50 percent - for associations and enterprises of the blind and the deaf-and-dumb) and the wages paid to disabled persons during the tax year, is not less then 70 percent of the wage bill of public associations and enterprises (for associations and enterprises of the blind and the deaf-and-dumb not less a 50 percent). The amount exempt from the profit tax shall not exceed three times the amount of the remuneration of disabled people paid by public associations and enterprises during the tax year.

4. Taxation of Revenues Obtained on a Gratuitous Basis

Grants, membership fees and donations received by an “organization” are exempt from profit tax¹⁹⁰. (See Section A (3) above).

The Law of Georgia on Grants¹⁹¹ regulates grants. Grants are the funds which are being gratuitously transferred, in cash or in kind, from the grantor (donor) to the grantee, that are used for specific humanitarian, educational, scientific-research, health care, cultural, sporting, ecological and social projects, as well as for implementation of the programs of the state or public importance. The funds transferred in order to achieve entrepreneurial or political goals are not considered grants.

International private or public organizations and foreign states, as well as Georgian non-entrepreneurial legal persons (foundations, programs) with the primary purpose to support charitable, social, cultural, educational, scientific-research and other activities beneficial to the public can be recognized as grantors.¹⁹²

The state of Georgia, a governmental body, a resident or non-resident non-entrepreneurial legal person of Georgia, or, their sub-divisions, as well as citizens of Georgia can all be recognized as recipients of grants.¹⁹³

5. Taxation of Income from Entrepreneurial Activities (Business)

According to civil legislation, non-entrepreneurial legal persons can engage in any legal activity even if not stipulated in its charter¹⁹⁴. Further, the Civil Code¹⁹⁵ provides that auxiliary entrepreneurial activities that serve to accomplish the statutory purposes of the organization do not alter the non-entrepreneurial nature of the organization.

Economic activity is described in Section 7 of the Tax Code as “any activity aimed at receiving profits, income or compensation, regardless of the result of such activity¹⁹⁶.” Economic activity can be entrepreneurial (conducted through sales or business operations) and non-entrepreneurial (transfer of property)¹⁹⁷.

As a general rule profits from all economic activities of all organizations, including charitable organizations, are subject to the profits tax. The Tax Code, however, provides for several exceptions.

¹⁹⁰ Section 47 (c) of the Tax Code.

¹⁹¹ The Law of Georgia on Grants as of June 28, 1996

¹⁹² Section 2 of the Law on Grants.

¹⁹³ Section 2 of the Law on Grants.

¹⁹⁴ Section 25 of the Civil Code.

¹⁹⁵ Section 30 of the Civil Code.

¹⁹⁶ Section 7(2) (b) of the Tax Code.

¹⁹⁷ Section 8 (1)-(2) of the Tax Code.

Charitable and religious activities are not regarded as economic activities. “Charitable activity¹⁹⁸” includes all direct or financial support of physical persons in need of assistance or that of a charitable organization. It also includes any scientific or educational activity, even entrepreneurial activity that is in the public interest. The income of NEOs generated from charitable activities is exempt from profits tax.

The Tax Code¹⁹⁹ also contains special exemptions for organizations of the disabled whose income from economic activities is exempt from profits tax if they meet special requirements.

There are no other exemptions for economic activities in the Tax Code. Taxation of “economic activity” is not limited to regular economic activity. Hence there is no exclusion for occasional transactions, such as the sale of a capital asset.

6. Availability of Exemptions for Passive (Investment) Income

There are no exemptions for passive investment income. The Tax Code covers much of what we call “passive income” in Section 8 under “Non-entrepreneurial Activity.” Non-entrepreneurial activities, like entrepreneurial activities, are a category of “economic activities” on which profits taxes must be paid.

“Non-entrepreneurial activities” include:

- ? the placing of money on deposit at banks and credit institutions;
- ? property rental;
- ? property management by proxy;
- ? purchase/sale of securities or shares in the authorized capital of an enterprise, acquisition/sale of bonds or other promissory notes, or purchase/sale of investment funds, or sale of copyright or other similar right.²⁰⁰

7. Regulation of Expenditures

The Georgian Tax Code has no rules governing minimum levels of expenditures of funds held by organizations.

The Tax Code however, establishes several limitations for the expenditures of charitable organizations in order to qualify for tax exemptions. The organization is not considered charitable if its income or assets benefit a specified person, with the exception of cases when such benefits occur through charitable activities²⁰¹. Assistance is not regarded as charitable assistance if the recipient incurs an obligation to the person providing the

¹⁹⁸ Section 10(1) of the Tax Code.

¹⁹⁹ Section 47 (f) of the Tax Code.

²⁰⁰ Section 8 of the Tax Code. The sale/purchase of securities is regarded as an entrepreneurial activity if it is either (i) performed on a continuous basis and is a professional activity, (ii) related to the sale of goods produced by a seller, or (iii) carried out within the framework of a trade or intermediary activities.

²⁰¹ Section 21 (1) of the Tax Code.

assistance or if the recipient is related to the provider of assistance within the meaning of Section 24 of the Tax Code. The revenues of a charitable organization may not be used for other purposes than the charitable purposes.

More requirements for organizations and expenditures are established for organizations of disabled persons.

Certain limitations on the expenditures from a grant are established in the Law on Grants. The grant shall be used only for the purposes stipulated in the contract between the grantor and grantee. Use of the grant for other purposes shall be allowed only by permission of the grantor (donor). (See A (4)). Realization of the values received through the grant shall be allowed only if so predetermined in the contract on the donation of the grant.

8. Deduction of Charitable Contributions

The Tax Code does not provide for any deductions for charitable giving whether from individuals (on their income tax) or from legal entities (on their profits tax).

B. VAT

1. Basic Notions

Chapter 11 of the Tax Code regulates the Value Added Tax (VAT). VAT is collected on any supply of goods, works and services within the territory of Georgia, as well as on all taxable goods imported into Georgia.

VAT taxpayers are persons or branches of legal persons that carry out VAT-taxable economic activities of GEL 100,000²⁰² or more in a year.²⁰³ The GEL 100,000 threshold may be reached by regular and continuous economic activity, by a one-time purchase in that amount, or by any combination thereof.

Taxable transactions include imports and goods/services provided on a gratuitous basis, unless otherwise exempted under the Tax Code.²⁰⁴ The value of transactions is determined by either the amount of actual compensation received (for sales/services in exchange for cash or credit) or by the fair market value of the goods (in case of barter/trade or in cases where goods are provided on a gratuitous basis or otherwise are provided below cost).

These rules harm NEOs that provide goods or services for compensation below market value or on a cost-free basis, since VAT payment takes funds away from the groups' statutory purposes.

²⁰² The Law on Amendments to the Tax Code will come in effect on January 1, 2004.

²⁰³ The "year" is any continuous 12-month period.

²⁰⁴ Sections 96 and 100 of the Tax Code, respectively.

Donors face the same difficulty in being forced to pay VAT even when providing goods or services at below-market prices or on a gratuitous basis. This may lead donors to refrain from donating or to donate less to compensate for any VAT they must pay on their giving.

2. VAT Rates

The standard VAT rate is 20 percent.

Zero-rated goods include:

- ? exports;
- ? services and supplies related to international air transportation of passengers and goods;
- ? gold transferred to the National Bank of Georgia.²⁰⁵

3. Registration

Organizations whose turnover exceeds GEL 100,000 threshold for a 12 month period must register as VAT taxpayers.²⁰⁶

Section 93 of the Tax Code provides that legal persons whose annual turnover is below the GEL 100,000 threshold may voluntarily choose to register as VAT taxpayers.

4. Exemption for Turnover and Import of Specific Categories of Goods and Services

The Tax Code provides a list of transactions that are exempt from VAT without restricting which entities can benefit from these exemptions:

- ? medical services provided under state programs;
- ? the rendering of care to sick, disabled, and elderly people;
- ? the supply and/or import of pharmaceutical raw materials and substitutes, some finished pharmaceutical goods, and vaccines;
- ? the supply and/or import of wheelchairs, iodized salt, x-ray films, insulin syringes, diagnostic testing systems, glucometers (test systems registered by the Ministry of Health of Georgia);
- ? the supply and/or import of diabetic foodstuffs marketed as such upon wholesale or retail supply;

²⁰⁵ Sections 102-104 of the Tax Code.

²⁰⁶ Section 92 (2) of the Tax Code with amendments to enter into effect on January 1, 2004.

- ? the supply or import of baby food and infant-hygiene products;
- ? rendering educational services to children and teens by hobby groups or study circles, as well as childcare services for children at preschools and orphanages;
- ? the supply, publishing, and/or import of scientific literature, textbooks, and children's literature that are approved by the Ministry of Education of Georgia in agreement with the Committee of Taxes and Revenues as well as the Committee of Education, Science, and Culture of the Parliament;
- ? services provided by educational institutions, the import of computers, equipment and chemicals for scientific and educational purposes;
- ? the supply and printing of tickets for the theater, circus, classical music concert, and museums;
- ? import of scientific art, (...), books and journals, the authors of which are Georgian citizens, as well as the import of Georgian classical literature published abroad;
- ? printing, supply, import, and realization of newspapers, magazines, and literature;
- ? the supply of crosses, candles, icons, books, and calendars used exclusively for religious purposes by the Georgian Patriarchate; the construction, restoration and painting by order of the Georgian Patriarchate of cathedrals, monasteries, as well as reconstruction, restoration, conservation works and archeological excavations provided by state programs for protection and revival of the historical and cultural monuments of Georgia included in the list of the treasury of world heritage; and
- ? the import of goods that are transferred to State bodies and public organizations of Georgia for natural disasters, accidents, and catastrophes, as well as the import of goods envisaged in agreements on grants; the fulfillment of works under a contract financed for the above-mentioned purposes by an international organization, one of the parties to which is an executive authority of Georgia. For these purposes, the procedure for imported goods as well as fulfillment of works on a contractual basis is determined by decree of the President of Georgia.²⁰⁷

5. VAT Rebate Procedure

A grant recipient is entitled to a refund on any VAT it has paid on those goods or services purchased within the framework of the grant agreement.²⁰⁸

Excess VAT payments in a given VAT period can be carried forward over the next reporting period. If at least 25 percent of a VAT-payer's taxable turnover is zero-rated, excess of VAT credited shall be refunded within 15 days of receipt of an application for a refund.²⁰⁹

²⁰⁷ Section 101 of the Tax Code.

²⁰⁸ Section 119 of the Tax Code

²⁰⁹ Section 118 of the Tax Code.

C. Property, Real Estate, and Land Tax

1. Applicable Taxes.

Three taxes are applicable to property:

- ? tax on transfer of real property;
- ? tax on property of the enterprise; and
- ? land tax.

Real property transfers incur a transfer tax that amounts to two percent of the amount of compensation (but no less than the market value) in the case of transfer of the title; or two percent of the amounts payable under a lease or tenancy agreement in the case of transfer into lease or tenancy.²¹⁰ The transferee of the property is the taxpayer.²¹¹

Organizations that use property, in whole or in part, for economic activity are among taxpayers of the enterprise property tax.²¹² The tax is imposed on fixed assets, uninstalled equipment, incomplete capital investment and intangible assets recorded on the balance sheet of an organization that is used for economic activity.

Taxpayers of land tax include legal entities owning or using plots of land.²¹³

2. Tax Benefits

Non-entrepreneurial organizations enjoy several tax benefits and exemptions related to the taxes above.

In accordance with Sections 166 of the Tax Code, real property transferred on a gratuitous basis to a charitable or religious organization is exempt from the real property transfer tax. A lease or tenancy agreement for a term of less than one year is also exempt.

In accord with Sections 140 and 143, the property of “organizations” is exempt from enterprise property tax, except for property used for entrepreneurial activities.

Under Section 158, the following are exempt from land tax (unless the owner leases the land or buildings on the land to a third person):

- ? parcels of land allocated for scientific research, educational institutions, experimental breeding stations, experimental farm plots, or land used for other

²¹⁰ Sections 167 and 168 of the Tax Code.

²¹¹ Section 164 of the Tax Code.

²¹² Section 140 of the Tax Code.

²¹³ Section 146 of the Tax Code.

- scientific and educational purposes, provided the activities are financed by the organization's budget;
- ? plots which are allocated for the use of organizations serving the blind, deaf-and-dumb, or retarded individuals; physically underdeveloped children; war veterans; and teens in need of social adaptation and work-related rehabilitation, as long as the plots are related to the organization's statutory functions and funded from the organization's budget;
 - ? plots of land used by orphanages, boarding schools, children's villages, and kindergartens that perform child care and education free of charge, if these land plots are not used for economic activity;
 - ? land used for the protection of native and historical monuments and occupied by structures recognized by the state as monuments of history, culture, and architecture, unless they are used for entrepreneurial activities other than the sale of admission tickets;
 - ? physical or legal persons who have received a new title to land are exempt from the land tax for the first five years.²¹⁴

D. Other Tax Issues

Excise Tax: goods subject to excise tax in Georgia are essentially fuels, tobacco, and alcohol products. Sections 128 and 129 of the Tax Code provide exemptions on the excise tax as follows:

- ? While passenger automobiles and tires for passenger automobiles are subject to excise tax, their import is exempt when the goods are imported for the purpose of humanitarian aid during a natural disaster;²¹⁵
- ? Also, when excise tax has already been paid, a purchaser can obtain a tax credit if these goods are to be used for scientific research or for medical purposes by hospitals.²¹⁶

Social Tax: The social tax due by an employer is 28 percent of his employees' wages. An exemption is given to salaries of NEO employees paid out of grant agreements.

Automobiles: There is an exemption from the tax on transfer of motor vehicles for the transfer of an automobile to a charitable organization. No exemptions are granted, however, on the motor vehicle ownership tax.

Natural Resource Use: The tax on the use of natural resources is reduced by 70 percent for users of natural resources whose activities are connected with the restoration and replacement of such resources or with scientific, cultural, and instructional activities connected with the extraction (use) of natural resources.²¹⁷

²¹⁴ Section 158 of the Tax Code.

²¹⁵ Section 128 of the Tax Code.

²¹⁶ Section 129 of the Tax Code.

²¹⁷ Section 196 of the Tax Code.

Advertising: Advertisements aimed at social causes and promoting charitable events are exempt from advertisement tax, in accordance with Section 213 of the Tax Code, as well as posters of political associations for elections.²¹⁸

There are no exemptions relevant to NEOs concerning:

- ✍ licensing fees;
- ✍ tax on pollution of environment from harmful substances;
- ✍ tax on entering motor vehicles onto the territory of Georgia and overload;
- ✍ local taxes such as:
 - the hotel tax;
 - the tax on gambling activities(a tax that applies to the conducting of lotteries as an entrepreneurial activity);
 - the tax on use of local symbols;
 - the tax on economic activity (which applies to all persons engaging in economic activity).

²¹⁸ Section 8 of the Law on Local Charges as of May 1998.

KAZAKHSTAN

A. Income (Profits) Tax

1. Basic Notions

The Tax Code of the Republic of Kazakhstan²¹⁹ (Tax Code) regulates corporate income tax in Kazakhstan. As the Tax Code only recently went into force, many provisions of it are subject to different interpretation by tax authorities and tax payers. Taxpayers are understood as legal entities that are residents of the Republic of Kazakhstan as well as non-resident entities that conduct their activities in the Republic through a permanent establishment or derive income from sources within the Republic of Kazakhstan.

Resident taxpayers are taxed on taxable income, defined as the difference between the aggregate annual income and deductions allowed by the Tax Code.²²⁰

2. Tax Rates

The basic corporate tax rate is 30 percent,²²¹ but several exceptions apply:

- ? A 15 percent rate applies to income taxed at the source (residents only);
- ? A 10 percent tax rate applies to taxpayers for whom the land constitutes the primary means of production.
- ? Nonresidents' net income (taxable income less corporate income tax) from activities in Kazakhstan through a permanent establishment is taxed at a rate of 15 percent, and nonresidents' income from sources unrelated to its permanent establishment is taxed at various rates, ranging from 5 to 20 percent.²²²

3. Wholly or Partially Exempt Organizations

The Tax Code of Kazakhstan defines two categories of organizations that enjoy some tax exemptions: “non-commercial organizations” (NCOs) and “social-sector organizations” (SSO).

²¹⁹ The Tax Code as of June 12, 2001 (with subsequent amendments as of [August 1, 2003](#).)

²²⁰ Section 79 of the Tax Code. Sections 80 – 91 list items included in the aggregate annual income, and Sections 80 to 103, 105 to 114 contain allowable deductions. This survey discusses only taxation of residents.

²²¹ Section 135 of the Tax Code.

²²² Sections 135 and 180 of the Tax Code. Section 178 of the Tax Code places “profits of nonresidents from sources in the Republic of Kazakhstan” in 23 categories, including, *inter alia*, income from: the sale of goods and provision of work and services in the Republic of Kazakhstan; the provision of financial, marketing, management, legal, auditing, information, and other services through permanent bases in the Republic of Kazakhstan; profits on sales of property, including real estate and securities; honoraria received by corporate board members; provision of import-expert services into or out of the Republic of Kazakhstan; etc.)

Non-Commercial Organizations (NCOs): The Tax Code defines NCOs as organizations having the status of a “non-commercial organization” under the civil legislation, excluding joint stock companies, institutions and consumer cooperatives. An NCO under the civil legislation may take many forms, including *inter alia*, public associations, public foundations, religious organizations, associations (unions) of legal entities, notary chambers, bar associations, chambers of trade and commerce, auditing chambers, and cooperatives of the owners of apartments.

The Tax Code, however, adds additional requirements for qualification of an organization as non-commercial, which resemble, but are not equivalent to, characteristics of NCOs under civil legislation. First, the organization must be conducting activities in service of a public interest (a condition not required under the civil legislation.) Second, the organization may not have as its purpose the pursuit of profit (whereas civil legislation requires only that pursuit of profit not be the primary purpose.) Finally, the NCO must not distribute any net income or property among its membership.²²³

To our knowledge, the tax authorities currently do not inquire as to compliance with these three conditions in deciding whether the organization qualifies as an NCO.

NCOs are granted limited tax benefits. Exemptions for (1) specific types of income obtained on a gratuitous basis; and (2) specific types of passive (investment) income called “premium.” These exemptions are discussed in more detail at A4 and A6 below.

Social-sphere organizations (SSO): Social sphere organizations include two categories:

- ? organizations deriving no less than 90 percent of their gross annual income from provision of services or conduct of activities in enumerated fields, basically limited to healthcare, child care and education, science, sports, culture, library services and social welfare²²⁴ (hereinafter, the exempt activities); and
- ? organizations using a certain ratio of disabled persons’ labor²²⁵ (handicapped labor organizations”).

SSOs are broadly exempt under Section 121 from corporate tax on income received on a gratuitous basis, passive income (except for such taxed at the source), and income gained from entrepreneurial activities.

The blanket exemption, however, is subject to some conditions and limitations. First, the exemption is not available to SSOs that conduct excisable activities or engage in manufacturing of excised goods.²²⁶

²²³ Section 120 (1) of the Tax Code.

²²⁴ Section 121 (1) of the Tax Code.

²²⁵ Section 121 (2) of the Tax Code. The full rule reads as follows: “during the respective tax period, handicapped employees shall comprise no less than 51 percent of the overall number of workers, and the wages shall amount to no less than 51 percent of the overall wages. For specialized organizations employing hearing-, speech- or vision-impaired the latter figure is 35 percent.

²²⁶ Section 121 of the Tax Code.

In addition, the exemption is available only if the SSO's entire income is used for the performance of the exempt activities. It is not clear how this rule applies to the organizations of the disabled which benefit from the exemption, but are not required to engage in exempt activities. It is also unclear whether violation of this rule will result in taxation of only that part of the income that was misused, or in loss of the entire exemption. Finally, it is not clear whether income received on a gratuitous basis by an SSO must be counted towards the gross annual income in determining compliance with the requirement that the organization derive no less than 90 percent of its gross annual income from exempt activities.

4. Taxation of Revenues Obtained on a Gratuitous Basis

NCOs, pursuant to Section 120 of the Tax Code, are exempt from taxation of income "in the form of [. . .] grants, entry and membership fees, charitable aid, gratuitously transferred property, subsidies, and donations."²²⁷ The NCO shall account for such income separately from taxable income.²²⁸

SSOs, pursuant to Section 121, are exempt from taxation on the same types of income (so long as the income is directed towards exempt activities), with the exception of entry and membership fees.²²⁹ It is unclear whether the omission of entry and membership fees in the list of exemptions for SSOs was intentional or an oversight.

A "grant," as defined by the Tax Code, is

"property provided on a gratuitous basis by countries, governments, international or government organizations, as well as by foreign non-governmental organizations or foundations (whose activity is of charitable and international character and does not contradict the Constitution of the Republic of Kazakhstan and which is included on a list established by the Government of the Republic of Kazakhstan) to the Government of the Republic of Kazakhstan, legal entities, and natural persons; [and]

property provided on a gratuitous basis by foreigners and stateless persons to the Republic of Kazakhstan and to the Government of the Republic of Kazakhstan for attainment of particular goals."²³⁰

Currently there is no official criteria or procedure for inclusion on the list of entities entitled to provide grants.

²²⁷ Section 80 (2) (14) of the Tax Code.

²²⁸ Section 120 (4) of the Tax Code. No sanctions for non-compliance are explicitly imposed by the Tax Code, though it is likely, that the exemption will not be applied if the organization fails to keep separate accounting.

²²⁹ Section 121 (3) of the Tax Code.

²³⁰ Section 10 (1) (4) of the Tax Code.

5. Taxation of Income from Entrepreneurial Activities

The Civil Code²³¹ generally defines “entrepreneurial activity” as business activity of natural and legal persons undertaken at their own initiative, regardless of the form of ownership, aimed at deriving profits by satisfying a demand for goods, works, or services.²³² The Tax Code does not define entrepreneurial activity, but as a matter of practice, it is understood to include any activity resulting in revenues, including income commonly viewed as passive (investment) income.

The Tax Code contains no exemptions for income earned by NCOs from entrepreneurial or business activity. While civil legislation permits NCOs to engage in such activity (so long as it is not the primary activity of the NCO), the Tax Code provides that NCOs “shall not pursue generation of profits as such.” Tax authorities do not, to our knowledge, verify compliance with this beyond verification of an appropriate limitation to that effect in the NCO’s charter. Excessive engagement in entrepreneurial activities by an NCO could, however, potentially result in refusal of the tax authorities to view the organization as non-commercial, and thus result in the NCO losing corporate tax exemptions for grants, entry and membership fees, charitable aid, and the like.

The Tax Code exempts SSOs from taxation of all income earned from specifically exempted fields of activities, whether or not those activities are (also) entrepreneurial. However, the blanket exemption is applicable only so long as income from the exempt activity accounts for 90 percent of the gross annual income. Thus, engaging in entrepreneurial activity that is not in an exempt field of activity could result in the loss of all tax privileges, if the income from exempt activity falls below 90 percent of the gross annual income.

According to local tax experts, denial of the right to exemptions will result in imposition of the income tax for the whole tax period (financial year), in which the organization failed to qualify.

6. Availability of Exemptions for Passive (Investment) Income

NCOs are exempt from taxation of “premium,” defined as interest earnings from loans, bank deposits, and debt securities (discount or coupon), as well as financial leasing payments, payments for property transferred into trusts, and payments under certain insurance agreements.²³³

Certain types of passive income -- dividends, bank deposit premium, and premium on debt instruments -- are subject to withholding at the source at the rate of 15 percent for all resident legal entities, including NCOs. Generally, the amount withheld is then credited towards the accrued amount of the corporate income tax payment. If, due to exemptions,

²³¹ The Civil Code of the Republic of Kazakhstan as of December 27, 1994.

²³² Section 10 (1) of the Civil Code.

²³³ Section 10(1) (2) of the Tax Code.

no taxable income accrues, the NCO will apparently be unable to reclaim the amounts withheld. However, as of January 1, 2004, due to amendments to the Tax Code, this “premium” exemption will only cover interest from bank deposits.

Passive income other than premium, such as rental income, is taxed under the general rules.

SSOs are not specifically exempt from taxation of premium. However, the blanket exemption from corporate income tax that they enjoy so long as they satisfy Section 121 of the Tax Code, should also exempt them from taxation of premium income.

7. Regulation of Expenditures

The Tax Code contains no requirements as to the volume or timing of expenditures by NCOs.

All income of SSO organizations shall be spent on implementation of the exempt activities (though, no time terms are specified in the Tax Code). As mentioned before, this requirement is not applicable to handicapped labor organizations.

8. Deduction of Charitable Contributions

The taxable income of a taxpayer (legal entity) can be decreased by up to two percent by the value of any property gratuitously transferred to an NCO.²³⁴ No deductions are available to individual taxpayers for such contributions.

B. VAT

1. Basic Notions

“Taxpayers” for the purpose of VAT are legal persons with annual turnover exceeding 12,000 times the monthly payment unit (MPU), an amount which is annually defined by the Parliament of the Republic of Kazakhstan²³⁵ (currently 873 tenge, or approximately \$5.70); and persons importing goods into the territory of Kazakhstan.²³⁶

The turnover and the value of imported goods are taxed under the VAT.²³⁷

2. VAT Rates

The VAT rate is 16 percent (15 percent effective January 1, 2004).²³⁸ A zero-rating applies only to exports²³⁹ and international transportation.²⁴⁰ No zero-rating or otherwise discounted rates are available for socially beneficial or other non-profit activities.

²³⁴ Section 122 (1) of the Tax Code.

²³⁵ Section 208 (1) and (3) of the Tax Code.

²³⁶ Section 207 of the Tax Code.

²³⁷ Section 206 of the Tax Code.

3. Registration

A person is obliged to register as a taxpayer if its annual turnover exceeds 12,000 times the monthly payment unit (MPU), an amount fixed yearly by the Parliament of the Republic of Kazakhstan²⁴¹ (currently 873 tenge (approximately \$5.70)).

Voluntary registration is allowed if a person is engaging in or intends to engage in VAT-taxable business.²⁴²

4. Exemption for Turnover and Import for Specific Categories of Organizations

Until January 1, 2004,²⁴³ associations of disabled persons and production organizations enjoy exemptions from VAT on supplies of goods, works, and services,²⁴⁴ so long as they satisfy the following conditions:

- ? at least 51 percent of the employees of the organization must be handicapped; and
- ? wages paid to the disabled employees must comprise no less than 51 percent of the organization's overall payroll (this number is further reduced to 35 percent for specialized organizations employing hearing-, speech-, or vision-impaired workers).

Turnover of the supply of services by NCOs is exempt from VAT, if related to:

- ? the provision of services for protection and social welfare of children, the elderly, war and labor veterans, and disabled persons;²⁴⁵ and
- ? religious sermons and the sale of religious goods by religious organizations.²⁴⁶

5. Exemption for Specific Categories of Goods and Services

Turnover of the following, regardless of the identity of the supplier as commercial or non-commercial, are exempt:

- ? enumerated services provided in the fields of culture, the sciences, and education;²⁴⁷

²³⁸ Section 245 of the Tax Code.

²³⁹ Section 222 of the Tax Code.

²⁴⁰ Section 224 of the Tax Code.

²⁴¹ Section 208 (1) and (3) of the Tax Code.

²⁴² Section 208 (4) of the Tax Code.

²⁴³ Section 2 (1) of the Law of the Republic of Kazakhstan on the Entry into Force of the Tax Code.

²⁴⁴ Excluding trade intermediation and excised goods and activities.

²⁴⁵ Section 229 (1) of the Tax Code.

²⁴⁶ Section 229 (2) of the Tax Code.

²⁴⁷ Section 231 of the Tax Code.

- ? medical (except cosmetic), orthopedic, and veterinary goods, services in certain enumerated cases, and others per governmental specification;²⁴⁸ and
- ? services pertaining to the management, maintenance, and operation of residential buildings.²⁴⁹

The following imports are exempt:

- ? goods acquired using funds of grants provided under the auspices of states, state governments, and international organizations;²⁵⁰
- ? goods (except for excisable goods) imported for humanitarian purposes, in accordance with the procedure established by the Government of the Republic of Kazakhstan;²⁵¹ and
- ? goods (except for excisable goods) imported for charitable purposes (including as technical assistance), under the auspices of states, state governments and international organizations.²⁵²

VAT paid when buying goods, works, and services in the territory of the Republic of Kazakhstan using funds of grants provided under the auspices of states, state governments, and international organizations is also reimbursable from the budget.²⁵³ Various acts by the Ministry of Finance and tax authority provide different interpretations of the condition of *provision under auspices of states, state governments and international organizations*, for the purpose of VAT reimbursement on acquisitions within the Republic of Kazakhstan and exemption on imports.²⁵⁴

As a matter of practice, however, both reimbursement of domestic VAT and exemption of import VAT are, generally, available only to grantees receiving funds from foreign states and from international (intergovernmental) organizations. However, in practice national non-commercial organizations can not take advantage of VAT exemptions, as the appropriate Tax Code provisions are not being implemented by government authorities.²⁵⁵

²⁴⁸ Section 232 of the Tax Code.

²⁴⁹ Section 225 of the Tax Code. This may be of relevance to homeowners' cooperatives.

²⁵⁰ Section 234 (1) (11) of the Tax Code. It should be noted that though grants are classified as "property" by the Tax Code, the goods representing a grant in kind (as opposed to any goods acquired using the funds of a cash grant) are formally not exempt from import VAT by this Clause.

²⁵¹ Section 234 (1) (3) of the Tax Code.

²⁵² Section 234 (1) (4) of the Tax Code.

²⁵³ Section 253 of the Tax Code.

²⁵⁴ According to the Resolution of the Ministry of State Revenues #608 of December 10, 2002, reimbursement is possible only in presence of an *international agreement*. The Order of the Minister for States Revenues #1583 of November 2001 established procedure for reimbursement of VAT only to government bodies (unless there is an explicit provision requiring VAT reimbursement in an international agreement). According to the Resolution of the Cabinet of Ministers #84 of January 23, 2002, the imported goods might be exempt from the VAT regardless of existence of an international agreement. This applies to grants registered with the Ministry of Economics (though no legal requirement or procedure for such registration is established by legislation).

²⁵⁵ However, in presence of an international agreement specifically providing for other rules, the tax or customs authorities may nevertheless accept the claim, under Section 2 (5) of the Tax Code, that if an

6. VAT Rebate Procedure

As a general rule, excess of the VAT paid and subject to offset over the accrued VAT is used towards future payments of VAT,²⁵⁶ and actual reimbursement is available only in presence of zero-rated turnovers and only after other tax arrears are paid.

Reimbursement of VAT on goods purchased from grant money shall be reimbursed to the taxpayer within 30 days if the following conditions are satisfied:²⁵⁷

- ? the funds are provided under the auspices of a state, state government or an international organization;
- ? the goods, works, or services are acquired exclusively for the purposes for which the grant is provided; and
- ? the supply of goods, performance of works, provision of services are effected under an agreement concluded with the actual recipient of the grant or with a contractor appointed by the recipient for the purpose of the grant.

C. Property Tax (Including Real Estate)

1. Applicable Taxes

Property is subject to property tax, land tax, and dues payable at registration of the rights thereto. Property tax is calculated on the basis of the annual average residual book value of the property and is paid on a yearly basis.²⁵⁸ The tax base for land tax is determined according to the area of the land.²⁵⁹ Dues payable at registration are established by the Government of the Republic of Kazakhstan.

2. Tax Benefits

Non-commercial organizations as well as social sphere organizations (regardless of organizational form) and certain other organizations enjoy a reduced property tax rate of ten percent of the standard rate (e.g., 0.1 percent instead of one percent).²⁶⁰ They also pay land tax at a reduced ten percent rate of the standard assessment.²⁶¹

Religious organizations enjoy full exemptions from property²⁶² and land taxes.²⁶³

international agreement ratified by the Republic of Kazakhstan established such rules as are different from those contained in the Tax Code, the rules of the mentioned agreement shall apply.

²⁵⁶ Section 251 of the Tax Code

²⁵⁷ Section 253 of the Tax Code.

²⁵⁸ Sections 351 to 367 of the Tax Code.

²⁵⁹ Sections 323 to 344 of the Tax Code.

²⁶⁰ Section 355 of the Tax Code.

²⁶¹ Section 338 of the Tax Code.

²⁶² Section 351 of the Tax Code.

²⁶³ Section 324 of the Tax Code.

None of the reduced rates and exemptions noted above applies to land rented out or given for use to any third party by such organizations.

D. Miscellaneous: Other Exemptions and Benefits

Non-commercial organizations and social sphere organizations enjoy other tax benefits, including benefits in social taxes, state dues, and registration fees.

1. Social (Payroll) Tax

Payments from the funds of grants provided under the auspices of states, state governments, or international organizations are not subject to social taxes.²⁶⁴

A decreased social-tax rate (6.5 percent) applies to specialized organizations employing movement-, hearing-, speech-, or vision-impaired individuals, if the organization satisfies conditions established by Tax Code in its Section 121 for handicapped labor organizations.²⁶⁵ Otherwise, NCOs and social sphere organizations pay this tax at the standard rate of 21 percent (effective on January 1, 2004 regressive rate from 20 to 7 percent).

2. Individual Income Tax

The individual income tax does not apply to the following revenues received by individuals from NCOs and social sphere organizations:²⁶⁶

- ? grants (except wage payments);
- ? humanitarian assistance;
- ? charitable assistance; and
- ? payments in connection with professional education from a grant, so long as the payments do not exceed the minimum statutory wage.

3. State Fees

Certain categories of NCOs enjoy exemptions from payment of certain state fees. For instance:

- ? public organizations of handicapped persons are exempt from paying court fees when filing claims that fall within their sphere of competence;
- ? the “Kazakhstan Voluntary Society of the Handicapped,” the “Kazakhstan Society of the Deaf,” and the “Kazakhstan Society of the Blind,” as well as their enterprises, are exempt from paying any notarial fees.

²⁶⁴ Section 316 (1) (1) of the Tax Code. As a matter of practice this tax benefit is available in case of grants provided by organizations included on the list determined by the Government, unlike in the situation with VAT, as discussed in B5 above.

²⁶⁵ Section 317 (4) of the Tax Code.

²⁶⁶ Section 144 of the Tax Code.

Certain categories of NCOs enjoy decreased registration fees for registration with the state to acquire legal personality, or change in the statutory documents, for themselves and for their subdivisions (e.g., youth clubs and children's organizations, homeowners cooperatives, etc.).

KYRGYZSTAN

A. Income (Profits) Tax

1. Basic Notions

The Kyrgyz Republic regulates the tax on profits of legal entities (the “profits tax”) in Title IV of the Tax Code (Tax Code)²⁶⁷.

Taxpayers are resident legal entities that engage in economic activities and receive profits from sources in Kyrgyzstan and/or abroad.²⁶⁸ The definition of economic activity is sufficiently broad so that most non-commercial organizations (NCOs) are considered taxpayers.

Profits are calculated as the difference between the aggregate annual income of the taxpayer and the deductions provided for by the Tax Code.²⁶⁹

2. Profits Tax Rates

The basic profits tax rate is 20 percent.²⁷⁰

The profits of associations of the disabled, as well as subsidiaries of the Kyrgyz Society of the Blind and Deaf in which disabled, blind, and deaf people comprise at least 50 percent of the total number of employees, are taxable at zero-rate²⁷¹.

3. Wholly or Partially Exempt Organizations

Exemptions in the Tax Code are linked to both the type of organization and the type of income.

There are two categories of organizations which are eligible for certain exemptions, namely noncommercial organizations and noncommercial organizations having charity status (charitable organizations).

A non-commercial organization, as defined by the Tax Code²⁷², is an organization (1) registered in an organizational and legal form provided for under the legislation of the

²⁶⁷ The Tax Code of the Republic of Kyrgyzstan as of June 26, 1996 with subsequent amendments as of April 30, 2003 (Tax Code)

²⁶⁸ Section 91 of the Tax Code. Taxation of non-resident legal entities lies outside the scope of this survey.

²⁶⁹ Section 92 of the Tax Code.

²⁷⁰ Section 106 (1) of the Tax Code. Certain decreased rates are available to non-residents and for specific types of income (such as bank interest, as discussed below in A6).

²⁷¹ Section 106 of the Tax Code.

²⁷² Section 9 (4) (29) of the Tax Code.

Kyrgyz Republic²⁷³ (iii) that does not pursue generation of profits as the primary purpose of its activities and does not distribute profits among the members, founders, and officers.²⁷⁴ In Article 112, the tax code also introduces the term ‘public organization’ without providing a definition. NCOs enjoy exemptions on gratuitous income, as discussed below in A4. Public organizations enjoy the same treatment as other NCOs.

The recent revision to the Tax Code introduced new definitions for “charitable organization,” consistent with the definition under the Charity Law.²⁷⁵ According to the Tax Code, a charitable organization is a non-commercial organization:

- “1) established and conducting charitable activities in accordance with the legislation on non-commercial organizations and charitable activity;
- 2) that does not engage in manufacturing and sale of excised goods or conduct gambling business;
- 3) and has obtained under the established procedure a document, issued by the tax organs, confirming its rights to tax privileges under Sections 112 [exemptions for charitable activity] and 145 [VAT exemptions] of this Code.”²⁷⁶

Charitable activities are defined as “voluntary activities of physical and (or) legal entities aimed at implementation of charitable purposes, as stipulated by the legislation on charitable activities,²⁷⁷ in the form of transferring assets to citizens and legal entities, rendering services and performing works on a gratuitous basis or on privileged conditions, or in exchange for such payment as would not exceed costs incurred in connection with their sale.” Thus, charitable activities may include economic activities, so long as the activity does not result in a profit.

The Tax Code requires a charitable organization, as a condition of being recognized as such, to obtain a certificate from tax authorities confirming its rights to tax benefits. (See A5).

The Tax Code does grant exemptions, to NCOs and “public organizations” for certain kinds of income. They are exempt from profits tax received on a gratuitous basis. (See A4).

²⁷³ The Law of the Kyrgyz Republic on Non-commercial Organizations as of October 1, 1999 (Law on NCOs).

²⁷⁴ Id.

²⁷⁵ Section 5 of the Law of the Republic of Kyrgyzstan on Philanthropy and Charitable Activity as of October 1, 1999 (Charity Law) defined charitable organization as a “non-state (non-commercial) organization, established for implementation of purposes, stipulated by this law through conduct of charitable activity in the interests of society in general or certain categories of persons.”

²⁷⁶ Section 9 (4) of the Tax Code. The Tax Code revisions, while imposing this additional requirement for organizations to qualify as charitable organizations not included in the Charity Law, did not introduce any profits tax benefits directly linked to recognition of the organization as charitable.

²⁷⁷ The Tax Code does not contain its own list of charitable purposes; it refers to those established by the legislation on charitable activities, which is reasonably broad and includes most traditional public-benefit activities.

Public organizations are exempt from income gained from charitable activities.²⁷⁸ The term “public organization” is not defined by the Tax Code nor used in other civil legislation. Income of public organizations, as well as other noncommercial organizations which don’t have charitable status are exempt from profits tax if received on a gratuitous bases and used for charitable purposes. (See A5) There is no clear distinction between the tax status of charitable organizations or other NCOs in the Tax Code.

4. Taxation of Revenues Obtained on a Gratuitous Basis

Under the recent revisions to the Tax Code, the following types of revenues of NCOs are not included in the calculation of “gross annual income,” and are therefore not taxed:

- ? membership and entry fees;
- ? gratuitously transferred assets, so long as used for statutory purposes;
- ? humanitarian aid and grants, so long as used for statutory purposes.²⁷⁹

The Tax Code provides thorough definitions of these terms, apparently in response to the tax authorities’ prior difficulties in enforcing the Tax Code effectively:

“Membership fees” are defined as:

“assets contributed to membership-based non-commercial organizations in the amount designated and the manner stipulated in the founding documents of the organization, provided that such transfer is not conditioned upon reciprocal provision of services to such member free of charge or below costs.”²⁸⁰

“Entry fees” are defined as:

“assets contributed to membership-based non-commercial organizations by persons upon joining the organization in the amount designated and under the procedure stipulated in the founding documents of the organization, provided that such transfer is not conditioned upon reciprocal provision of services to such member free of charge or below costs.”²⁸¹

“Humanitarian aid” is defined as:

“assets gratuitously provided by governments and international, foreign, and local organizations to the Government of the Kyrgyz Republic, local authorities, state, and non-commercial organizations, as well as to individuals in the form of food,

²⁷⁸ Section 112 of the Tax Code (“Exemption from the Profits Tax”).

²⁷⁹ Section 93 (6) of the Tax Code.

²⁸⁰ Section 9 (68) of the Tax Code.

²⁸¹ Section 9 (69) of the Tax Code. These definitions of “entry” and “membership fees” were apparently considered necessary in light of other provisions of the Tax Code, as well as problems with tax enforcement. The tax authorities have indicated that entrepreneurs attempt to use membership fees to hide commercial relationships between customers and an NCO; an “NCO” provides services in exchange for a “membership fee” or “entry fee,” even though no actual membership relationship exists.

consumer goods, equipment, appliances, clothing, medical supplies and pharmaceuticals, other goods aimed at the improvement of the conditions of life among the population, [directed towards] the prevention or elimination of emergency situations of a military, ecological, or industrial nature, subject to the subsequent consumption and (or) gratuitous distribution of those assets.”²⁸²

“Grants” are defined as:

“assets gratuitously provided by governments and international, foreign, and local organizations to the Government of the Kyrgyz Republic, local authorities, state and non-commercial organizations (except for those pursuing political aims).”²⁸³

While these new definitions may appear rigid, they may also represent an improvement over prior law by providing a comprehensive interpretation of these terms and therefore helping create a consistent understanding and implementation of the Tax Code provisions where these terms are being used.

5. Taxation of Income from Entrepreneurial Activities

NCOs are generally allowed to engage in entrepreneurial activities, with some limitations, but income from such activities is taxed if it is not used for charitable activities or purposes. Entrepreneurial activities will not result in the loss of tax privileges applicable to revenue obtained on a gratuitous basis.

More specifically, the Civil Code allows NCOs to engage in entrepreneurial activities “to the extent it is necessary for implementation of their statutory goals.”²⁸⁴ The Law on NCOs, in substance, allows NCOs to conduct entrepreneurial activities (as any other types of activities) “if they do not contradict aims and purposes of the organization, determined by the charter, programmatic documents and other acts.”²⁸⁵ Finally, the Charity Law provides that “a charitable organization may engage in entrepreneurial activity only to attain purposes for which it is established, and corresponding to such purposes.”²⁸⁶

The Civil Code defines entrepreneurial activity “as independent activity, conducted at a [person’s] own risk, aimed at derivation of profits.”²⁸⁷ The Tax Code neither uses nor defines the term entrepreneurial activity, but instead uses the term “economic activity,” and provides that “[e]conomic activity` includes all types of economic activities, conducted by persons regardless of purposes and results of such types of activities.”²⁸⁸ While this definition is unenlightening, there are, in any case, no profits tax exemptions

²⁸² Section 9 (4-3) of the Tax Code.

²⁸³ Section 9 (4)(2) of the Tax Code.

²⁸⁴ Section 85 of the Civil Code

²⁸⁵ Section 12 of the Law on NCOs. The Section further establishes that limitations of specific types of activities of NCOs may be established only by law.

²⁸⁶ Section 7 of the Charity Law.

²⁸⁷ Section 1 of the Civil Code

²⁸⁸ Section 9 (51) of the Tax Code.

on income from entrepreneurial or economic activities for NCOs, if such are understood as any activities undertaken for consideration, in exchange for certain value.

The income of both NCOs and charitable organizations is exempt from profits tax, if this income was generated through economic activities, which are recognized as charitable (sales at cost or below cost) and allocated to statutory purposes.

6. Availability of Exemptions for Passive (Investment) Income

Certain types of income traditionally viewed as “passive” are subject to exemptions or special treatment, regardless of whether the taxpayer organization is commercial or non-commercial:

- ? Dividends received by legal entities that are residents of Kyrgyzstan are not subject to the profits tax.²⁸⁹
- ? Interest payable to any person is taxed at its source, through a withholding of 10 percent, and is not included in gross annual income upon submission of documentary evidence of withholding.²⁹⁰

Income from renting out property is included in gross annual income and taxed under the regular procedure within the gross annual income.²⁹¹

7. Regulation of Expenditures

The Tax Code contains no provisions limiting an NCO’s expenditures.

The Charity Law, on the other hand, imposes certain rules regarding the use of funds by charitable organizations, similar to those in other laws based on the Newly Independent States Model Charity Law.²⁹² The limitations on expenditures imposed by the law are summarized in the table below:

Constraint 1: “A charitable organization may not use for remuneration of <i>administration and management</i> staff more than 2 percent of	Exception 1: “This restriction does not apply to remuneration for persons <i>participating in implementation of charitable programs.</i> ”
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²⁸⁹ Section 112 (4) of the Tax Code. Dividends (as well as interest) received by non-residents are taxed at the source through withholding of 10 percent.

²⁹⁰ Section 108 (1) and (3) and Section 93 (1) (3) of the Tax Code.

²⁹¹ Section 93 (1) (3) of the Tax Code.

²⁹² Model Provisions for Charity Laws were drafted by the Parliamentary Assembly of the Newly Independent States in 1997.

²⁹³ Section 9 (3) of the Charity Law.

²⁹⁴ *Id.* *Charitable program* is defined in Section 10(1) of the Charity Law as “complex of measures, approved by the highest governing body of a charitable organization and aimed at solving particular tasks,

all funds expended during the financial year.” ²⁹³	²⁹⁴
<u>Constraint 2:</u> - “no less than 98 percent of a charitable donation in monetary form shall be used for charitable purposes within a year from receipt of this donation” - “a charitable donation in kind shall be used for charitable purposes within a year from receipt.” ²⁹⁵	<u>Exception 2:</u> Both requirements apply “unless the donor or the <i>charitable program</i> specifies otherwise.” ²⁹⁶
<u>Constraint 3:</u> “no less than 98 percent of the income derived during the <i>financial year</i> from non-realization operation transfers from business associations established by the charitable organization and from entrepreneurial activity permitted by law shall be used to <i>finance charitable programs</i> .” ²⁹⁷	<u>Exception 3:</u> -“ <i>financing charitable programs</i> ” includes “expenses on materials and technical, organizational, or other means [to ensure implementation of such programs], on remuneration of persons participating in charitable programs, or other expenses associated with the implementation of charitable programs” ²⁹⁸ - in the course of implementation of <i>long-term</i> ²⁹⁹ charitable programs, the funds obtained shall be used within the time established by such programs.”

The Charity Law includes a much lower ceiling for staff compensation (just 2 percent of overall expenditures) and a much higher level of mandatory disbursement (98 percent as opposed to the usual 80 percent), in comparison with the NIS Model Charity Law and other legislative acts modeled after it. However, in exactly the same way as in the Model Law, consequences of limitations are mitigated by the exceptions for spending with the framework of charitable programs or pursuant to arrangements with donors, as shown in the table above.

conforming to statutory purposes of this organization.” “Charitable programs,” pursuant to Section 10(2), must in addition:

- include estimates of expected revenues and planned expenses (including remuneration for persons participating in implementation of a charitable program;
- establish stages and time table of its implementation.

²⁹⁵ Section 9 (4) of the Charity Law.

²⁹⁶ *Id.*

²⁹⁷ Section 10 (3) of the Charity Law. Note that the rule, which refers to the financial year in which the income was *derived*, does not specify when such income must be *spent*. Note also that the Tax Code does not use the notion of “non-realization operations,” which is peculiar to the tax system of the Russian Federation. Its use here probably reflects wholesale adoption of the Model Charity Law, without due regard to the national tax system of the Republic of Kyrgyzstan.

²⁹⁸ Section 10 (3) of the Charity Law. This formulation appears to allow an organization to link to charitable programs even remotely related expenses.

²⁹⁹ The law does not define this term.

8. Deduction of Charitable Contributions

The Tax Code provides incentives for charitable donations by legal entities and individuals in the form of deductions. The March 2003 amendments to the Tax Code raised the limits on deductibility of contributions from two to five percent of taxable income. The relevant provisions of the Tax Code are as follows:

“Gross annual income of a legal entity shall be decreased by the amount of an asset, including money and property (at its market value), gratuitously transferred to charitable and budgetary organizations in the course of the tax year, in an amount not exceeding five percent of the taxable income of the taxpayer, provided that those assets are not used to the benefit of the legal entity that transfers them.”³⁰⁰

“Gross annual income of an individual shall be decreased by the amount of an asset, including money and property (at its market value), gratuitously transferred to charitable and budgetary organizations in the course of the tax year, in an amount not exceeding five percent of the taxable income of the taxpayer, provided that those assets are not used to the benefit of the individual who transfers them.”³⁰¹

B. VAT

1. Basic Notions

Value added tax (VAT) is regulated by Title V of the Tax Code.

Taxable persons are legal persons engaging in economic activity if, over a period of 12 calendar months, such person (1) provides supplies (other than exempt supplies) whose aggregate turnover exceeds the threshold established by the Government (currently, 300,000 som or (\$7, 246³⁰²), or (2) has aggregate turnover of taxable supplies and taxable imports during a period of less than 12 calendar months exceeding this threshold.³⁰³

Taxable supplies and imports are subject to VAT.³⁰⁴ “Taxable supplies” are non-exempt supplies of goods, works, and services in the territory of the Kyrgyz Republic.³⁰⁵ A

³⁰⁰ Section 112 (3) of the Tax Code.

³⁰¹ Section 88 (2) of the Tax Code.

³⁰² The Kyrgyz National Bank approved exchange rate for one USD is 41.4 soms as of October 15, 2003.

³⁰³ Section 9 (31) of the Tax Code; Section 127 of the Tax Code. However, this does not mean that one not obliged to register is exempt from paying import VAT.

³⁰⁴ Section 147 of the Tax Code.

³⁰⁵ Section 9 (32) of the Tax Code. Supplies of goods in the territory of Kyrgyzstan are taxable regardless of whether they are provided for consideration or not, while performance of works and rendering of services are taxable only if effected in exchange for consideration.

“taxable import” is a non-exempt import of goods into the customs territory of the Kyrgyz Republic.³⁰⁶

2. VAT Rates

The VAT rate is 20 percent.³⁰⁷ No preferential rates exist. There is a zero-rate available for exports,³⁰⁸ supplies connected with international transportation,³⁰⁹ and supplies to diplomatic establishments and their staff³¹⁰ (as well as to international organizations, if so established by a governing international agreement).³¹¹

3. Registration

A legal person engaging in economic activity³¹² is required to be registered as a VAT-payer if, over a period of 12 calendar months, such person provides supplies (other than exempt supplies) whose value exceeds the threshold established by the Government. A person is also required to register if the total turnover of taxable supplies and taxable imports during a period of less than 12 calendar months exceeds this threshold. Registration is due within a month of the expiration of this period and takes effect on the first day of the second month following submission of the registration form.

The registration threshold is currently set by the Government at 300,000 som³¹³ (\$7,246³¹⁴).

A person not required to register as a VAT payer may do so voluntarily, if such a person supplies goods or services (except for exempt transactions) to persons registered for the purpose of VAT.³¹⁵ The Tax Code also provides an opportunity for persons who intend to begin economic activity and undertake taxable transactions to register in advance. The registration will be annulled if the “intention to conduct such transactions discontinues.”³¹⁶

4. Exemption for Turnover and Import for Specific Categories of Organizations

³⁰⁶ Section 9 (33) of the Tax Code.

³⁰⁷ Section 119 of the Tax Code.

³⁰⁸ Except for export of gold alloys and refined gold. Section 150 of the Tax Code.

³⁰⁹ Section 150-1 of the Tax Code.

³¹⁰ Section 151 (1) of the Tax Code.

³¹¹ Section 151 (2) of the Tax Code.

³¹² See discussion of the definition of “economic activity” in A5 above.

³¹³ Governmental Decree #375, as of August 12, 1996.

³¹⁴ The Kyrgyz National Bank approved exchange rate for 1 USD is 41.4 soms as of October 15, 2003.

³¹⁵ Section 128(3) of the Tax Code. The term of such registration shall be no less than 2 years (unless the relevant activity is interrupted earlier). *Id.*

³¹⁶ Section 128(4) of the Tax Code. If a taxpayer has provided no supplies for 6 consecutive months, it may not claim a rebate of excess VAT payments. *Id.*

Section 145 of the Tax Code (“Supplies Provided by Non-commercial Organizations”) provides for exemption from VAT for several categories of goods and services when provided by certain types of taxpayers. Specifically, Section 145 provides as follows:

Supplies provided for payment that does not exceed the cost of such supplies are exempt from VAT, if:

- ? they are supplies of goods, works, and services provided by non-commercial organizations for healthcare, education, science, culture, and sports establishments;
- ? they are supplies of goods, works, and services provided by non-commercial organizations for social security or the protection of children or low-income elderly;
- ? they are supplies of services provided by healthcare, education, science, culture, and sports institutions;
- ? they are supplies of religious services by religious organizations;
- ? they are supplies of specialized goods for disabled;
- ? they are supplies by charitable organizations for charitable purposes.”

Section 145 thus exempts certain socially beneficial supplies from VAT, upon condition that such goods and services are supplied at or below cost, and so long as the supplier is a non-commercial organization, the certain VAT exemption is applicable only to charitable organizations.

5. Exemption for Specific Categories of Goods and Services

The following supplies that may be of interest to NGOs³¹⁷ are exempt from VAT:

- ? supply of residential buildings or renting out of residential premises, with certain exceptions;³¹⁸
- ? supply of pharmaceuticals;³¹⁹
- ? financial services enumerated by the Tax Code;³²⁰
- ? insurance service and services concerned with payment of pensions.³²¹

The import of the following goods of interest to the NGO community are exempt from VAT:³²²

³¹⁷ Other exempt supplies include supply of land, supplies concerned with gold, certain transportation services, postal services, public utilities, privatization of state property.

³¹⁸ Section 139 (1) of the Tax Code. This exemption does not apply to renting out hotel type premises, various recreation facilities, or parking lots.

³¹⁹ Section 139 (2) of the Tax Code.

³²⁰ Section 140 of the Tax Code.

³²¹ Section 141 of the Tax Code.

³²² Section 147 of the Tax Code. Other exempt imports include certain temporary imports, re-imports, transits, goods intended for diplomats and diplomatic establishments, excise stamps, technological equipment imported as contribution to charter capitals, under the list approved by the Government.

- ? goods provided for rendering assistance when liquidating consequences of natural calamities, armed conflicts and accidents;³²³
- ? goods imported as humanitarian assistance, grants under the procedure established by the Government of the Kyrgyz Republic;³²⁴
- ? pharmaceuticals in accordance with the list approved by the Government of the Kyrgyz Republic;³²⁵
- ? educational materials and school accessories, scientific publications;³²⁶
- ? baby food.³²⁷

The abovementioned exemptions for imports are conditioned upon compliance with customs regulations. The VAT exemption also applies to imports designated in the customs regulations.³²⁸

6. VAT Rebate Procedure

Normally, excess VAT paid will not be reimbursed to the taxpayer; instead, it is either applied in the subsequent reporting period,³²⁹ or may be applied towards payment of other taxes.³³⁰ A rebate is only available to taxable persons who regularly provide zero-rated supplies and who regularly incur taxes that may be off-set in excess of tax they owe. Such persons are entitled to reimbursement within 30 days of the VAT report,³³¹ less other tax arrears (if any).³³²

C. Property, Real Estate, and Land Tax

1. Applicable Taxes

A real estate tax was introduced in Kyrgyzstan in April 2003 as a local tax.³³³

Land tax applies to “land users regardless of the ownership form.”³³⁴ Rates are established on an annual basis by a separate law.

2. Tax Benefits

³²³ Section 147 (2) (1) of the Tax Code.

³²⁴ Section 147 (2) (2) of the Tax Code.

³²⁵ Section 147 (3) (1) of the Tax Code.

³²⁶ Section 147 (3) (2) of the Tax Code. These are exempt only if they appear on the list approved by the Government.

³²⁷ Section 147 (3) (2) of the Tax Code.

³²⁸ Section 147 (1) of the Tax Code.

³²⁹ Section 125 of the Tax Code.

³³⁰ Section 126 of the Tax Code.

³³¹ Section 159 (1) of the Tax Code.

³³² Section 159 (2) of the Tax Code.

³³³ Section 196 to 196 (9) of the Tax Code.

³³⁴ Section 175 of the Tax Code.

The Tax Code does not contain any exemptions from the real estate tax relevant to NCOs, though the local self-governance bodies have the authority to determine the list of taxpayers and incomes exempt from the tax.

Section 180 of the Tax Code exempts from the land tax, *inter alia*, land held by organizations of disabled persons and war participants, lands of charitable organizations, and lands of associations of the blind and deaf. However this section does not indicate what particular types of lands are exempted from land tax. In practice, tax authorities are guided by two determinative criteria: status of owner of land and the classification of lands (their purpose of use)³³⁵. The issue of applicability of Section 180 of the Tax Code regarding lands provided for agricultural use and other economic activity is not clearly addressed in legislation.

D. Other Taxes

Pursuant to Section 172 of the Tax Code, excise taxes are not assessed on otherwise excisable goods:

- ? imported as humanitarian assistance under the procedure established by the Government; and
- ? imported for charitable purposes under the auspices of states, governments, and international organizations, including as technical assistance.

NCOs are not exempt from local taxes and fees in effect in Kyrgyzstan (e.g., advertising tax, tax on auctions, lotteries, contests, and exhibitions).³³⁶ However, local self-governing bodies have limited authority to introduce tax exemptions or preferences with respect to some local taxes.

According to Section 33 of the Law of the Republic of Kazakhstan on Taxes on Enterprises, Associations and Organizations³³⁷, associations of the blind and deaf, budgetary organizations, sanatoriums and rest homes, as well as goods received as humanitarian assistance, are exempt from the tax on road use.

³³⁵ Section 12 of the Land Code as of June 2, 1999.

³³⁶ Health resort tax, tax on dog owners, hotel tax, and several other local taxes are applicable only to individuals, by definition.

³³⁷ The Law of Kyrgyzstan on Taxes on Enterprises, Associations, and Organizations as of December 17, 1991 (with subsequent amendments).

MOLDOVA

A. Income (Profits) Tax

1. Basic Notions

The Tax Code³³⁸ (Tax Code) of the Republic of Moldova provides for an income tax, which is assessed on taxpayers who must declare their income from all sources.³³⁹ Section 13 of the Tax Code defines “taxpayer” (for the purpose of the income tax) as those legal and natural persons who receive income from any source in the Republic of Moldova³⁴⁰. Residents of the Republic of Moldova receiving income from sources outside the Republic are also considered taxpayers.³⁴¹

Taxable income is the difference between gross income, less any deductions and immunities to which a taxpayer is entitled.³⁴²

2. Profits Tax Rates

The tax rate for legal entities is 22 percent.³⁴³

3. Wholly or Partially Exempt Organizations

Section 52 of the Tax Code exempts non-commercial organizations (NCO) from income tax, subject to certain conditions.³⁴⁴

The Tax Code³⁴⁵ defines an NCO as a “legal entity that does not pursue derivation of profit as the purpose of its activity and does not use any part of its property or income for the benefit of its members, founders, or any private person.” According to Section 52 (1), the following may be treated as non-commercial organizations and are exempt from income tax:

- ? institutions of healthcare, education, science, and culture;

³³⁸ The Tax Code of the Republic of Moldova as of April 24, 1997 (with amendments as of November 8, 2002.)

³³⁹ Section 13 (2) of the Tax Code.

³⁴⁰ A partnership, as defined in Section 5(9) of the Tax Code, is an exception to this rule.

³⁴¹ Section 13 (1) of the Tax Code.

³⁴² Section 14 of the Tax Code. Deductions and immunities are enumerated in Sections 33 to 36 of the Tax Code.

³⁴³ Section 15 of the Tax Code.

³⁴⁴ The Tax Code distinguishes between private NCOs and public institutions that may do similar work. While the private NCOs are exempt under Section 52, public institutions are exempt under Section 51 (“Public authorities and public institutions, exempt from tax”). Under this provision, public authorities and public institutions financed by the state budget, the budgets of territorial subdivisions, and/or the state social security budget are exempt from income tax.

³⁴⁵ Section 52 of the Tax Code.

- ? associations of the blind, deaf, and handicapped; enterprises established to carry out the statutory purposes of such associations; associations of veterans' and other public associations, foundations, and charitable organizations engaging solely in the following:
 - provision of material aid and free services to the handicapped, sick, shut-ins, orphans or children who have otherwise lost parental care, families with many children, the unemployed, and victims of war, natural disasters, ecological catastrophes, or epidemics;
 - activities concerned with the protection of human rights, education, and the acquisition and dissemination of knowledge; provision of healthcare and social assistance to the general public; culture, the arts, and amateur sports; consequences of natural disasters and environmental protection; and other activities that benefit the public, in accordance with legislation on public associations and foundations;

- ? trade unions, religious organizations, public savings and loans associations, associations of employers, entrepreneurs and farmers, as well as other associations organized to establish favorable conditions for the fulfillment and protection of industrial, scientific/technical, social, and other common interests of economic actors;

- ? colleges and associations of advocates; and unions, associations, and chambers of notaries;

- ? political parties and other public political organizations.”³⁴⁶

Moldovan law allows NCOs to choose from two procedures that they should go through in order to be recognized as charitable.

NCOs under paragraph (b) above must obtain a public benefit certificate from the Certification Commission at the Ministry of Justice in order to secure the tax exemption.³⁴⁷ The procedure for obtaining a public benefit certificate, stipulated by the Law on Associations and the Law on Foundations, requires an application be supported by documentation specifying the organization's activities and sources of revenues, as well as an assurance that the organization does not participate in election campaigns of candidates for public office. Once a Certification Commission adopts a positive decision on granting a public benefit certificate to an NCO, it advises the tax authorities on the adopted decision.³⁴⁸

³⁴⁶ Section 52(1) of the Tax Code.

³⁴⁷ Section 52(2)(6) of the Tax Code. They may obtain a 6-month temporary exemption from state tax authorities while the application for a public benefit certificate is pending.

³⁴⁸ *Id.* Commentators in Moldova have observed that in practice, non-certified public associations and foundations (including those identifying themselves as charities) enjoy exemption for income from their statutory activity as long as both content of the charter and actual activity of the organization comply with provisions of Section 52 (2). Certification for public benefit status is required, however, for purposes of donations: only donations to certified organizations will be deductible for donors. (See A9).

In addition, NCOs are recognized as charities if they are registered according to the Law on Charity and Sponsorship³⁴⁹ which stipulates the registration procedure for charities conducted by the Ministry of Justice. According to this law, NCOs are required to be incorporated as charitable organizations (in comparison to certification of already existing NCOs) under the alternative procedure. Charitable organizations shall satisfy several requirements in the Law on Charity and Sponsorship. A “charitable organization” is an organization, which is established to pursue the charitable purposes listed in the said law through conducting charitable activities.³⁵⁰ Government bodies can not be founders/co-founders of charitable organizations. While formally in force, the Law on Charity and Sponsorship is not being implemented.

Other NCOs obtain their tax exemption upon approval of a tax-exemption application by the local tax authorities.³⁵¹ Commentators in Moldova have observed that in practice, non-certified public associations and foundations (including those identifying themselves as charities) enjoy exemption for income from their statutory activity as long as both content of the charter and actual activity of the organization comply with provisions of Section 52 (2). Certification (or registration) as a charity is required, however, for purposes of donations: only donations to certified organizations are deductible for donors. (See A9).

An NCO will be allowed exemption from income tax only if it complies with the following requirements:³⁵²

- ?) it must be registered or established in accordance with the appropriate legislation, and its charter, by-laws, or other documentation must identify particular non-commercial activities, its status as a non-commercial organization, and contain a prohibition of distribution of income or property to any members of the organizations, founders, or other private persons, including in the course of liquidation of the non-commercial organization;³⁵³
- b) it must allocate all of its income from the activities provided for in the charter, by-laws, or other documentation to the attainment of those purposes stipulated in the charter, by-laws, or other documentation;

³⁴⁹ The Law on Charity and Sponsorship as of October 31, 2002.

³⁵⁰ Section 7 of the Law on Charity and Sponsorship.

³⁵¹ The application must include the NCO’s certificate of state registration along with the organization’s charter, by-laws, or other documentation demonstrating compliance with the requirements of Section 52. Tax authorities must adopt a decision on granting the tax-exempt status to the NCO within 30 days following submission of the application. Section 52(2)(5).

³⁵² Section 52(2) of the Tax Code.

³⁵³ Exemption of the enterprises of associations of the blind, deaf, and handicapped does not require indication of non-commercial status in their charters, by-laws or other documents, or the prohibition of distribution of dividends to founders (Section 52 (3) of the Tax Code).

?) it must not use any part of its property or income to benefit any member, founder, or other private person affiliated with the organization;

d) it must not support any political party, election coalition, or any candidate for public office, nor use any part of its income or property for the financing of such political organizations or candidates.³⁵⁴

The income tax exemption for NCOs applies to the organization's entire income, except for income gained from any "side business," which is taxed under Section 53 of the Tax Code. (See discussion of side business below in A5.)

4. Taxation of Revenues Obtained on a Gratuitous Basis

Revenues obtained on a gratuitous basis are exempt from income tax as per Section 52's broad exemption for NCOs, provided that receipt of donations is provided for in the organization's charter. There is no precise definition of a grant in Moldovan legislation, but grants are generally treated as donations and exempt under Section 52 of the Tax Code. The same applies to membership fees, as long as their payment complies with the charter.

5. Taxation of Income from Entrepreneurial Activities (Business)

The Tax Code defines "entrepreneurial activity" and "business" as "activities conducted in accordance with legislation, except for work pursuant to labor contracts performed with the aim of receiving income or where income is gained as a result thereof regardless of the aim of the activity from which the income arises."³⁵⁵

Status legislation³⁵⁶ permits charities, associations and foundations to conduct entrepreneurial activities, so long as they are related to the organization's statutory purposes.

To pursue entrepreneurial or economic activity unrelated to statutory purposes, NCOs and charities must establish a separate enterprise. The income of such enterprises is taxed in accordance with Section 53 of the Tax Code ("Side Business") on general tax provisions.

Taxation of income from entrepreneurial activity depends upon whether that activity is related to the statutory purposes, in which case it is exempt, or considered "side-business," in which case it is taxed. The income from related entrepreneurial activity of

³⁵⁴ These limitations do not apply to organizations referred to in Section 52(1)(e) of the Tax Code – political parties and other public political organizations.

³⁵⁵ Section 5(16) of the Tax Code.

³⁵⁶ The Law of Moldova on Charity and Sponsorship as of October 31, 2002; the Law of Moldova on Public Associations as of May 17, 1996; the Law on Public Foundations as of July 30, 1999.

an NCO is exempt from profits tax.³⁵⁷ Usually the tax authorities decide whether economic activity of an NCO is related or unrelated.

Unrelated entrepreneurial activity (or “side business”) is³⁵⁸ any entrepreneurial activity not provided for by the charter, by-laws, or other documents of a non-commercial organization, and/or an activity conducted in violation of the requirements set in Tax Code.³⁵⁹ Side business of Section 52 organizations is treated as a separate subject of taxation. The income from the “side business” is taxed at the general rate 25 percent.

6. Availability of Exemptions for Passive (Investment) Income

Dividends received by taxpayers from other entities, except for dividends from non-residents, are not included into the gross income of the taxpayer and thus are not subject to tax.³⁶⁰ An entity paying out dividends must, however, withhold at the source a 25 percent tax of the amount of dividends due, which is then credited towards the general income tax obligation of the paying entity.³⁶¹

There are no explicit exemptions for passive income.³⁶² Whether passive income of an NCO is taxable should depend upon whether it is considered entrepreneurial activity related to a statutory purpose (exempt), or “side-business” (not exempt). In practice, tax authorities tend to view passive income of NCOs as income from a “side business” and thus taxable.

7. Regulation of Expenditures

The legislation governing public benefit foundations contains a rule requiring that “administrative expenses shall not exceed 20 percent of all expenditures.”³⁶³ There are no limitations on accumulation.

The Law on Charity and Sponsorship includes a similar rule, according to which no more than 20 percent of funds “collected for charitable purposes” may be used for “carrying out its activities and compensation for administrative expenses.”³⁶⁴ The said law also

³⁵⁷ Section 52 of the Tax Code.

³⁵⁸ Section 52 of the Tax Code.

³⁵⁹ The Tax Code does not include a criterion of *regularity* in assessing tax on income from side businesses, but rather imposes profits tax regardless of the incidental or permanent nature of the activity.

³⁶⁰ Section 20(k) of the Tax Code.

³⁶¹ Section 80(1) of the Tax Code.

³⁶² The Tax Code defines two types of passive income. Under Section 12(4) of the Tax Code, “investment income” is income derived from capital investments and investments in financial assets, provided that participation of the taxpayer in such activities is not regular, permanent, and significant. “Financial income,” pursuant to Section 12(5), is income received as royalties, annuities, rent, or the result of favorable currency exchange, gratuitously transferred assets, and other income received as a result of financial activities, provided that participation of the taxpayer in such activities is not regular, permanent, and significant.

³⁶³ Section 23 of the Law on Foundations.

³⁶⁴ Section 20(3) of the Law on Charity and Sponsorship.

states that the positive difference between gross income and expenses shall not be distributed among the participants (members) of an organization³⁶⁵

Additionally, no less than 80 percent of a monetary donation, or the entirety of any non-monetary donation, must be used for charitable purposes within the year of receipt, with some exceptions.³⁶⁶ Another restriction states that no less than 80 percent of the revenues obtained during the financial year from “non-operational activities” from any “economic associations” established by a charitable organization, and from “entrepreneurial activity permitted by law” shall be spent financing charitable programs.³⁶⁷

There are no tax consequences associated with failure to meet the requirements under the Charity Law.

8. Deduction of Charitable Contributions

Resident taxpayers³⁶⁸ are permitted to deduct “donations for charitable purposes made during the year, not in excess of ten percent of the amount of [their] taxable income,” provided that such donations are substantiated in the manner established by the Government.³⁶⁹

The Tax Code defines “donations for charitable purposes” as such “donations or gifts” to

- ? public authorities and public institutions financed by the state budget, the budgets of territorial subdivisions, and/or the state social security budget public;
- ? NCOs (See A(3)); and
- ? religious organizations.

B. VAT

1. Basic Notions

Section 94 of the Tax Code defines VAT taxpayers as:

?) legal and natural persons, registered or subject to registration in accordance with the requirements of Section 112, i.e., persons that supply goods and/or services with a total value exceeding 200,000 Leu (MDL) (approx. 14,800 USD as of October 2003) in any consecutive 12-month period.³⁷⁰

³⁶⁵ Section 7 of the Law on Charity and Sponsorship.

³⁶⁶ Section 20(4) of the Law on Charity and Sponsorship.

³⁶⁷ The law does not specify any period of time within which such funds must be spent. The rule additionally exempts “long-term” charitable programs from the 80 percent rule on expenditure of funds. Section 18(3) of the Law on Charity and Sponsorship.

³⁶⁸ Section 36 (1) of the Tax Code.

³⁶⁹ Section 36 (3) of the Tax Code, the Regulation of the Cabinet of Ministers #489 as of May 4, 1998 establishes documentary requirements.

³⁷⁰ Section 112(1) of the Tax Code.

- b) legal and natural persons importing goods, except for natural persons importing goods for personal use or consumption, provided that their value does not exceed the limit specified in the law on budget for the respective year;
- ?) legal and natural persons importing services that are considered taxable supplies.

The following are taxable pursuant to Section 95 of the Tax Code:

- ?) supply of goods and services by taxpayers of the VAT resulting from their entrepreneurial activity in the Republic of Moldova; and
- b) import into the Republic of Moldova of goods and services, except for goods imported by natural persons for personal use or consumption, provided that their value does not exceed the limit specified in the law on budget for the respective year.³⁷¹

2. VAT Rates

The following VAT rates apply in the Republic of Moldova, per Section 96(1) of the Tax Code:

- ? standard rate – 20 percent of taxable value of imported goods and services and of supplies effected in the territory;
- ? decreased rates – a 5 percent rate applies to natural and liquefied gas imported into and supplied in the Republic of Moldova. An 8 percent rate applies to supplies of bread and certain bread products and milk and certain dairy products;³⁷²
- ? zero rate applies to exported goods and services; all types of international passenger and cargo transportation; and goods and services supplied for international organizations within the framework of agreements to which the Republic of Moldova is a party (the list of such international organizations is contained in the law on the budget for the respective year).³⁷³

3. Registration

The general rule is that taxpayers engaging in entrepreneurial activity must register as VAT-payers if they supply goods and/or services with a total value exceeding 200,000 Leu (MDL) (approx. 14,8 00 USD as of October 2003) in any consecutive 12-month period.³⁷⁴

³⁷¹ Section 95 of the Tax Code.

³⁷² Except for children's food exempt from VAT by virtue of Section 103(1)(2) of the Tax Code.

³⁷³ Other zero-rated supplies include electric and heat energy, hot water; goods intended for official use by diplomatic and other such missions in the RM, as well as for personal use or consumption by members of the diplomatic, administrative, and technical staffs of these missions and their family members residing therein -- on a reciprocal basis, in the manner established by the Government; construction works on building of residential houses conducted on conditions of hypothec.

³⁷⁴ Section 112(1) of the Tax Code.

Taxpayers must officially notify the State Tax Service of the taxable value (i.e., that exceeding 200,000 MDL) by filling out a special form and registering no later than one month after the expiration of the term within which the excess occurred. Taxpayers are deemed registered for the purposes of VAT beginning with the first day of the month following the month within which they were supposed to have submitted the official notification.

Those planning to begin entrepreneurial activity and intending to provide VAT-taxable supplies may register before beginning operation.³⁷⁵ Offset of the VAT paid for acquired goods and services is allowed only after taxable supplies have been provided for no less than six consecutive months after registration. The person is deemed registered as a VAT-payer from the day that the registration form is submitted to the State tax service. If the State Tax Service finds that the registered taxpayer was not entitled to or not obliged to register, the registration is deemed void.

Persons not required to register may register voluntarily as VAT-payers if they provide supplies to other taxpayers on a regular basis (for no less than one year) and have no tax arrears.³⁷⁶ Upon registration, such persons subject themselves to all the requirements of the Tax Code relating to VAT. Registration of such taxpayers is valid for no less than two years or until the taxpayer ceases entrepreneurial activity, whichever comes first. Such persons are deemed registered as VAT-payers from the day of submission of the registration form to the State Tax Service.

4. Exemption for Turnover and Import for Specific Categories of Organizations

There are no blanket exemptions for non-commercial organizations or any subtypes thereof. Certain organizations, though, have been designated by statute as exempt from VAT payment on certain goods and services. Under Section 103 of the Tax Code, the following are exempt: (enumeration of Section 103 retained below):

- (1) enterprises of the Association of the Blind, Association of the Deaf, and Association of the Handicapped are VAT-exempt with regards to materials imported for industrial purposes;³⁷⁷
- (2) goods and services of educational institutions allocated for educational purposes; personnel training services and services related to the improvement of professional skills; services for training children and teenagers; services provided by nurseries and kindergartens connected with the care of children in preschool establishments;³⁷⁸
- (3) goods provided by school cafeterias and cafeterias of educational facilities and hospitals; goods sold in the canteens of other institutions, including social

³⁷⁵ Section 112(4) of the Tax Code.

³⁷⁶ Section 112(3) of the Tax Code.

³⁷⁷ Section 103(2)(7) of the Tax Code.

³⁷⁸ Section 103(1)(5) of the Tax Code.

and cultural organizations financed in full or in part from the state budget; food services for the poor and/or elderly provided by charitable organizations;³⁷⁹
(4) rituals and ceremonies conducted by religious organizations.³⁸⁰

5. Exemption for Specific Categories of Goods and Services

The following supplies and imports, which may be related to the non-commercial sector, are VAT-exempt:³⁸¹

1. Import of goods and services which were manufactured by a taxpayer on the territory of Moldova;
2. Groceries and other goods for children in accordance with the list provided in the Law on Budget for the respective year;
3. preschool facilities, clubs, health resorts, and other places of social or cultural as well as housing and communal purpose being transferred by public authorities to enterprises, institutions and organizations;
4. Services and goods by educational institutions as related to the educational process, under condition, that all revenues are re-invested into the educational activities;
5. Services and actions for which there is a state duty; licensing, registration, and patent fees; fees and duties levied in granting certain rights to legal and physical persons; legal fees; natural resource utilization fees; services rendered by the members of colleges of advocates;
6. Services related to care for the sick and elderly;
7. Medical services, except for cosmetic procedures and medical supplies; vouchers to health resorts, rehabilitation institutions, recreation institutions, touring and excursion vouchers; technical means for prophylactics of disability and rehabilitation of the disabled;
8. Specified financial services;
9. Scientific research as well as experimental and engineering work conducted at the account of the budget funds;
10. Certain veterinary, biological, and other agricultural products;³⁸²
11. Books and periodicals, except for those relating to advertising or of an erotic character, and services relating to the publishing of books and periodicals;
12. Capital assets being transferred to the statutory capital of an entity;
13. Cars;
14. Goods and services, imported or purchased on the territory of the Republic of Moldova or of funds from loans and grants granted to the Moldovan Government, or provided by the government guarantees out of funds from loans of international finance institutions for specified projects, as well as from grants provided to budget subsidized institutions according to the list approved by the Government.

³⁷⁹ Section 103(1)(11) of the Tax Code.

³⁸⁰ Section 103(1)(16) of the Tax Code.

³⁸¹ References are to the numeration of Section 103 of the Tax Code.

³⁸² See the respective clause of Section 103 of the Tax Code for more detailed description of the products and substances falling within the scope of this exemption.

The following imported goods are exempt (if their importation complies with all conditions stipulated in applicable tax and customs legislation and regulations):

- (a) goods for rendering assistance after natural disasters, armed conflicts, and other public emergencies;
- (b) humanitarian assistance-related goods (designated as such by the Government);
- (c) goods in transit via the territory of Moldova.³⁸³

6. VAT Rebate Procedure

As a general rule, if the input VAT exceeds the output VAT, the difference shall be applied towards future VAT obligations (i.e., VAT is not reimbursed from the budget and not applied towards other tax obligations).³⁸⁴

In certain exceptional cases, reimbursement will be made within 45 days from the state budget to enterprises manufacturing certain bread and milk products (i.e., goods assessed at the lower eight percent VAT)³⁸⁵ or zero-rate supplies.³⁸⁶

C. Property, Real Estate, and Land Tax

1. Applicable Real Estate Taxes

In the Republic of Moldova, real property tax is regulated by Title 6 of the Tax Code. This is a local tax based on the value of the real property.³⁸⁷ The tax base for real property is 50 percent of the property's assessed value.

The maximum rate for real property tax is 0.5 percent of the taxable base. The specific tax rate, established on an annual basis by the representative body of the local public authorities, cannot be lower than 50 percent of the maximum rate.³⁸⁸

Real property tax is payable by the taxpayer in equal parts no later than June 15 and October 15 of the year.³⁸⁹

2. Tax Benefits

Section 283 of the Tax Code ("Exemption from Tax") exempts, *inter alia*, the following organizations from real property tax:

³⁸³ Section 103(20) of the Tax Code.

³⁸⁴ Section 101(2) of the Tax Code.

³⁸⁵ Section 101(3) of the Tax Code.

³⁸⁶ Section 101(5) of the Tax Code.

³⁸⁷ Section 276 of the Tax Code.

³⁸⁸ Section 280 of the Tax Code.

³⁸⁹ Section 282 of the Tax Code.

- a) public authorities and institutions financed from the budgets of all levels;
- b) Association of the Blind, Association of the Deaf, and Association of the Handicapped as well as enterprises, established by those organizations for fulfillment of their statutory purposes;
- c) religious organizations, with regards to real property used to carry out religious ceremonies.³⁹⁰

No decreased rates are provided for by the Tax Code itself.

The following land owners and land users are exempt from the property tax with respect to land and land plots:³⁹¹

- a) lands used by nature parks, preserves and botanical gardens;
- b) lands used by science and research organizations and institutions of agricultural and forestry focus for scientific and educational purposes;
- c) lands used by institutions of culture, art and cinematography, education, healthcare, sports and recreation as well as historic, natural and cultural monuments financed from the state budget or by professional unions.

D. Other Tax Issues

1. Other Taxes

Apart from the real property tax, the Tax Code provides for the following local taxes and duties:³⁹²

- ? natural resource-use tax;
- ? duty for improvement of land;
- ? levy on the right to conduct local auctions and lotteries;
- ? hotel tax;
- ? advertisement tax;
- ? tax for the right to use local symbology;
- ? tax for placement of trading facilities;
- ? market dues;
- ? parking fees;
- ? health resort fees;
- ? tax on dog owners;
- ? fees for the right to conduct movie and television filming;
- ? dues for crossing state borders;
- ? fee for the right to sell within the customs zone;
- ? fee for the right to provide services on passenger transportation;

³⁹⁰ Section 283 of the Tax Code.

³⁹¹ Section 283(3) of the Tax Code.

³⁹² Section 6(6) of the Tax Code.

? sanitation taxes.

2. Other Exemptions and Benefits

The Law on Public Associations vests the local authorities the right to exempt public-benefit public associations from local taxes, though such practice is uncommon.

RUSSIA

A. Income (Profits) Tax

1. Basic Notions

The basic profits tax rules are set forth in Chapter 25 of the Tax Code. Pursuant to the Tax Code, a non-commercial organization (NCO) registered as a legal entity under the laws of the Russian Federation is considered a “taxpayer” for the purpose of profits tax, regardless of the nature of its activities.³⁹³

Taxable income is “the income received [by an organization], decreased by the amount of expenses incurred” as determined by the Tax Code.³⁹⁴

Two general categories of income are delineated in the Tax Code. “Realization” income is income received from the sale of goods and services produced or acquired.³⁹⁵ “Non-realization” income refers to income derived from investments, royalties, interest, rental property, etc.³⁹⁶ More importantly, “non-realization income” also includes property or property rights obtained on a gratuitous basis (except where such income is expressly excluded from taxable income pursuant to Section 251 of the Tax Code).³⁹⁷

In calculating profits tax, “realization” income may only be decreased by expenses related to production and supply, while “non-realization” income may be decreased only by “non-realization” expenses,³⁹⁸ i.e. expenses directly related to generation of such income, and recognized as deductible by the Tax Code.

2. Profits Tax Rates

The base profits tax rate is 24 percent.³⁹⁹ A portion of the tax collected is transferred to the federal budget and a portion to the federal entity’s budget. Federal entities⁴⁰⁰ have the

³⁹³ See Sections 246 and 11 (1) of the Tax Code. Taxation of foreign entities operating in, or deriving income from the Russian Federation, lies outside the scope of this analysis. Thus, hereinafter, NCOs for purposes of this summary refer only to legal entities registered as such in the Russian Federation.

³⁹⁴ Section 247 (1) of the Tax Code.

³⁹⁵ Sections 248 (1) and 249 of the Tax Code.

³⁹⁶ Section 250 (8) of the Tax Code includes an open list of 21 examples of “non-realization” income, including the following that are traditionally viewed as passive income:

- 1) “from holding stakes in other organizations;”
- 4) “from provision of property into lease (sublease);”
- 5) “from provision of rights to intellectual property;”
- 6) “interest received under loan, credit, bank account, bank deposit arrangements as well as arising from securities and other debt instruments;”]

³⁹⁷ Section 250 of the Tax Code.

³⁹⁸ Section 252 of the Tax Code.

³⁹⁹ Section 284 (1) of the Tax Code.

authority to exempt particular types of taxpayers from the portion of profits tax due to them.

Dividends payable from one Russian organization to another are taxed separately at a rate of 6 percent and are subject to tax withholding.⁴⁰¹

Interest on government and municipal bonds is normally taxed at a rate of 15 percent.⁴⁰²

Under Chapter 26(2) of the Tax Code, an organization, including an NCO, may choose to be taxed under the “simplified taxation system” provided that it complies with certain requirements.⁴⁰³ Under this system, an organization will pay a uniform tax in the amount of either 6 percent of gross income or 15 percent of income decreased by costs, and will be generally exempt from other major taxes.⁴⁰⁴

3. Wholly or Partially Exempt Organizations

On the federal level, certain profits tax benefits are available to non-commercial organizations or to particular types of non-commercial organizations – however, benefits are always linked to particular income-generating *activities* or particular *types* of income. There are no blanket exemptions available to any organization.⁴⁰⁵

There is a Law of the Russian Federation on Charitable Activities and Charitable Organizations⁴⁰⁶ (Charity Law) and similar laws in some federal entities of the Russian Federation that regulate the status of charitable organizations. On the federal level there are no corresponding tax benefits and no procedures for determining the charitable status of organizations. Certain federal entities (such as the City of Moscow) establish relevant procedures and provide for tax benefits within their jurisdictions. (See section C below.)

4. Taxation of Revenues Obtained on a Gratuitous Basis

⁴⁰⁰ Under Section 65 of the Constitution of the Russian Federation, the Russian Federation consists of 89 federal entities (“subjects of federation”) possessing independence on certain legislative issues.

⁴⁰¹ Section 284 (3) of the Tax Code. The applicable rate between a Russian and foreign organization is 15 percent.

⁴⁰² Section 284 (4) of the Tax Code. Interest on certain bonds is taxed at the rate of zero percent.

⁴⁰³ Section 346 (12) (2) of the Tax Code.

⁴⁰⁴ Under Section 346 (11) (2) of the Tax Code, organizations taxed under the “simplified taxation system” are not subject to profits tax, sales tax, tax on property of enterprises, uniform social tax and VAT, except *import VAT* (“value added tax payable at importation of goods into the customs territory of the Russian Federation”).

⁴⁰⁵ Constituents of the Russian Federation have limited authority to grant tax benefits to taxpayers on taxes attributable to their respective budgets. See discussion in Section C and D of this summary.

⁴⁰⁶ The Law of the Russian Federation on Charitable Activities and Charitable Organizations as of August 11, 1995.

Exemptions for gratuitous income are scattered throughout the Tax Code. The following types of income, *inter alia*, are not included in the tax base for the purpose of profits tax under Section 251 (1):⁴⁰⁷

6) funds, assets and other property obtained in the form of gratuitous aid under the procedure established by the Gratuitous Aid Law;⁴⁰⁸

11) assets obtained on a gratuitous basis by a Russian organization from an organization, if the latter owns more than 50 percent in the charter capital of the Russian organization;⁴⁰⁹

14) assets obtained by a taxpayer for purposes as designated by giver, including grants (provided such assets are accounted for separately);⁴¹⁰

“Grant” is defined for purposes of Chapter 25 as: “monetary funds and other property, if their transfer (receipt) satisfies the following conditions:

- provided on a gratuitous and irrevocable basis by physical persons, non-commercial organizations, including foreign and international organizations and associations, as listed and approved by the Government of the Russian Federation;
- provided to facilitate specific programs in the field of education, art, culture, environmental protection, as well as for specific scientific research; and
- provided on the conditions determined by the grantor, with mandatory submission to the grantor of a report on the designated use of the grant.”

22) property gratuitously obtained by state and municipal educational institutions and non-state educational institutions licensed to pursue educational activities for carrying out their statutory activities;

27) property (including money) and property rights obtained by a religious organization in connection with the performance of religious ordinances and ceremonies and from the production of religious literature and articles of religious designation.

⁴⁰⁷ Exemptions listed are those as may be relevant to this survey; references are to numbers of the respective Sub-clauses of Section 251 (1) of the Tax Code.

⁴⁰⁸ The Law of the Russian Federation on Gratuitous Aid (Assistance) to the Russian Federation and on Introduction of Changes and Additions to Certain Normative Acts of the Russian Federation on Taxes and on Introduction of Privileges as Regards to Payments to the Budget and State Non-budget Funds in Connection with Implementation of Gratuitous Aid (Assistance) to the Russian Federation as of May 4 1999 (Gratuitous Aid Law).

⁴⁰⁹ “property obtained [under this sub-clause] (except for monetary funds) is not viewed as *income* provided that it is not transferred to *third persons* within one year from the moment of its receipt

⁴¹⁰ The Tax Code includes as funds designated for defined purposes the “assets obtained by a taxpayer and used according to its designation, established by the organization or physical person which is the source of financing.” The Tax Code lists 9 such assets and includes grants. Among other types of funds designated for defined purposes are “funds obtained from the Russian Fund for Fundamental Research, Russian Fund for Technological Development, [and the] Russian Humanitarian Scientific Fund.”

In addition, Section 251 (2) of the Tax Code exempts the portion of income spent on the support of non-commercial organizations and for conduct by them of their statutory activities, provided such funds are subject to separate accounting⁴¹¹ More specifically, the following incomes are exempt from tax:

- ? entrance fees, membership fees, designated contributions and allocations to public law professional unions established pursuant to the principle of obligatory membership, participatory contributions, and donations, recognized as such by the Civil Code of the Russian Federation;⁴¹²
- ? property inherited by non-commercial organizations pursuant to a will;
- ? financing received from the federal budget, budgets of the federal entities of the Russian Federation, local budgets, and budgets of state non-budgetary funds, provided for the conduct of statutory activities of non-commercial organizations;
- ? funds and other property obtained to conduct charitable activities;
- ? aggregate contributions by founders of non-state pension funds;
- ? pension contributions to non-state pension funds;
- ? funds donated by owners to institutions established by them, used in accordance with their designated purpose;
- ? certain funding within and among professional organizations of advocates;⁴¹³
- ? funds obtained by trade unions pursuant to collective contracts (agreements) for conduct by trade unions of social and cultural and other events provided by their statutory activities;
- ? certain funding to and from ROSTO (Russian Defensive Sports and Technical Organization);
- ? property (including monetary funds) and property rights obtained by religious organizations for the purpose of conduct of statutory activities.

⁴¹¹ Section 251 (2) refers to income (except excised goods and materials) specifically designated for maintenance of non-commercial organizations and conduct by them of statutory activities, received from other organizations and/or physical persons and used by the said recipients according to the designated purpose.

⁴¹² Section 251(2) (1) of the Tax Code names those types of persons or entities to whom gifts are registered as donations and thus exempt. The Civil Code limits the recipients of donations to the following: citizens; healthcare, nursing, social protection and other similar institutions; charitable, scientific and educational institutions, foundations; museums and other cultural institutions; public and religious organizations of the Russian Federation and its constituents; and municipal formations. Hence, not all non-commercial organizations may receive donations (for instance, non-commercial partnerships, unions of legal entities, autonomous non-commercial organizations, and house building cooperatives) and gratuitous transfer to them will be deemed a gift and subject to profits tax.

⁴¹³ Namely: “allocations by chambers of advocates of the federal entities of the Russian Federation to the needs of the Federal chamber of advocates in the amount and according to the procedure established by the All-Russian congress of advocates; allocations by advocates to the needs of the chamber of advocates of the respective federal entities of the Russian Federation in the amount and according to the procedure established by annual meeting (conference) of the advocates of the chamber of advocates of such constituent of the Russian Federation, as well as for maintenance of the respective advocate’s cabinet, college of advocates or bureau of advocates.”

Although the list of types of income that may be excluded from the taxable base may seem extensive, in practice, a typical NCO is rather limited in its ability to receive tax exempt income.

5. Taxation of Income from Entrepreneurial Activities

Under the Civil Code of the Russian Federation, “entrepreneurial activity” is defined as “independent activity carried out at one’s own risk with the view of obtaining profits from the use of property, sale of goods, performance of works or provision of services.”⁴¹⁴

NCOs are permitted to engage in entrepreneurial activities as long as their statutory activities remain their principal activities. The entrepreneurial activities of an NCO must satisfy two requirements: (1) such activities must assist an NCO in conducting its statutory purposes and expand its ability to achieve its statutory objectives; and (2) the direction of such activities must be in line with the statutory objectives of the NCO.

Generally, Russian tax legislation does not grant any exemptions for profits of NCOs arising from entrepreneurial activities, regardless of the amount of profits or relatedness to statutory purposes of the organization. Income of an NCO received as a result of the sale of goods and services is subject to profits tax on general grounds. Such income may be reduced by the amount of expenses directly related to the receipt of such income. Once tax is paid on income from entrepreneurial activities, the remainder may be used by an NCO for its non-commercial activities.

An exception to this general rule applies only to the following organizations:

- ? public organizations of the handicapped;
- ? institutions wholly owned by public organizations of the handicapped; and
- ? organizations using labor of handicapped individuals, provided handicapped employees account for at least 50 percent of the total number of employees and their aggregate wages amount to no less than 25 percent of the total payroll amount.

The organizations mentioned above may reduce their taxable income from the sale of goods and services by the amounts allocated to public organizations of the handicapped for carrying out their statutory activities, as well as amounts allocated for purposes of social protection of the handicapped.⁴¹⁵ Certain conditions and restrictions apply in both cases.⁴¹⁶

⁴¹⁴ Section 2 of the Civil Code.

⁴¹⁵ Section 364 (1) (38) of the Tax Code. The following are considered *purposes of social protection of the handicapped*: improvement of working conditions of the handicapped, creating working places for the handicapped (including acquisition and installation of equipment and organization of work of independent contractors), education (including new professions and work methods) and placement of the handicapped, rehabilitation measures (including acquisition and servicing of technical means of rehabilitation, seeing guide dogs, vouchers for sanatorium-and-resort institutions), securing equal opportunity for the handicapped in regard to other citizens (including transport services for the handicapped, organization of

Additionally, certain benefits are granted to organizations wholly owned by religious organizations. Such organizations may decrease their taxable income from the sale of religious literature and objects of religious designation by amounts transferred to parent religious organizations for conduct of their statutory activities.⁴¹⁷

The law contains limitations on certain entrepreneurial activities of NCOs. Non-commercial organizations are not permitted to perform activities under:

- ? Loan contracts secured by assignment of debt obligations of the third party,⁴¹⁸
- ? Commercial concessions (franchising) contracts,⁴¹⁹
- ? Public contracts.⁴²⁰

6. Taxation of Passive (Investments) Income

Types of income traditionally viewed as passive or investment income (under the Tax Code identified as “non-realization” income) are subject to profits tax and are not exempt for non-commercial organizations.

7. Regulation of Expenditures

The Russian Tax Code does not include rules regarding the allocation or timing of distributions.

The Charity Law imposes upon charitable organizations certain rules regarding use of the funds. No more than 20 percent of funds “collected for charitable purposes” may be used for carrying out activities and compensation for administrative expenses.⁴²¹ Additionally, no less than 80 percent of a monetary donation, or the entirety of any non-monetary donation, must be used for charitable purposes within the year of receipt, with some exceptions.⁴²² Finally, no less than 80 percent of the revenues obtained during the

recreation for handicapped children) in accordance with the legislation of the Russian Federation on social protection of the handicapped, including contributions for maintenance of public organizations of handicapped persons (POHPs). Part-time workers and those working under civil law contracts (as opposed to labor contracts) are not taken into account in calculating the percentage of handicapped employees. *Id.*

⁴¹⁶ These deductions are not available for expenses associated with the production and sale of excised goods and minerals as well as such other goods as may be determined by the Government of the Russian Federation upon agreement with all-Russia organizations of handicapped people, and the related intermediary services. Section 264 (1) (39) of the Tax Code. Recipients of the funds intended for POHPs and for purposes of social protection of the handicapped, upon expiration of the tax period, must submit to the tax authorities in the place of their tax registration a report on the designated use of the funds. If such funds are not used in compliance with their designation, they are deemed taxable income on the part of the recipient.

⁴¹⁷ Section 264 (39) (1) of the Tax Code.

⁴¹⁸ Section 825 of the Civil Code.

⁴¹⁹ Section 1027 of the Civil Code.

⁴²⁰ Section 426 of the Civil Code.

⁴²¹ Section 20 (3) of the Law on Charity.

⁴²² Section 20 (4) of the Law on Charity.

financial year from “non-operational activities” from any “economic associations” established by a charitable organization, and from “entrepreneurial activity permitted by law” shall be spent financing charitable programs.⁴²³ The limitations are mitigated by exceptions for spending within the framework of charitable programs or pursuant to arrangements with donors. There are no tax consequences for failing to adhere to these requirements.

8. Deduction of Charitable Contributions

The Tax Code does not provide for deductions or benefits for legal entities that contribute to non-commercial organizations. Limited exceptions to this rule exist which are applicable to handicapped labor and to religious organizations as discussed above at A5.

An individual taxpayer may take *social tax deductions* to decrease his or her income tax base by up to 25 percent. Social tax deductions apply to:

the amount of income transferred by taxpayers for charitable purposes as monetary aid to organizations of science, culture, education, healthcare and social security that are financed in full or in part from the funds of respective budgets, as well as organizations of physical culture and sports, educational and preschool institutions for the needs of physical development of citizens and maintenance of sports teams, as well as donations transferred (paid) by the taxpayer to religious organizations for the conduct of their statutory activity but no more than 25 percent of the total income received over a tax period.⁴²⁴

B. VAT (or GST, or other similar tax)

1. Basic Notions

Organizations, individual entrepreneurs, and importers are all deemed taxpayers for the purpose of VAT.⁴²⁵ Non-commercial organizations (NCOs) are considered taxpayers

The following items, *inter alia*, are subject to VAT:

- ? the sale of goods, works, and services in the territory of the Russian Federation, including the transfer of property rights; and
- ? importation of goods into the customs territory of the Russian Federation.⁴²⁶

⁴²³ The law does not specify any period of time within which such funds must be spent. The rule additionally exempts “longterm” charitable programs from the 80 percent rule on expenditure of funds. Section 18(3) of the Law on Charity.

⁴²⁴ Section 219 (1) (1) of the Tax Code.

⁴²⁵ Section 143 of the Tax Code.

⁴²⁶ Section 146, (1) (1) and (4). Also subject to VAT are: transfer of goods, works, and services within the territory of the Russian Federation *for a taxpayer’s own needs*, provided that related costs are not accounted for as deductions for the purpose of calculation of the profits tax; and performance of construction works for taxpayer’s own needs.

The gratuitous transfer of title to goods and provision of service is also subject to VAT.⁴²⁷

2. VAT Rates

The basic rate is 20 percent.⁴²⁸

A zero-rate is applicable in connection with exports, international transportation, space exploration, extraction of precious metals, and use and consumption by diplomatic establishments.⁴²⁹

A VAT rate of ten percent applies to the supply as well as import of the following goods:⁴³⁰

- ? certain foodstuffs, as specified by the Tax Code;
- ? certain goods for children, as specified by the Tax Code;
- ? printed periodicals, except for printed periodicals of advertising or erotic character; book products connected with education, science and culture⁴³¹ and
- ? medical items of domestic and foreign origin.

3. Registration

There is no general registration threshold for VAT and no separate procedure for registration as a payer of VAT. The NCO, as all other legal entities, must apply for tax registration within ten days of obtaining state registration as legal entities.

In absence of a registration threshold, no option of voluntary registration for the purpose of the VAT arises.

However, under Section 145 (1), “organizations and individual entrepreneurs are entitled to a release from the obligations of the taxpayer in connection with calculation and payment of the tax, if during the three preceding consecutive months the amount of revenue from realization of goods, works, and services of those organizations or individual entrepreneurs, without account of the [VAT] tax and the sales tax, does not exceed one million rubles in aggregate.”⁴³²

4. Exemption for Turnover and Import for Specific Categories of Organizations

⁴²⁷ *Id.*

⁴²⁸ Section 164 (1) (3) of the Tax Code.

⁴²⁹ Section 164 (1) of the Tax Code.

⁴³⁰ Section 164 (2). Goods listed are those as may be relevant to NCOs.

⁴³¹ Also including the supply of related editorial and publishing services.

⁴³² This release is unavailable to those supplying excised goods and minerals during the preceding three months and is inapplicable to import. Additional rules and restrictions apply by virtue of Section 145 of the Tax Code.

An NCO will be exempt from VAT if it elects to be taxed under the “simplified taxation system” discussed above in A2. The simplified tax system, however, does not affect obligations in regard to import VAT.

5. Exemption for Specific Categories of Goods and Services

Provisions relevant to exemptions from VAT (other than import VAT) are scattered throughout the Tax Code. The exemptions particularly significant for NCOs are noted below.

Section 39 (3) exempts the following:⁴³³

- 3) transfer of capital assets, non-material assets and other property to NCOs for conduct of their primary statutory activities, unconnected with entrepreneurial activities;
- 4) contributions to charter funds of cooperatives;
- 7) inheritance of property;
- 8) gratuitous transfer of residential buildings, kindergartens, clubs, sanatoriums and other objects of social-and-cultural and housing-and-communal designation to bodies of government and local authorities (or, upon request of such authorities, to specialized organizations, for use in accordance with their designation).

Section 149 (2) exempts the following:⁴³⁴

- 1) certain medical items from the list approved by the Government of the Russian Federation;
- 2) medical services provided by medical organizations and institutions except for cosmetic, veterinarian, sanitation and epidemiological services;⁴³⁵
- 3) services for caring of the sick, handicapped and elderly, provided by state and municipal institutions for social care
- 4) childcare services in pre-school institutions, conduct of exercises with juveniles in clubs and, workshops (including for sports);
- 5) foodstuffs produced and provided directly by certain types of catering organizations, including at educational facilities;
- 6) services for storing, gathering and use of archives by archiving organizations and institutions;
- 7) ritual services, works for manufacturing of gravestones and decoration of graves, and funeral accessories;⁴³⁶

⁴³³ References are to numbers of the respective Sub-clauses of Section 39 (3) of the Tax Code.

⁴³⁴ References are to numbers of the respective Sub-clauses of Section 149 (2) of the Tax Code.

⁴³⁵ This Sub-clause further specifies which items shall be deemed *medical*, namely: “services, determined by the list of services rendered pursuant to the mandatory medical insurance; services rendered to the population at diagnostics, prophylactics and cure regardless of the source of payment, according to the list approved by the Government of the Russian Federation; services at collecting donors’ blood, rendered pursuant to contracts with stationary [in-patient] medical institutions and polyclinic departments; emergency medical aid services to the population; services of the medical personnel patient’s bedside; forensic services; services rendered to pregnant woman, the new born, the handicapped and drug addicts.”

- 8) contributions to charter funds of cooperatives and investment funds;
- 9) educational services (except for consulting) and services for renting out premises by non-commercial educational organizations;
- 10) renovation, restoration, conservation and reconstruction of works of historical and cultural heritage protected by the state, and worship buildings used by religious organizations,
- 11) goods, works, and services (except for excised goods and minerals) performed within the framework of provision of gratuitous aid to the Russian Federation under the procedure established by the Gratuitous Aid Law,⁴³⁷
- 12) services in the field of culture and art (as enumerated by the Tax Code), rendered by institutions of culture and art (as defined by the Tax Code),⁴³⁸
- 13) works and services related to production of certain cinematographic products.

Section 146 (2) of the Tax Code exempts the following:⁴³⁹

- 1) gratuitous transfer of capital assets by government and municipal representatives and executive authorities to budgetary institutions and state and municipal unitary enterprises.

Section 149 (3) of the Tax Code exempts the following:⁴⁴⁰

- 1) sales of objects of religious designation and religious literature⁴⁴¹ and provision of services of a religious nature;⁴⁴²
- 2) goods, works and services, with some exceptions,⁴⁴³ produced and supplied by qualifying public organizations of handicapped persons (POHPs),⁴⁴⁴ their affiliates⁴⁴⁵ and several other related types of organizations;⁴⁴⁶

⁴³⁶ According to a list approved by the Government of the Russian Federation.

⁴³⁷ The Law of the Russian Federation on Gratuitous Aid as of May 4, 1999.

⁴³⁸ The sub-clause contains a list of services in the field of culture and defines as “institutions of culture and art,” the following facilities: “theatres, cinemas, concert organizations and collectives, theatrical and concert ticket windows, circuses, libraries, museums, exhibitions, houses and palaces of culture, clubs, houses (in particular, of cinematography, literature, or composers), planetaria, parks of culture and recreation, lyceums and people universities, excursion bureaus (except for travel excursion bureaus), sanctuaries, botanical gardens and zoos, national parks, nature parks and landscape parks.”

⁴³⁹ References are to numbers of the respective Sub-clauses of Section 146 (2) of the Tax Code.

⁴⁴⁰ References are to numbers of the respective Sub-clauses of Section 149 (3) of the Tax Code.

⁴⁴¹ This exemption is available to religious organizations and entrepreneurial associations wholly owned by them (does not apply to excised goods and materials).

⁴⁴² This clause exempts “organization and conduct by the mentioned organizations of religious ordinances, ceremonies, prayer gatherings and other cult actions.”

⁴⁴³ Excluding, for example, excised goods, minerals and other goods on the list adopted by the Government upon proposal of the all-Russian POHPs, and brokerage and other mediation services.

⁴⁴⁴ For a POHP to qualify, no less than 80 percent of its members must be handicapped persons or their legal representatives. Qualifying POHPs may include those established as public associations.

⁴⁴⁵ Two types of organizations are included (one *commercial* and one *non-commercial*), namely: (i) organizations whose charter capital entirely consists of shares owned by qualifying POHPs, provided that the average number of the handicapped persons amounts to no less than 50 percent and their part in the wages fund amounts to no less than 25 percent; (ii) institutions whose property is entirely owned by qualifying POHPs and established to pursue educational, cultural, medical and sanative, fitness and sports,

- 6) supplies of articles of folk art handicrafts of recognized artistic value (except excised goods);⁴⁴⁷
- 12) gratuitous provision of goods, works and services as charity;⁴⁴⁸
- 13) admission, and provision of facilities for, sporting events, by specialized organizations;
- 14) services by advocates and services to advocates by their organizations;⁴⁴⁹
- 15) financial services consisting in provision of loans in monetary form;
- 16) scientific and research as well as experimental and designing works, under certain conditions;
- 18) services of sanatorium and resort, rehabilitation and recreation organizations situated in the territory of the Russian Federation, subject to substantial documentary formalities.

A taxpayer may opt out from the exemptions under Section 149 (3) of the Tax Code by making an appropriate filing with the tax authorities.⁴⁵⁰

Section 150 (1) of the Tax Code exempts certain imports from the import VAT, including:⁴⁵¹

- 1) goods (except for excised goods and minerals), imported as gratuitous aid to the Russian Federation;⁴⁵²
- 2) certain medical items from the list approved by the Government of the Russian Federation;
- 3) materials for manufacturing of medical immunological and biological agents for the purpose of diagnostics, prophylactics and (or) cure of infectious diseases;⁴⁵³
- 4) art treasures, transferred as a donation to institutions, designated as especially valuable objects of cultural or national heritage of the nations of the Russian Federation;

scientific, informational and other social purposes, as well as to render legal or other assistance to handicapped persons, handicapped children and their parents.

⁴⁴⁶ Namely: “medical and production (labor) workshops at tuberculosis, psychiatric, psychoneurological institutions, institutions for social security and social rehabilitation of population”

⁴⁴⁷ This exemption is conditioned upon registration of samples of such goods under the procedure established by the Government of the Russian Federation.

⁴⁴⁸ This sub-clause in its entirety reads as follows: “gratuitous transfer of goods (performance of works, rendering of services) within the framework of charitable activities on the gratuitous basis pursuant to the Federal law ‘On Charitable Activities and Charitable Organizations,’ except for excised goods.”

⁴⁴⁹ This sub-clause reads in its entirety as follows: “rendering of services by advocates, as well as by colleges of advocates, advocates’ bureaus, chambers of advocates of the constituents of the Russian Federation or by the Federal chamber of advocates to its members in connection with performance by them of their professional activities.”

⁴⁵⁰ Section 149 (5) of the Tax Code.

⁴⁵¹ Exemptions listed are those that may be relevant to this survey and references are to numbers of the respective Sub-clauses Section 150 (1) of the Tax Code.

⁴⁵² These goods need to be provided under the procedure established by the Gratuitous Aid Law.

⁴⁵³ According to the list approved by the Government of the Russian Federation.

5) all types of printed publications imported by state and municipal libraries within the framework of international book exchange, as well as cinematographic works, imported by specialized state organizations for the purpose of international non-commercial exchange.

Use of goods exempt from import VAT for purposes other than those underlying the exemptions results in an obligation to pay VAT and charging of penalties.⁴⁵⁴

C. Property Tax (Including Real Estate)

1. Applicable Taxes.

The Law of the Russian Federation on Property Tax of Enterprises⁴⁵⁵ (Property Tax Law) and the Law of the Russian Federation on Payment for Land⁴⁵⁶ (Land Payment Law) impose taxes on property and land, respectively.

The Tax Code allows a federal entity to introduce real estate tax,⁴⁵⁷ whereupon the tax on property of organizations (regional tax)⁴⁵⁸ and land tax (local tax)⁴⁵⁹ would cease to apply.⁴⁶⁰

Capital assets, non-tangible assets, reserves and costs on the balance sheet of taxpayers (enterprises) are subject to the property tax.⁴⁶¹ The property tax base is the average annual value of the property.⁴⁶² The tax rate applicable by default is two percent, but lower rates can be established by legislature of the federal entities for particular activities of taxpayers.⁴⁶³

Various land tax rates are established at the federal level, and the tax revenues are split among federal entities and municipalities.

2. Tax Benefits

There are no blanket property or land tax exemptions for non-commercial organizations.

⁴⁵⁴ Section 150 (2) of the Tax Code.

⁴⁵⁵ The Law of the Russian Federation on Property Tax of Enterprises as of December 13, 1991 (with subsequent amendments).

⁴⁵⁶ The Law of the Russian Federation on Payment for Land as of October 11, 1991 (with subsequent amendments).

⁴⁵⁷ Section 14 (1) (2) of the Tax Code.

⁴⁵⁸ Section 14 (1) (1) of the Tax Code.

⁴⁵⁹ Section 15 of the Tax Code.

⁴⁶⁰ Section 14 (2) of the Tax Code.

⁴⁶¹ Section 2 of the Property Tax Law.

⁴⁶² Section 3 of the Property Tax Law.

⁴⁶³ Section 6 of the Property Tax Law. As will be discussed below, the constituent may completely forfeit the property tax for a specific category of organizations, such as in the case of charitable organizations in the city of Moscow.

Property Tax. Exemptions from the property tax are contained in Section 4 of the Property Tax Law, while Section 5 provides for deductions. Some exemptions apply to particular types of organizations, others to types of property without regard to the owner, while still others reference both owner and property.

Section 4 exempts the following from payment of all property tax:

- ? public associations and unions conducting their activities solely using designated purpose contributions by citizens and allocations from enterprises and organizations, provided they do not engage in entrepreneurial activities;
- ? budgetary institutions and organizations;
- ? colleges of advocates, advocates' bureaus, chambers of advocates of the constituents of the Russian Federation, and federal chamber of advocates;
- ? religious associations and organizations, national and societies;
- ? public organizations of the handicapped, as well as other enterprises, institutions and organizations in which handicapped persons comprise at least 50 percent of the employees;
- ? home building cooperatives, country-house building cooperatives, garage cooperatives, and gardener fellowships;⁴⁶⁴
- ? certain subsidiaries of various Russian academies, subject to various conditions.

The following property is exempt from property tax:⁴⁶⁵

- ? property used solely for the needs of education and culture;⁴⁶⁶ and
- ? property used (intended) solely for recreation or rehabilitation of children under 18.

Section 5 of the Property Tax Law allows a taxpayer to decrease the taxable value of the property recorded on the balance sheet. This value can be decreased by the value of "the property received as gratuitous aid, for a period of two years, as well as the property used for direct provision of gratuitous aid, for the period of its use for the said purposes."⁴⁶⁷

The Property Tax Law also includes deductions for the balance sheet value of "objects of housing-and-utility and cultural-and-social spheres entered onto the balance sheet in full or in part."

Federal entities of the Russian Federation can establish property tax preferences for specific categories of taxpayers. For instance, the city of Moscow exempts certain charitable organizations from payment of the property tax.⁴⁶⁸ This tax privilege is available to organizations registered as public associations and registered as charitable

⁴⁶⁴ Note that there is no exemption for homeowner fellowships.

⁴⁶⁵ Section 4 of the Property Tax Law.

⁴⁶⁶ The Instruction of the State Tax Service #33 as of June 8, 1995 classifies eligible items of property.

⁴⁶⁷ This exemption is introduced into Section 5 of the Property Tax Law by the Gratuitous Assistance Law.

⁴⁶⁸ Section 2 (14) of the Law of the City of Moscow "On rates and preferences of the tax on the property of enterprises" as of March 2, 1994.

under the established procedure with the Department of Justice of the City of Moscow, and conducting activities in accordance with the Law of the Russian Federation “On Charitable Activities and Charitable Organizations”⁴⁶⁹ and the Law of the City of Moscow “On Charitable Activities.”⁴⁷⁰ The latter law established the procedure for noncommercial organizations to obtain the status of a charity. To enjoy this tax preference, the organization must have a *passport (certificate) of a charitable organization*.

Land Tax. As in the case of the property tax, exemptions from land tax reference both the nature of land and the nature of the taxpayer. Exempt from land tax are:⁴⁷¹

- 4) institutions of art, cinematography, education, healthcare, state and municipal institutions of social services (as financed from the respective budgets and not including resort institutions), children’s rehabilitation institutions (regardless of source of financing), as well as religious associations on whose land the buildings are located which are used by them and which are protected as historical, cultural and architectural heritage;
- 10) institutions of culture, physical culture and sports, tourism, sports-and rehabilitation designation and sports facilities, regardless of the source of financing;⁴⁷²
- 11) certain establishments for higher education, science and research, according to the government approved list;
- 15) sanatorium-and-resort and rehabilitation institutions, owned by state or municipalities as well as by professional unions

The exemption does not apply to lands rented out.⁴⁷³

Federal entities of the Russian Federation can establish additional privileges for the part of the land tax attributable to them.⁴⁷⁴ Municipalities can also do so, but the forms of privileges are limited to partial exemption for a particular period of time, deferment of payment, and decrease of the rate for specific taxpayers.⁴⁷⁵

D. Miscellaneous

1. Other Exemptions and Benefits

⁴⁶⁹ Law of the Russian Federation “On Charitable Activities and Charitable Organizations” as of September 11, 1995.

⁴⁷⁰ The Law of the City of Moscow “On Charitable Activities” as of July 5, 1995.

⁴⁷¹ References are to clauses of Section 12 of the Land Payment Law.

⁴⁷² Except those used contrary to the designated purpose.

⁴⁷³ Section 13 (4) of the Land Payment Law.

As of January 1, 2003, a new regional tax -- *transportation tax* -- was introduced (Chapter 28 of the Tax Code), and simultaneously the federal taxes on road users and vehicle users were cancelled.

The transportation tax will be implemented through legislation of constituents of the Russian Federation. For instance, in Moscow, a law was adopted on October 23, 2002.

No exemptions are envisaged for NCOs under the Tax Code. The Tax Code sets forth rates that may be decreased or increased by the constituents of the Russian Federation, however, not in excess of five times the default rate imposed by the Tax Code. The law of the constituents of the Russian Federation can also establish tax benefits for this tax, as well as the procedure, time, terms of payment and reporting forms.

TAJIKISTAN

A. Income (Profits) Tax

1. Basic Notions

The Tax Code of the Republic of Tajikistan⁴⁷⁶ (Tax Code) regulates profits tax in Tajikistan. Taxpayers are understood as legal entities which are residents or “foreign enterprises.”⁴⁷⁷ “Enterprises” are defined as “establishments carrying out economic activities or established for that purpose.” The notion of “economic activities” embraces all types of activities resulting in generation of revenues other than exempt revenues. Hence, mere maintenance of a bank account will be viewed as economic activity and make an entity a taxpayer of the profits tax.

Taxable income is the “positive difference between gross income of the taxpayer and deductions provided for by the Chapter 18 [of the Tax Code].”⁴⁷⁸

2. Tax Rates

The base profits tax rate is 30 percent.⁴⁷⁹ A tax rate of five percent of gross revenues applies to small enterprises that elect to be taxed under the simplified taxation system.⁴⁸⁰ Bank interest is taxed at the rate of 12 percent and to be withheld at the source of payment.⁴⁸¹

3. Wholly or Partially Exempt Organizations

The tax code grants some tax exemptions to several categories of organizations. The notion of “non-commercial organization,” though used in the civil legislation,⁴⁸² is not found in the Tax Code. Rather, the Tax Code uses the term “organization,” which includes “public and religious organizations (associations), foundations, institutions, associations (unions) of legal entities, international, intergovernmental and other organizations carrying out non-economic activities.”⁴⁸³

Exempt from the profits tax are:⁴⁸⁴

⁴⁷⁶ The Tax Code as of November 12, 1998.

⁴⁷⁷ Section 126 of the Tax Code defines resident enterprises as “enterprises, which have the place of establishment or management in the Republic of Tajikistan” while other enterprises are deemed “non resident.”

⁴⁷⁸ Section 127 (1) of the Tax Code.

⁴⁷⁹ Section 128 of the Tax Code.

⁴⁸⁰ Sections 278-281 of the Tax Code.

⁴⁸¹ Section 148 of the Tax Code.

⁴⁸² Sections 128 to 135 of the Civil Code of the Republic of Tajikistan.

⁴⁸³ Section 18 (1) of the Tax Code.

⁴⁸⁴ Section 129 of the Tax Code. This provision also exempts the National Bank of Tajikistan and its institutions, and the dividends issued by a resident enterprise to the resident enterprise.

- ? enterprises owned by associations of the disabled, blind and deaf (under certain conditions).⁴⁸⁵
- ? “religious, charitable, budgetary, international, and intergovernmental organizations, except for profits derived by them from entrepreneurial activities;”

A “charitable organization” is defined in Section 20 of the Tax Code as an organization that:

- ? is established to carry out “charitable activity” (defined within the Tax Code to include a broad spectrum of public-benefit activities);⁴⁸⁶
- ? is registered as charitable under the procedure established by the Republic of Tajikistan;
- ? spent at least 50 percent of its expenses during the previous year on the charitable activity; and
- ? complies with certain limitations on political activities and distribution of benefits.⁴⁸⁷

The notions of “charitable organization”, “charitable activity” are further defined in the Law on Charitable Activity⁴⁸⁸, which also establishes the procedure of certification of charitable organizations.

An organization is not deemed charitable (regardless of its legal and organizational status or name), if (a) it participates, directly or indirectly, in election campaigns at any level of any political party, public organization (movement) or any individual candidate; (b) earnings or assets of the organization benefit any person, except for benefits arising from conduct of charitable activities and reasonable payments for property or services. The Law in Foreign Investments grants a time-limited exemption to non-commercial organizations that establish a joint manufacturing venture (with certain exceptions) with a foreign investor whose share is more than 30 percent. The period of time of the exemption varies depending on the amount of foreign investments.

4. Taxation of Revenues Obtained on a Gratuitous Basis

Section 129 of the Tax Code exempts from the profits tax gratuitous transfers, membership fees, and donations received by “organizations.” (See Section A (3)). A notion of “Grant” is defined in the Law on Charitable Activity as “property (including monetary), which is transferred gratuitously to natural persons and non-commercial organizations for their performance of a specified program or project.”⁴⁸⁹

⁴⁸⁵ Two conditions must be met for this exemption to be effective: (i) the disabled, blind, or deaf shall constitute no less than 50 percent of the employees; and (ii) no less than 50 percent of the overall annual remuneration (including such in kind) shall be allocated to such persons.

⁴⁸⁶ Section 11 of the Tax Code.

⁴⁸⁷ Section 20 (2) of the Tax Code.

⁴⁸⁸ The Law of the Republic of Tajikistan on Charitable Activity as of April 22, 2003.

⁴⁸⁹ Section 2 of the Law On Charitable Activity.

5. Taxation of Income from Entrepreneurial Activities

Under the civil legislation or tax legislation, there is no prohibition for noncommercial organizations to engage in entrepreneurial activities– they may do so “to the extent it is necessary for their statutory purposes.”⁴⁹⁰ Neither the Tax Code nor implementing regulations contain any provisions that condition application of tax benefits for gratuitously obtained income of “organizations” upon abstaining from entrepreneurial activities or compliance with the abovementioned limitation imposed by the civil legislation.

“Economic activity” is defined under the Tax Code as “any activity aimed at derivation of profits, income or compensation, regardless of the results of such activity, unless otherwise provided by this section.”⁴⁹¹ Charitable activity is not considered economic activity.⁴⁹²

The Tax Code distinguishes two types of economic activity - non-entrepreneurial (passive) and entrepreneurial (active)– and sets out a test for determining whether the economic activity is passive or active. In substance, obtaining interest from bank deposits, occasional trades in securities and renting out property are non-entrepreneurial activities. The offering of a person’s own goods, works and services (even on an occasional basis), and resale or intermediation activity, are presumed entrepreneurial activity.⁴⁹³

Tax Code contains no exemptions for revenues earned from entrepreneurial activities, or from economic activities. However, religious and charitable organizations are exempt from profits taxes “except for profits derived by them from entrepreneurial activities.”⁴⁹⁴

6. Availability of Exemptions for Passive (Investment) Income

Tax on bank interest payable to resident enterprises is withheld at the source at the rate of 12 percent. The amount of pre-tax interest is included into the gross income of the entity, but the entity is then entitled to credit for the amount of tax withheld at the source.⁴⁹⁵

Dividends paid from one resident enterprise to another are not taxed.⁴⁹⁶

All other income traditionally viewed as “investment income” is fully taxed at the rate of 30 percent.

⁴⁹⁰ Section 50 (3) of the Civil Code of the Republic of Tajikistan as of November 12, 1999.

⁴⁹¹ Section 8 (1) of the Tax Code. Section 8 (3) of the Tax Code excludes from “economic activity” *inter alia*, charitable activity and religious activity.

⁴⁹² Section 8 (3) of the Tax Code.

⁴⁹³ Section 9 of the Tax Code.

⁴⁹⁴ Section 129 of the Tax Code.

⁴⁹⁵ Section 148 of the Tax Code.

⁴⁹⁶ Section 40 of the Instruction on Calculation and Payment to the Budget of the Tax on Profits of Legal Entities #61 as of February 4, 2000

7. Regulation of Expenditures

The Tax Code contains no regulations regarding expenditures of NCO funds. The Law on Public Associations⁴⁹⁷ provides that revenues from business activities of public associations may not be distributed among their members or participants and shall be used only to achieve the organization's statutory purposes.⁴⁹⁸ The Law On Charitable Activity⁴⁹⁹ provides that assets of a charitable organization can be used for charitable purposes and on administration of a charitable organization. A grant can only be used for specified programs and in accordance with requirements set by a donor who provided the grant. Funds spent on publishing an annual report of a charitable organization as well as funds on independent audit of its activities are included into the 80 percent threshold. No less than 80 percent of the revenues by a charitable organization shall be spent on charitable programs⁵⁰⁰.

8. Deduction of Charitable Contributions

Individuals and legal entities may deduct up to two percent of their taxable income for payments to "charitable organizations" and for the purpose of carrying out "charitable activities".⁵⁰¹ The value of in-kind donations is calculated as the lesser of the market value of the property or the cost of its production.

B. VAT

1. Basic Notions

Under the Tax Code, "taxable operations" and "taxable imports" are taxed.⁵⁰² Taxable operations include the supply of goods, the performance of work, and the provision of services (except for exempt supplies) carried out in the course of the independent economic activities of a person, when they are considered to be effected in the territory of the Republic of Tajikistan.⁵⁰³

"Taxpayers" for the purpose of the VAT are legal and natural persons which are registered or are obliged to have registered as such.⁵⁰⁴ (See Section B (3)). A person is considered a taxpayer from the moment of registration or from the beginning of the reporting period following the period when the obligation to apply for registration arises.

⁴⁹⁷ The Law on Public Associations as of May 23, 1998.

⁴⁹⁸ Section 24 of the Law on Public Associations.

⁴⁹⁹ Section 19 of the Law on Charitable Activity.

⁵⁰⁰ Section 20 of the Law on Charitable Activity. Provision in this Section defines the notion of a "charitable program".

⁵⁰¹ Section 133 of the Tax Code.

⁵⁰² Section 182 (1) of the Tax Code.

⁵⁰³ Section 182 (2) of the Tax Code. *Taxable import* is not defined as such.

⁵⁰⁴ Section 177 (1) of the Tax Code.

The use by the taxpayer of goods (works or services) for non-economic purposes as well as performance of a taxable operation in which it receives no consideration in exchange is considered a taxable operation and taxed at the market value of the goods, works and services, less the VAT.⁵⁰⁵

2. VAT Rates

The base rate is 20 percent.⁵⁰⁶ No decreased rates apply. Zero-rating is available only in connection with exports, international transportation, and supply of gold to the National Bank of Tajikistan.

3. Registration

The obligation to register arises when a person engaging in economic activities has carried out in the course of the preceding 12 full months taxable operations in the amount exceeding 12,000 times “non-taxable minimum income” (24,000 samony (TJS)), which threshold is approximately \$10,000 (7800) US.⁵⁰⁷ The obligation arises within 10 days from the end of such period.

Voluntary registration is permitted and becomes effective on the first day of the reporting period following the month when the application is submitted or on the day specified in the application.⁵⁰⁸

4. Exemption for Turnover and Import for Specific Categories of Organizations

Supplies of goods, works and services by associations of the disabled, blind and deaf, as well as enterprises owned by such associations, are exempt from VAT, provided that two conditions are met: (i) the disabled, blind, and/or deaf constitute no less than 50 percent of their employees; and (ii) no less than 50 percent of the overall remuneration (including such in kind) is allocated to the disabled, blind, and deaf.⁵⁰⁹

Otherwise, VAT exemptions are based on the type of operation or import (see Section B (5) below), rather than the type of organization, although their application may be conditioned on certain characteristics of the organization.

5. Exemption for Specific Categories of Goods and Services

Among the operations and imports exempt from VAT are⁵¹⁰:

⁵⁰⁵ Section 184 (3) and(4) of the Tax Code..

⁵⁰⁶ Section 199 of the Tax Code.

⁵⁰⁷ Section 178 (1) of the Tax Code.

⁵⁰⁸ Sections 179 and 180 (3) of the Tax Code.

⁵⁰⁹ Section 187 of the Tax Code.

⁵¹⁰ *ibid*

- ? the sale, transfer or lease of the real property, with certain limitations as regards hotels and resorts and newly built housing;
- ? the provision of religious services by religious organizations;
- ? the provision of medical services;
- ? the provision of educational services for children and teenagers in clubs, workshops (including for fitness and sports), and art studios, as well as childcare services in preschool institutions; and
- ? import of goods, performance of works and services as humanitarian assistance, as well as import of goods to be transferred to the state bodies of the RT and public organizations for the purpose of eliminating consequences of natural calamities, accidents and catastrophes.

6. VAT Rebate Procedure

A taxpayer may apply for a reimbursement of VAT paid in excess of accrued VAT only if at least 25 percent of the taxable turnover during the reporting period was zero-rated. Reimbursement is to be made within 45 days from receipt of the application from the taxpayer.⁵¹¹ Otherwise the excess shall be applied towards the future VAT obligations for the subsequent 5 reporting periods, and any remaining excess shall be returned from the budget within 45 days from the expiration of such five months period.⁵¹²

C. Property, Real Estate, and Land Tax

1. Applicable Taxes

Enterprises are subject to a property tax of 0.5 percent of the average annual residual value of its property, which include non-tangible assets. Payments of the profits tax are credited towards payment of the property tax.

Land tax is payable by the “users of land”⁵¹³ as a fixed amount per hectare per year.⁵¹⁴

2. Tax Benefits

Exempt from property tax are, *inter alia*, property “used exclusively for the needs of peoples education and culture”⁵¹⁵ and property “of religious associations and organizations and national cultural societies, except for such used in entrepreneurial activities.”⁵¹⁶

⁵¹¹ Section 206 (1) of the Tax Code.

⁵¹² Section 206 (2) of the Tax Code.

⁵¹³ Section 228 of the Tax Code.

⁵¹⁴ Section 229 (3) of the Tax Code.

⁵¹⁵ Section 263 of the Tax Code.

⁵¹⁶ *Id.*

Exempt from land taxes are, *inter alia*, “parcels of land directly used for scientific and educational purposes,”⁵¹⁷ and “lands of organizations, on which the buildings used by them are protected by the state as historical, cultural or architectural heritage.”⁵¹⁸

⁵¹⁷ Section 234 of the Tax Code.

⁵¹⁸ *Id.*

TURKMENISTAN

A. Income (Profits) Tax

1. Basic Notions

The taxation of profits of legal entities is regulated by the Law of Turkmenistan on Tax on Profits⁵¹⁹ (Profits Tax Law) and by the Instruction on the Procedure of Calculation and Payment to the State Budget of Turkmenistan of the Profits Tax⁵²⁰ (Profits Tax Instructions). The contents of these acts deviate from each other, creating considerable confusion.⁵²¹

Under the Profits Tax Law, “[L]egal entities [...] engaging in entrepreneurial (commercial) activity” are deemed taxpayers for the purpose of profits tax.⁵²² Such taxpayers are referred to in the law as “enterprises.”

Taxable income is “gross profits of an enterprise adjusted by the amounts specified” under the law.⁵²³

2. Profits Tax Rates

The basic profits tax rate is 25 percent.⁵²⁴

Youth enterprises enjoy a reduced profits tax rate (50 percent reduction off of the 25 percent rate) for two years following registration.⁵²⁵ Youth enterprises are those enterprises established by youth associations, foundations, and student groups in which people younger than 30 years of age comprise at least 75 percent of the workforce.⁵²⁶

3. Wholly or Partially Exempt Organizations and Income

⁵¹⁹ The Law of Turkmenistan on Tax on Profits as of October 8, 1993 (with subsequent amendments as of July 12 1999.) (Profits Tax Law)

⁵²⁰ The Instruction on the Procedure of Calculation and Payment to the State Budget of Turkmenistan of the Profits Tax approved by the Ministry of Economics and Finance and the State Tax Inspection as of May 19, 2000.

⁵²¹ Due to the current regime, the practice of taxation is relatively less dependent on the laws themselves and relatively more dependent on relationships with key officials and the regime’s interest in the services provided by the NCO.

⁵²² Section 1 (1) of the Profits Tax Law. Subdivisions of foreign and domestic entities, and international and foreign legal entities engaging in commerce in the territory of Turkmenistan, are also profits taxpayers.

⁵²³ Section 2 (1) of the Profits Tax Law.

⁵²⁴ Section 3 of the Profits Tax Law. A 30 percent tax rate applies to banks and 35 percent rate applies to brokerage and agency services as well as commission sales.

⁵²⁵ Section 4 (28) of the Profits Tax Instructions.

⁵²⁶ This age is raised to 35 for enterprises established for scientific research or innovative work.

Section 4 of the Profits Tax Law contains a list of enterprises exempt from profits tax, which include the following:

- ? religious associations;
- ? enterprises employing school students, provided they account for no less than 75 percent of the total number of employees, for 2 years after the registration;⁵²⁷
- ? educational institutions;⁵²⁸
- ? institutions engaging in the rehabilitation of the handicapped;⁵²⁹
- ? public organizations of the handicapped as well as their enterprises and associations (however, “only with respect to profits allocated to the statutory activity or spent independently in accordance with statutory activities”);
- ? enterprises that manufacture prosthetic/orthopedic items and specialized means of transportation for the handicapped (only with respect to profits received from these types of activities).

4. Taxation of Revenues Obtained on a Gratuitous Basis

Under the Profits Tax Law, funds contributed to ecological and health rehabilitation foundations as well as funds transferred to enterprises, institutions, and organizations engaged in the sphere of people’s education, healthcare, and social security are not subject to tax, provided such funds are used for statutory purposes. Such foundations, enterprises, institutions and organizations must submit a report detailing how and when the funds were received and how and when they were spent.⁵³⁰ In cases where the funds were spent not in conformity with their designation (other than their statutory purposes), such funds are to be confiscated and transferred to the state budget.⁵³¹

5. Taxation of Income from Entrepreneurial Activities (Business)

Non-commercial organizations are generally allowed to engage in entrepreneurial activities, but profits are fully taxed.

The Profits Tax Law states that “budgetary and other non-commercial organizations, obtaining income from commercial activity, shall pay tax on the excess of income from entrepreneurial (commercial) activity over the costs resulting from such activity.”⁵³²

There is no definition of “commercial activity” in the Profits Tax Law; apparently the tax law regards the term “commercial” as the equivalent of “entrepreneurial.” The Civil Code defines “entrepreneurial activity” as “independent activity conducted at [one’s] own

⁵²⁷ Section 4 (27) of the Profits Tax Instructions.

⁵²⁸ *Id.*

⁵²⁹ Section 4 (2) of the Profits Tax Law. It is commonly understood that only those profits that come from the rehabilitation activities of such organizations are exempt from the profits tax.

⁵³⁰ Section 4 (25) of the Profits Tax Instructions.

⁵³¹ Section 4 (1) of Profits Tax Instructions.

⁵³² Section 2 (7) of the Profits Tax Law.

risk and aimed at the systematic derivation of profits from the use of property, sale of goods, performance of work, and rendering of services to persons.”⁵³³

As a matter of practice, the test for “systematic derivation of profits” is not applied by the tax authorities, and the profits from even occasional commercial activity are taxed.

Non-commercial organizations may carry out commercial activities without the risk of losing their tax benefits.

6. Availability of Exemptions for Passive (Investment) Income

There are no exemptions for passive income for any type of organization.

The following types of passive income are taxed at a 15 percent rate:

“income (dividends, interest) obtained from stock, fixed income instruments (bonds), and other securities owned by enterprises⁵³⁴ as well as income received from share participation in the activities of other enterprises.”⁵³⁵

The taxes due on the abovementioned types of income are withheld at the source by the enterprises distributing such proceeds.⁵³⁶ The amount of dividends, interest and income received from share participation in other enterprises is deducted from the gross annual income of the organization.⁵³⁷

Interest earned on bank accounts is tax-free for all natural and legal persons.⁵³⁸

7. Regulation of Expenditures

There are no distribution or expenditure requirements under the Profits Tax Law or regulations.

8. Charitable Deductions

According to the Profits Tax Law, the following items are deductible from taxable profits:⁵³⁹

- ? “amounts contributed to ecological and health rehabilitation foundations as well as funds transferred to enterprises, institutions and organizations engaged in the sphere

⁵³³ Section 2 (3) of the Civil Code.

⁵³⁴ Except for governmental bonds and other securities, which are not taxed.

⁵³⁵ Except for revenues received from abroad.

⁵³⁶ Section 5 (1) of the Profits Tax Law. Note that royalties are not mentioned in this context.

⁵³⁷ Section 2 (6) of the Profits Tax Law. Note that royalties are not mentioned in this context.

⁵³⁸ Under Section 2 (6) of the Profits Tax Law, the bank interest is deductible from the gross annual income, and there is no provision imposing withholding tax on it.

⁵³⁹ Section 4 (1) of the Profits Tax Law.

- of people’s education, healthcare and social security, however not in excess of 5 percent of the taxable profits;”
- ? “amount of expenses [...] allocated to sustain facilities and institutions of health, people’s education, culture and sport, pre-school facilities and resort camps, hospices for elderly and disabled, housing facilities on their balance sheets[...] as well as actions aimed at protecting environment, not in excess of 30 percent of the overall expenses;”⁵⁴⁰
 - ? “amounts allocated by educational institutions directly to the needs of support, development and perfection of the educational process in such institutions.”⁵⁴¹

Further, on the basis of the Profits Tax Instruction, the following items are tax deductible:

- ? “expenses of enterprises for building and maintaining social and cultural facilities for children and youth and solving other social problems of youth;”
- ? “profits allocated by structural subdivisions of youth foundations to such foundations for conduct of their statutory activities.”
- ? “profits received by youth associations from investment activity connected with carrying out youth programs designated by the state organ for the matters of youth at the Cabinet of Ministers of Turkmenistan.”

B. VAT

1. Basic Notions

VAT⁵⁴² taxpayers include, *inter alia*, legal entities engaging in manufacturing and other commercial activities.⁵⁴³

Subject to the VAT are “turnover of provision of goods, work, and services in the territory of Turkmenistan, including import-export operations.”⁵⁴⁴ Turnover in connection with the provisions of goods (works, services) to legal entities and physical persons on a gratuitous basis or in exchange for partial consideration is subject to VAT.

Supplies provided on a gratuitous basis or for partial payment are taxed based on regulated tariff prices. If no tariffs apply, VAT will be calculated using the “real costs” of the goods and services in question.

Import VAT is payable by foreign and domestic importers – legal entities and their subdivisions -- and is mainly regulated by the Resolution #4828 of the President of Turkmenistan, dated September 8, 2000 (Resolution #4828).

⁵⁴⁰ Note that this provision is speaking in terms of internal allocation of funds by an organization to its subdivisions or institutions.

⁵⁴¹ Section 4 (1) of the Profits Tax Law.

⁵⁴² The Law of Turkmenistan on Value Added Tax as of October 8, 1993. (Law on VAT)

⁵⁴³ Section 2 of the VAT Law.

⁵⁴⁴ Section 3 of the VAT Law.

2. VAT Rates

The basic VAT rate is 20 percent. A reduced rate of 16.67 per cent applies to turnover of goods (works, services) subject to regulated prices (tariffs). No zero-rating applies.

3. Registration

There is no minimum registration threshold for legal entities; all legal entities falling within the definition of the taxpayer are obliged to register.

4. Exemption for Turnover and Import for Specific Categories of Organizations

Most exemptions are linked to the nature of the goods and services themselves, as opposed to the nature of the organization.

Exempt are “goods, works, and services manufactured and provided by healing-and-production (labor) workshops at psychiatric and psychiatric-and-neurological institutions, by public organizations of the handicapped.”⁵⁴⁵

5. Exemption for Specific Categories of Goods and Services

The following services and goods relevant to this survey are exempt from VAT:⁵⁴⁶

- ? “[...] services provided by members of advocates’ colleges;”
- ? “childcare services in preschool institutions;”
- ? “services in care of the sick and elderly;”
- ? “ritual services by funeral homes, cemeteries;”
- ? “payment for extra-curricular education of children and teenagers and for use of sports facilities and cultural and educational institutions;”
- ? “conduct of services and ceremonies by religious organizations, as well as services of religious associations;”
- ? “goods realized by training-and-manufacturing enterprises of the association of the blind and deaf;”
- ? “scientific-and-research and experimental-and-engineering works funded by the budget;”
- ? “paid medical services for citizens of Turkmenistan, medication provided within the borders of Turkmenistan, items of medical designation, medical equipment, prosthetic/orthopedic items, and special transportation means for the disabled;”
- ? “goods produced by cafeterias of [...] educational establishments, hospitals, children preschools, and other institutions and organizations of the social-cultural sphere, financed from the budget.”

⁵⁴⁵ Section 5 of the VAT Law.

⁵⁴⁶ Section 5 of the VAT Law.

UKRAINE

A. Income (Profits) Tax

1. Basic Notions

The Law of the Republic of Ukraine on the Taxation of Profits of Enterprises⁵⁵⁰ (Profits Tax Law) regulates profits taxes in Ukraine. Taxpayers include resident legal entities “that conduct activities aimed at receiving profits in Ukraine and beyond its borders” as well as non-resident legal entities of any organizational form that receive income generated in Ukraine, except organizations that enjoy diplomatic status or other immunities according to the international treaties of Ukraine.⁵⁵¹

Taxable income is calculated as adjusted gross income received during the accounting period reduced by the taxpayer’s gross expenditures and depreciation costs.

2. Profits Tax Rates

The profits tax rate is a flat rate of 30 percent of taxable income.⁵⁵²

Taxpayers with annual gross revenues not exceeding one million UAH (approximately 180,000 USD) and an average annual number of employees below 50 may opt to pay an alternative tax of 6 percent (for those electing to pay VAT) or ten percent (for those electing not to pay VAT) of their gross annual revenues.⁵⁵³ In order to opt for the lower tax rates, taxpayers must file an application with local tax authorities and receive an appropriate certificate.

3. Wholly or Partially Exempt Organizations and Types of Income

The Profits Tax Law establishes a complex system of tax exemptions for various categories of non-profit organizations and institutions based on the type of income received by such organizations. The law distinguishes between the following categories of organizations, and provides exemptions as noted:⁵⁵⁴

⁵⁵⁰ The Law on Taxation of the Profits of Enterprises of Ukraine, as of December 28, 1994 (with subsequent amendments, as of December 24, 2002).

⁵⁵¹ Section 2(1)(1) and 2(1)(2) of the Profits Tax Law. Other taxpayers are: branches and offices of Ukrainian legal entities, unless their principals pay consolidated income tax (Section 2.1.3, Id); permanent representative offices of nonresidents receiving income originating in Ukraine or acting as agents of such non-residents This summary treats only taxation of resident taxpayers.

⁵⁵² Section 10(1) of the Profits Tax Law.

⁵⁵³ Section 2 of the Presidential Decree on the Simplification of Taxation, Accounting, and Reporting for Small Enterprises, of June 28, 1999, No. 746.

⁵⁵⁴ Section 7(11)(1) of the Profits Tax Law.

- (a) State and municipal bodies, and state and municipally-owned organizations, institutions, and enterprises:
- are exempt from donations in cash or in kind; passive income; state services enlisted by the government; and grants⁵⁵⁵.
- (b) Charitable funds and charitable organizations, established under the Law on Charitable Activities, including public organizations established for purposes of carrying out environmental, health care, amateur athletic, cultural, educational, or scientific activities, as well as artists' unions, political parties, organizations of disabled, scientific and research institutions, certain institutions of higher education, national parks (preserves):
- donations in cash or in kind; passive income; income from their primary activities/services; and grants are exempt from profits tax.
- (c) Pension funds and credit unions;
- passive income, membership fees, and grants are exempt from profits tax.
- (d) Other legal persons, not listed in paragraph (b), the activities of which are not intended to generate profit (primarily, organizations providing services only to their members):
- passive income, income from primary activities/services, and grants are exempt from profits tax.
- (e) Unions and associations of legal persons as well as cooperatives, established to serve the interests of their members, which are funded exclusively by membership fees and do not carry out any economic activities, except generating passive income:
- passive income, membership dues, and grants are exempt from profits tax.
- (f) Religious organizations:
- donations in cash or in kind, passive income, and income from primary activities/services are exempt from profits tax.
- (g) Building associations, condominiums and other associations of housing co-owners:⁵⁵⁶

⁵⁵⁵ The term "grant" as used here refers to budgetary subsidies or grants provided within the framework of the humanitarian or technical assistance pursuant to international agreements approved by the Parliament.

⁵⁵⁶ The recently introduced paragraph "g" covers only associations relating to housing and ownership, and not organizations of owners of other types of immovable property. For instance, garage or gardening cooperatives will fall under paragraph "d" and have different non-taxable sources of income.

passive income, income in cash or in kind received for ensuring their primary activities, and membership fees are exempt from profits tax.

(h) Professional associations and trade unions:

donations in cash or in kind, passive income, and membership fees are exempt from profits tax.

The Law on Charity and Charitable Organizations⁵⁵⁷ (the “Charity Law”) identifies entities qualifying as Charities⁵⁵⁸ but does not by itself confer any tax exemptions.⁵⁵⁹ As a result, in order for a charity to obtain tax exemptions, it must qualify for tax exempt status and officially register in the Registry of Non-profit Organizations by the tax authorities.

Most charities and public benefit organizations would qualify as paragraph (b) organizations, receiving broad tax exemptions (donations, passive income, income from primary activities/services, and grants). However, certain organizations pursuing public activities, for example, those assisting the poor, the disabled, or orphans are not explicitly included into this category.⁵⁶⁰ In practice, such organizations are often entered into the Registry of Non-profit Organizations (hereinafter referred to as “NPOs”) if they do not render any for-profit services and comply with the other requirements of the law.

Only the organizations listed above are eligible to be registered in the Registry of NPOs and receive concomitant exemptions. Tax authorities will normally check the charter documents of an applicant organization to make sure they comply with the requirements of the Profits Tax Law.⁵⁶¹ Specifically, such organizations (except organizations specified in sections “a” and “c” above) must comply with the “non-distribution” requirement imposed by the Profits Tax Law prohibiting distribution of profits or assets to the organization’s founders or members or use of such profits/assets to the benefit of any founder, member or officer (except for wages and payments to social funds).⁵⁶²

⁵⁵⁷ The Law on Charity and Charitable Organizations of Ukraine, as of September 16, 1997.

⁵⁵⁸ Under Section 1 of the Law on Charity and Charitable Organizations, charitable organizations are non-governmental organizations, the primary objective of which is carrying out charitable activity in the public interest or in the interest of certain categories of individuals. Charitable activities are defined as voluntary altruistic activities performed by charitable organizations that do not envision profit making.

⁵⁵⁹ For this reason, many organizations carrying out public benefit activities are not registered as charitable. Although Section 20 of the Charity Law purports to provide tax exemption to certain categories of charities, this provision is not enforceable without proper registration by the charity as an NPO under the Profits Tax Law.

⁵⁶⁰ Paragraph (b) explicitly includes only public organizations established for “promoting environmental, health care, amateur athletic, cultural, educational or scientific activities”.

⁵⁶¹ According to the State Tax Administration, about fifty percent of all registered NGOs are entered in the Registry. Of those rejected, forty-five percent reported that they were not entered into the NPO Registry because their articles did not comply with the requirements of the law. O. Sidorenko, “Public and Charitable Organizations of Ukraine,” *Perehrestie* No. 2(7), 2000.

⁵⁶² Section 7(11)(8) of the Profits Tax Law.

The registration procedure of an organization in the Registry of NPOs is stipulated by the Regulation of the State Tax Administration “On the Register of Non-Profit Organizations and Institutions.”⁵⁶³ After an NPO is entered into the registry, it is required to file tax statements to the tax authorities on a quarterly basis. Tax-exempt status need not be renewed each year (although the State Tax Administration may withdraw this status as a result of violation by such organization of applicable legislation).

Some legal entities are exempt from profits tax generally. For example, subsidiaries established by organizations of handicapped individuals are tax exempt on all their income (except gambling and excisable items), provided at least 50 percent of the employees of such organizations are disabled individuals and payroll for disabled employees amounts to at least 25 percent of total payroll expenses.⁵⁶⁴ Income received by preschool educational establishments for carrying out their charter activities is also tax exempt.⁵⁶⁵

4. Taxation of Revenues Obtained on a Gratuitous Basis

As noted above, donations in cash or in kind are exempted when given to (a) government authorities and organizations funded by the state budget; (b) charitable foundations and public organizations; (c) religious organizations; and (d) professional associations and trade unions.

Membership dues are exempt only for (a) pension funds and credit unions; (b) unions, associations, and other alliances serving to represent members’ interests; (c) building associations, condominiums and other associations of housing co-owners; and (d) professional and trade unions.

Grants are exempt for (a) government organizations funded by the state budget; (b) charitable and public organizations; (c) pension funds and credit unions; (d) other legal entities whose activities are not intended to generate profit; and (e) unions, associations, and other alliances serving members’ interests.

5. Taxation of Income from Economic Activities

Under the Law “On Citizens’ Associations⁵⁶⁶,” public organizations are prohibited from directly engaging in any form of economic activity, except through a specially created business subsidiary.⁵⁶⁷ Despite this outright prohibition found in the statutory law, the Profits Tax Law seems to take a more lenient approach towards this issue. Various provisions of the law imply the possibility for an NPO to engage in certain types of

⁵⁶³ The Order of the State Tax Administration On Approving the Regulation of the State Tax Administration “On the Register of Non-Profit Organizations and Institutions as of July 11, 1997, No. 232.

⁵⁶⁴ Section 7(12) of the Profits Tax Law; Section 5(2)(1) of the VAT Law.

⁵⁶⁵ Section 7(13)(6) of the Profits Tax Law.

⁵⁶⁶ The Law on Citizens’ Associations of Ukraine, as of June 16, 1992 (with subsequent amendments, as of May 13, 1999.)

⁵⁶⁷ The Law of Ukraine on Citizens’ Associations as of June 16, 1992 (with subsequent amendments, as of May 13, 1999.)

economic activity, and as a matter of fact, NPOs do engage in some economic activities. Charitable organizations, under the Charity Law, are expressly allowed to carry out economic activities provided they are aimed at achieving the charity's statutory purposes.⁵⁶⁸

The tax legislation defines "economic activity" as "any type of activity carried out by a person aimed at making profits in the pecuniary form and creating tangible and intangible assets, provided such activity is regular, stable, and substantial."⁵⁶⁹ The tax authorities generally interpret economic activity as any provision of goods, work, and services, whether for value or not.

As noted in A3, "paragraph (b)" organizations (under Section 7(11)(3)) are exempt from taxation of income derived from "primary activities." The interpretation of what constitutes "primary activities" and whether economic activity may be part of the "primary activities" has for a long time been a contentious issue. Tax authorities have often taken the position that any permissible economic activity for an NPO must be specifically provided for by the relevant law under which the NPO was established and specified in the NPO's charter. As a result, many NPOs were either excluded from the NPO registry or precluded from directly engaging in economic activities, because the law under which many were established, the Law on Citizen's Associations, provides that a public organization may engage in economic or other commercial activity *only* by establishing a separate legal entity.⁵⁷⁰

The Profits Tax Law was recently amended to introduce a definition of "primary activities." Primary activities are charitable activities, provision of educational, cultural, scientific, informative and other similar services for public consumption, and provision of services in connection with the establishment of the social security system (pension funds, credit unions and similar organizations). Additionally, "primary activities" include the sale of goods and services by NPOs that promote principles and ideas for the furtherance of which the NPO was established and which are closely related to its primary activities, provided that the price for such goods and services is lower than the usual price or subject to state regulation.⁵⁷¹

⁵⁶⁸ Section 20 of the Charity Law. However, the law interchangeably uses the terms "entrepreneurial," "commercial activities," and "economic activity" without providing a definition of any of them. The Law on Licensing defines "economic activity" as any activity connected with the production of goods, trade, or provision of services and labor.

⁵⁶⁹ Section 1.1.32 of the Profits Tax Law.

⁵⁷⁰ Section 24 of the Law on Citizens' Associations. Another problem has been the compulsory state licensing or accreditation of many social services (medical, legal, tourist, educational, sports and some research) under the Law on Licensing of Certain Kinds of Commercial Activities. A license may be received by any properly registered legal entity *undertaking economic activities*, regardless of the legal status or type of ownership, except for a state and local governmental authorities and selfemployed individuals. However, the Tax Administration has often used an organization's receipt of a license for economic activities, which include the provision of services or labor, as the basis for excluding an organization from the Registry of NPOs regardless of whether such services were rendered for profit. The possibility of losing tax benefits deters organizations from applying for licenses, and hence from providing services that may otherwise be in line with their statutory purposes.

⁵⁷¹ Section 7(11)(13) of the Profits Tax Law.

Thus the definition expressly allows NPOs to engage in economic activities,- i.e., sale of goods and services -- provided they (a) promote the “principles and ideas for the which the NPO was established, (b) are closely related to the NPO’s primary activities, and (c) their price is lower than the fair market price or is subject to state regulation. While it remains to see how this provision will be implemented, the clarification in the law should lead to a more liberal treatment by tax authorities of economic activities so long as they meet the statutory requirements.⁵⁷²

NPOs may engage in economic activities other than those within the scope of their “primary activities,” and still maintain their tax exempt status. Such conclusion may be inferred from two different provisions of the Profits Tax Law. Section 7(11)(9) provides that in the event the NPO receives income from sources other than those specified by Section 7(11)(2)-(7)(11)(7), it should pay an income tax on general grounds on such portion of its income. Additionally, Section (16)(10)(2) of the Profits Tax Law provides that “nonprofit organizations provided for under paragraph 7(11) shall pay income tax on revenues from minor activities on general terms.” Income obtained from activities other than primary activities (i.e. economic activities) is subject to a flat 30 percent tax rate.

Other recent developments have further expanded the legal space for economic activities by NPOs. For instance, income of pre-school educational establishments is tax exempt,⁵⁷³ and revenue derived from direct sales of published materials are excluded from gross income until January 1, 2004.⁵⁷⁴

6. Availability of Exemptions for Passive (Investments) Income

The Profits Tax Law defines “passive income” as “revenues received as interest, dividends, insurance benefits and indemnities, as well as royalties.⁵⁷⁵ The passive income of all types of NPOs is tax-exempt.

Dividends. Income of an NPO received in the form of dividends is tax exempt (dividends are deemed passive income). While paying out dividends, an issuer of dividends must withhold and make an advance payment of profits tax in the amount of 30 percent of the amount of dividends. The amount of profits tax paid by the issuer upon distribution of dividends is deductible from the aggregate amount of profits tax accrued in the current or subsequent reporting periods.⁵⁷⁶

⁵⁷² The law excludes from the scope of primary activities of certain mutual benefit organizations (pension funds, credit unions, etc.) the provision of goods or services to persons other than founders, participants, and members. Section 7(11)(13) In other words, while sales by such NPOs to their own members are treated as primary activities and therefore exempt from income tax, services for fees by mutual benefit organizations to persons other than members could potentially result in exclusion from the Registry and loss of their tax exempt status.

⁵⁷³ Section 7(13)(6) of the Profits Tax Law.

⁵⁷⁴ Section 7(19) of the Profits Tax Law.

⁵⁷⁵ Section 7(11)(13) of the Profits Tax Law.

⁵⁷⁶ Section 7(8)(2) – 7(8)(4) of the Profits Tax Law.

Rent and Lease Income. Rent and lease payments are not considered to be passive income. They are not taxed to the extent the rental payments do not exceed costs (including, for example, maintenance costs, electric and other communal charges) and accrued depreciation. Any income in excess of costs and depreciation is taxed on general grounds.

Capital Gains Capital gain received by an NPO (i.e. positive difference between the selling price of an asset and its balance sheet cost) is not considered passive income and is subject to tax on general grounds. This capital gains tax applies even to onetime sales.⁵⁷⁷

7. Regulation of Expenditures

A recent amendment made to the Profits Tax Law eliminated taxation of retained income of NPOs.⁵⁷⁸ According to the previous rule, any retained income in excess of 25 percent of exempt revenues was taxed, unless at least 75 percent of taxexempt revenues (passive income, donations, related-activity income, etc.) were spent before April 1 of the subsequent fiscal year. Elimination of this rule made it possible for NPOs to accrue and use funds according to their discretion, including for purposes of long-term programs. The old rule on taxation of retained income still applies to NPOs listed under section (d) of Section 7.11.1 of the Profits Tax Law (private educational institutions, etc.).

8. Deduction of Charitable Contributions

Ukrainian law provides some income tax benefits to natural persons and legal entities that make donations to NPOs listed in the Registry.

The law allows legal entities to deduct donations made to NPOs in the amount ranging from two to five percent of their taxable income for the preceding year.⁵⁷⁹ Governmental and municipal agencies or institutions, like NPOs, are qualified recipients of deductible donations. In practice, legal entities often make donations to the state or local budgets in support of local educational facilities, health care, culture, or other projects. Legal entities can deduct from their taxable income an additional five percent if donated to nonprofit organizations engaged in the protection of Ukraine's cultural heritage. These donations count towards the five percent threshold. A ten percent deduction (with the ten percent aggregate rule (See A.2)) may also be taken on donations to public associations of the disabled.⁵⁸⁰

Donations by natural persons of no more than four percent of total taxable income are deductible,⁵⁸¹ if support organizations registered in accordance with the Law on Charity,

⁵⁷⁷ Section 5 of the Profits Tax Law.

⁵⁷⁸ Law of Ukraine No. 349-IV "On Making Amendments to the Law of Ukraine "On Taxation of Profits of Enterprises" as of December 24, 2002.

⁵⁷⁹ Section 5(2)(2) of the Profits Tax Law. The tax deduction rule does not apply to small enterprises that are taxed according to the special "simplified taxation system." Presidential Decree on the Simplification of Taxation, Accounting, and Reporting for Small Enterprises, as of June 28, 1999, No. 746.)

⁵⁸⁰ Section 5.2.3 of the Profits Tax Law.

⁵⁸¹ Clause K, Section 5 of the Cabinet Decree on Personal Income Tax as of December 26, 1992 (with subsequent amendments).

Professional Unions, and Religious Organizations. The exemption does not apply to any other type of organization.

Donations made by natural persons in other forms (e.g., participation in fundraising activities or lotteries, transfer of assets, etc.) are not deductible.

No carryovers of unused charitable deductions are allowed.

B. VAT (or GST, or other similar tax)

1. General Principles

A “taxpayer” for purposes of Law of Ukraine on Value Added Tax⁵⁸² (the “VAT Law”) is a person who is under an obligation to make withholding and contribute to the budget taxes paid by buyers or persons importing (sending) goods to Ukraine’s customs territory.⁵⁸³

An organization will be considered a VAT taxpayer if:⁵⁸⁴

- ? its taxable transactions involving the sale of goods (work, services) over the most recent 12 months exceeds 3600 times the minimum wage (currently this amount is equal to 61,200 UAH or 11,500 USD);
- ? it imports goods to Ukraine’s customs territory or receives work/services from a nonresident for use or consumption in Ukraine’s customs territory;⁵⁸⁵
- ? it engages in business transactions in Ukraine’s customs territory with payments in cash, regardless of sales volume;⁵⁸⁶
- ? it renders passenger or freight services on Ukraine’s customs territory;
- ? it is responsible for tax payments for objects that are part of the rail transport network, in accordance with procedures adopted by the Cabinet of Ministers of Ukraine;
- ? it renders communications services, and has consolidated reporting on revenues and expenditures related to these services, including its subsidiaries.

The following operations are subject to taxation:⁵⁸⁷

- ? sales of goods (work, services) on Ukraine’s customs territory, including payments for services under leasing contracts and when assigning mortgage ownership rights to a lender (creditor) to redeem the mortgagor’s credit arrears;

⁵⁸² The Law on the Value Added Tax of Ukraine, as of April 03, 1997 (with subsequent amendments,.)

⁵⁸³ Section 1.3 of the VAT Law.

⁵⁸⁴ Section 2 of the VAT Law.

⁵⁸⁵ Excepted are those individuals not registered as taxpayers when they import goods in amounts that are not taxable pursuant to legislation.

⁵⁸⁶ Excepted are individuals conducting trade who are not subject to market duties payable in keeping with procedures established under current legislation.

⁵⁸⁷ Section 3 of the VAT Law.

- ? imports of goods to Ukraine's customs territory and receiving services by non-residents to be used or consumed in Ukraine's customs territory, including importation of property under lease, pledge and mortgage contracts;
- ? exports of goods from Ukraine's customs territory and rendering services to be used outside Ukraine's customs territory.

2. VAT Rates

The VAT is levied at a flat rate of 20 percent of the amount of a taxable transaction.⁵⁸⁸ No decreased rates are in effect.

A zero-rate applies mainly to exported goods, work(s) and services, and international passenger and freight transportation. Sales by subsidiaries established by organizations serving disabled individuals (except gambling and excised items) are also subject to a zero rate.⁵⁸⁹

3. Registration

Any person entering into taxable transactions involving the sale of goods or services of an aggregate value exceeding 3,600 times the minimal monthly personal income⁵⁹⁰ (approximately \$11,500) for any period of the preceding twelve calendar months is obligated to register as a VAT taxpayer.⁵⁹¹ Many organizations do not meet this threshold and as a result need not register and pay VAT.

Persons not required to register based on the volume of their transactions may nevertheless register if they sell any items for cash. However, if within 24 calendar months of registration as a VAT payer, their sales for the preceding 12 calendar months do not exceed the tax-exempt minimum, the registration is annulled by the tax authorities.⁵⁹²

4. Exemptions for Specific Categories of Organizations

Paragraph "b" exempts NPOs (under the Profits Tax Law) from VAT payment on gratuitous transfer (imports) of goods and services for charitable purposes. This exemption does not apply to excise goods, securities, intangible assets and certain goods intended for economic activity specified by the government.⁵⁹³

NPOs of the disabled⁵⁹⁴ are exempt from VAT on sales of their goods and services, except excise goods, gambling services and purchased goods. Such organizations may also claim

⁵⁸⁸ Section 6(1) of the VAT Law.

⁵⁸⁹ Section 6(2)(8) of the VAT Law.

⁵⁹⁰ Section 2 of the VAT Law of Ukraine as of April 3, 1997 (with subsequent amendments), as of December 12, 2000.

⁵⁹¹ Section 2(1) of the VAT Law.

⁵⁹² Section 9(6) of the VAT Law.

⁵⁹³ Section 5(1)(21) of the VAT Law.

⁵⁹⁴ This refers to NPOs whose workforce consists at least 50 percent of disabled employees and whose wages consist at least 25 percent of wages for the disabled employees.

a zero-rate VAT and seek a rebate of any input VAT (i.e., VAT paid in connection with purchasing goods, services). In order to claim the rebate, such organizations must receive a permit from the Inter-Departmental Commission on Enterprises and Public Organizations for the Disabled according to the Law on Social Protection for the Disabled.⁵⁹⁵

Input VAT is also returned to members of the International “Soyuz Chernobyl” Organizations and of the National PO “Soyuz Chernobyl” Organization of Ukraine, if over 75 percent of their employees are victims of the Chernobyl disaster.⁵⁹⁶

5. Exemption for Specific Categories of Goods and Services

Sales or transfers of goods or services are generally subject to VAT based on their actual value – an amount not lower than market value – even when these transactions are conducted for free or below their actual cost.⁵⁹⁷ As an exception to this rule, VAT is not levied on charitable aid or on free-of-charge transfers of goods or services to charitable organizations, other organizations listed in the NPO Registry, state or municipal authorities, state or locally owned organizations, institutions, or enterprises. In addition, VAT is not levied on the free transfer of goods or services to beneficiaries of charitable aid recognized as such by law.⁵⁹⁸

The Law on Humanitarian Aid⁵⁹⁹ specifies the procedures for labeling and distributing charitable (humanitarian) aid, as well as for control over the provision of humanitarian services. In accordance with this law, if charitable (humanitarian) aid is received from a foreign legal or natural person, the recipient of such aid must be accredited by the Commission on Humanitarian Aid to receive exemptions from the VAT and other taxes.

The contribution of assets to the charter capital of a legal entity,⁶⁰⁰ or an organization’s collection of membership dues, are not considered taxable transactions.

The VAT Law establishes a list of transactions that are exempt from VAT regardless of whether such transactions are performed by commercial or non-commercial entities. The list includes, *inter alia*:

- ? sale through subscription and delivery of print media;
- ? sale of books, school notebooks, school textbooks, and other educational materials produced in Ukraine;
- ? payment of tuition for primary, middle, or higher education in properly accredited institutions;
- ? sale of specialized goods for the disabled;
- ? healthcare services rendered by properly accredited institutions;

⁵⁹⁵ Section 5(2)(1) and 6(2)(8) of the VAT Law.

⁵⁹⁶ Resolution of the Cabinet of Ministers as of October 17, 1996, No. 1279.

⁵⁹⁷ Section 4.2 of the VAT Law.

⁵⁹⁸ Section 4 of the VAT Law.

⁵⁹⁹ The Law on Humanitarian Aid, as of October 22, 1999.

⁶⁰⁰ Section 3(2)(8) of the VAT Law.

- ? the maintenance of homes for the elderly and disabled.⁶⁰¹

6. VAT Rebate Procedure

VAT payers eligible for rebates may choose either to claim a cash rebate (via bank wire or treasury checks) or to make reduced VAT contributions in subsequent periods. Amounts (Portions) of rebate VAT not reimbursed to the tax payer within a one month period after the filing of declaration (start to) bear interest.⁶⁰²

C. Property Tax (Including Real Estate)

1. Applicable Taxes

There is no general property tax in Ukraine, however, there is a land tax. The land tax is paid by land owners and land users, including those who use plots of land on the basis of lease agreements. Generally, the law on the national budget establishes the real property tax rate for each fiscal year. Most property tax is paid to local governments, however, which may increase the base rates established by the central government by no more than 100 percent.⁶⁰³ The tax rate is one percent of appraised value of the site or, if a local government makes no appraisals, the tax is levied at the average rate (up to 60 cents per square meter at present).⁶⁰⁴

2. Tax Benefits

The following organizations are exempt from real property tax:

- ? children's health care institutions;
- ? public organizations of disabled individuals and subsidiaries established by such organizations;
- ? registered charitable organizations that do not carry out economic activities;
- ? registered religious organizations that do not carry out economic activities.⁶⁰⁵

These groups lose their tax exemption if they rent land plots or run other business activities at those locations. Local authorities may exempt a taxpayer from the portion of the land tax that is paid to the local budget. In practice, local authorities often exempt NGOs from this tax in part or in full.

D. Miscellaneous: Other Exemptions and Benefits

⁶⁰¹ Section 5 of the VAT Law.

⁶⁰² Section 7(7)(3) of the VAT Law.

⁶⁰³ Section 6 of the Law on the Real Property Tax.

⁶⁰⁴ This rate may be increased by a factor of five for recreational sites.

⁶⁰⁵ Section 11 of the Law on the Real Property Tax of Ukraine as of July 3, 1997 (with subsequent amendments.)

1. Payroll Tax

Like any legal entity, an NPO pays a number of payroll taxes based on the number of salaried employees employed by the organization. Payroll taxes include payments to:

- ? the social insurance fund (2.9 percent of payroll);
- ? the employment fund (1.9 percent of payroll);
- ? the pension fund (32 percent of payroll); and
- ? the accident/insurance fund (0.5 percent of payroll).

In addition, the following taxes are withheld from an employee's salary:

- ? income taxes (at the rate of ten percent to 40 percent depending on the size of the salary) for full-time employees and 20 percent for employees who have other principal employment);
- ? pension fund payments (two percent of salary);
- ? employment fund payments (0.5 percent of salary); and
- ? social insurance (0.5 percent of salary).

The employer's payroll taxes on wages of disabled employees are reduced. The rates of social insurance taxes are amended frequently, as is the tax base on which such taxes are levied (as of June 2003, the maximum amount for payroll accruals is limited to UAH 2,660 or nearly USD 500 per month).

NGOs that are plaintiffs on behalf of other persons, Ukrainian and international associations of Chernobyl victims, NGOs of disabled individuals, and some other nonprofits are exempted from court filing and notary fees.

2. Local Taxes

Local taxes are regulated by the Cabinet of Ministers Resolution on Local Taxes and Duties. Local authorities may grant exemptions to NGOs from any local tax or local part of a national tax. The largest local tax paid by NGOs is the local payroll tax, as set by local authorities but generally proportional to the number of employees. The amount of this tax is fairly insignificant: up to ten percent of an amount equal to 17 UAH (approximately US\$3) times the number of employees, annually. Many local governments do not levy this tax or grant partial or general exemptions for NGOs. An NGO does not pay this tax if it has no employees or outside individual contractors.⁶⁰⁶

⁶⁰⁶ Section 15 of the Resolution of the Cabinet of Ministers of Ukraine on Local Taxes and Fees of as of May 20, 1993 (with subsequent amendments.)

UZBEKISTAN

A. Income (Profits) Tax

1. Basic Notions

The Tax Code (Tax Code) of the Republic of Uzbekistan⁶⁰⁷ imposes a “tax on the profits of legal entities” (the profits tax). Taxpayers are defined as “legal entities having taxable profits in the financial year.”⁶⁰⁸

Taxable profits are calculated as “the difference between the aggregate income and deductions, determined in accordance with this Code.”⁶⁰⁹ “Aggregate income,” in turn, is defined to include “monetary and other assets as payment for goods delivered, work fulfilled, services rendered, and transactions, as are to be received or as are received by the legal entity including any conducted on a gratuitous basis.”⁶¹⁰

Such income includes, *inter alia*, “property received without compensation,” “gratuitous financial aid (with the exception of subsidies extended from the state budget),” and “other income,” the latter leaving room for interpretation by the tax authorities.⁶¹¹

2. Profits Tax Rates

The current base rate is 20 percent for residents of Uzbekistan. The Cabinet of Ministers is authorized to establish the rate – or rates – up to a maximum of 35 percent, upon approval of the state budget.⁶¹²

The decreased rates apply to certain categories of tax payers defined in regulations of the Cabinet of Ministers of Uzbekistan, for example, manufacturers of consumer goods⁶¹³, and of goods for children⁶¹⁴.

⁶⁰⁷ The Tax Code of the Republic of Uzbekistan as of April 24, 1997 (with subsequent amendments of December 13, 2002).

⁶⁰⁸ Section 13 of the Tax Code.

⁶⁰⁹ Section 16 of the Tax Code.

⁶¹⁰ Section 17 of the Tax Code.

⁶¹¹ *Id.*

⁶¹² Section 28 of the Tax Code. The Regulation of the Cabinet of Ministers on The Forecast of Major Economic Indicators and Parameters of the State Budget of the Republic of Uzbekistan For the Year 2003 dated December 30, 2002, # 455 establishes such rate (*hereinafter, Regulation #455*).

⁶¹³ The Regulation of the Cabinet of Ministers on Measures to Stimulate Saturation of the Market with Consumer Goods and to Improve Relationships Between Manufacturers and Resale Organizations” dated November 13, 2002, #390 (*hereinafter, Regulation #390*).

⁶¹⁴ Section 18 of the Instruction on the Procedure for Calculation and Payment to the Budget of the Tax on Income (Profits) of Legal Entities, adopted by the Resolution of the Ministry of Finance #15 and of the State Tax Committee #2002-12, as of January 1, 2002 (*hereinafter “Profits Tax Instruction”*) defines that this rate applies to such legal entities in which the said goods amount to no less than 60 percent of the overall production.

Dividends and interest payments to legal entities are taxed at a rate established by the Cabinet of Ministers (currently set at 15 percent).⁶¹⁵ See discussion at A6.

Newly established legal entities, active in the areas defined in the Tax Code pay reduced tax rate for the first two years of their existence.⁶¹⁶

3. Exemptions for Specific Types of Organizations and Income

Under Section 31 (6) of the Tax Code, “non-commercial organizations” (NCOs) are exempt from profits tax “except for income received by them from entrepreneurial activities.”

Non commercial organizations are defined in various ways in different legislation. For purposes of tax privileges, “non-commercial organizations” are defined by a footnote in the Tax Code⁶¹⁷ as:

“Enterprises, institutions and organizations financed exclusively by the state budget or those receiving subsidies from the budget to cover their expenditure within the limits of approved estimate;

Charitable unions, associations, and foundations, international organizations and religious associations and other organizations:

- ? established in public and charitable as well as other purposes not seeking profit from entrepreneurial activity, stipulated in their founding documents;
- ? distributing and investing financial and other assets not in the personal interests of their staff, founders or members of a given institution (with the exception of remuneration for work according to the procedure established by law).”

Under the Civil Code of the Republic of Uzbekistan, “non-commercial organizations” are defined as legal entities that “do not pursue generation of profits as their [primary] purpose,” and “may be organized in the form of public associations, public foundations, institutions financed by the founder, as well as in other forms provided for by the legislative acts.”⁶¹⁸

The Law on Non-State Non-Commercial Organizations (Law on NNO)⁶¹⁹ introduced the term “non-state non-commercial organization,” and defined an NNO as a “selfgoverning organization established on a voluntary basis by physical and (or) legal entities, which (a)

⁶¹⁵ Section 29 of the Tax Code. Regulation # 455. Certain exceptions apply, see A6.

⁶¹⁶ Section 31 of the Tax Code. For the first year after registration, new organizations pay 25 percent of their usual rate; in the second year, they pay 50 percent.

⁶¹⁷ Section 31(6) of the Tax Code.

⁶¹⁸ Section 40 of the Civil Code as of August 29, 1996 (with subsequent amendments as of May 1, 1998.)

⁶¹⁹ The Law on Non-Commercial Non-governmental Organizations as of April 14 1999 (*hereinafter* “*The Law on NNOs*”).

does not pursue the generation of income as its primary purpose; and (b) does not distribute the income received among its participants (members).⁶²⁰ The use of the term “non-state” has no legal implications. There is no prohibition for governmental agencies from founding or co-founding a “non-state non-commercial organization.” In substance, an NNO is the same as an NCO, for purposes of civil legislation.

Apart from the general tax exemption granted to NCOs by the TC, certain tax privileges are enjoyed by NCOs or specific types of NCOs under governmental resolutions and presidential decrees (such as microfinancing organizations, fellowships of real estate proprietors), as will be discussed below in A5.

Some entities are exempt from income tax generally or with regards to income derived from certain activities that are useful to society, regardless of their nature as commercial or non-commercial. They include:⁶²¹

- 1) “organizations specialized in the production of prosthetic and orthopedic devices and implements, or the rendering of services to the disabled, with respect to the primary type of activity;”
- 2) “organizations owned by public associations of the disabled, by the Nuroniy Foundation and by the Victims of Chernobyl of Uzbekistan Association, provided that no less than 50 percent of the employees of such organizations are handicapped persons, 1941 -1945 war or labor front veterans” (with certain exceptions);⁶²²
- 3) “medical and manufacturing work-shops at healthcare institutions;” and
- 4) “[entities] licensed to engage in concert tour activities.”

4. Taxation of Revenues Obtained on a Gratuitous Basis

Non-commercial organizations are exempt from profits taxation on property received on a gratuitous basis. This exemption logically flows from Section 31’s general exemption of NCOs from profits tax (with the exception of entrepreneurial profits), but as a matter of practice, Section 16 of the Tax Code and The Cabinet of Ministers Regulation #502 are generally invoked to support this exemption. Contributions, shares and other designated financial allocations to charter fund(s) (capital) aggregated to pursue common goals shall not be deemed income of the legal entity specifically established to pursue such goals, and shall not be subject to taxation.⁶²³ The Cabinet of Ministers Regulation #502 provides that “sponsorship contributions and other allocations by legal and natural

⁶²⁰ Section 2 of the Law on NNOs.

⁶²¹ References are to the numeration of clauses within Section 31 of the Tax Code.

⁶²² Section 16 of the Tax Code. Except for enterprises engaging in trading, intermediation, supply/marketing, and procurement activities.

⁶²³ Note that the civil legislation generally does not provide for “charter fund (capital)” for NNOs, though according to the local tax experts, many NCOs provide for it in their charters.

persons to non-commercial organizations for performance of their statutory activities are tax exempt.⁶²⁴ Based on these provisions, NCOs avoid taxation on gratuitously-obtained income, provided that they properly account and report for its use in compliance with statutory purposes and target designation (if any) of the received funds/property.

5. Taxation of Income from Entrepreneurial Activities

NCOs are permitted by the civil legislation to engage in entrepreneurial activities “within the limits corresponding to their statutory purpose.”⁶²⁵ Non-compliance with this condition may result in suspension of activities.

Uzbekistan’s Tax Code does not define “economic activities” or “entrepreneurial activities,” but the Law of the Republic of Uzbekistan on Guarantees of Entrepreneurial Activity⁶²⁶ broadly defines “entrepreneurial activities” as “initiative activity [...] aimed at procurement of income at [one’s] own risk and responsibility.”⁶²⁷

As a practical matter, all revenues gained from business or investments by an NCO, unless they fall into specific exemptions, are viewed as emanating from entrepreneurial activity and are taxed.

The Tax Code contains various specific exemptions:

- ? Until January 1, 2006, the income of non-commercial organizations from micro-financing is exempt from tax, provided the released funds are used to cover operational expenses, the development of materials and technical base, or to gain further micro-financing.⁶²⁸
- ? “Income from work on the restoration and reconstruction of historical and cultural monuments” is exempt, regardless of organizational form of the legal entity engaged in it.⁶²⁹
- ? Taxable income earned by wholly-owned subsidiaries of “religious and public associations (except for trade unions, political parties and movements) and charitable foundations” is decreased for the purpose of taxation by the amounts allocated to performance of the parent organization’s statutory activities.⁶³⁰

⁶²⁴ “Sponsorship contributions” are not defined.

⁶²⁵ Section 31 of the Law on NNO and Section 40 of the Civil Code.

⁶²⁶ The Law of Uzbekistan on Guarantees of Entrepreneurial Activities as of May 25, 2000.

⁶²⁷ *Id.* Section 3.

⁶²⁸ The Regulation of the Cabinet of Ministers of the Republic of Uzbekistan on Measures for Development of Micro-financing in the Republic of as of August 30, 2002 #309

⁶²⁹ Section 31 (8) of the Tax Code.

⁶³⁰ Section 32 of the Tax Code. It is difficult, however, to identify which organizations are eligible for this exemption. The Section appears to distinguish between certain kinds of “associations” and “foundations.” Under the Civil Code and the Law on NNO, a *foundation* is a legal form different from an *association*. The Law on Public Associations, on the other hand, includes “foundation” as a particular variety of “associations.” The meaning of a “charitable” foundation is also unclear. Regulation of the Cabinet of

- ? Until January 2007, “fellowships of real estate proprietors” (an organizational form of NCO introduced by special legislation) are exempt from all taxes and dues (including exemption for income from renting out the property), upon certain conditions related to their activities and the use of the released funds.⁶³¹

NCOs do not lose their tax status by engaging in entrepreneurial activity. However, the excessive pursuit of commerce or investments may result in the refusal of the tax authority to view an organization as “non-commercial” and in the loss of all tax exemptions otherwise available.

6. Exemptions for Passive (Investment) Income

Under Section 29 of the Tax Code, taxes on interest and dividends payable to resident legal entities are withheld at the source at a rate established by the Cabinet of Ministers—currently, 15 percent -- except for dividends and interest emanating from governmental securities. At the same time, Section 17 of the Tax Code includes interest, dividends, royalties, and rent payments in the gross annual income, thus taxing these forms of income the same rate (20 percent) as income from entrepreneurial activities. The amounts of interest and dividends taxed at the source are deductible from the gross annual income, provided that withholding of tax at the source is evidenced by appropriate documents⁶³².

7. Regulation of Expenditures

There is currently no provision mandating any minimum level of distribution of an organization’s funds for any purpose.

8. Deduction of Charitable Contributions

Taxable income of legal entities may be reduced by the value of certain contributions made to other organizations or certain other expenses.⁶³³

Up to one percent of the taxable income may be deducted for “contributions” made to:

- ? “environmental, health-related, and other charitable foundations;”

Ministers of the Republic of Uzbekistan On Procedure of Adoption of Privileges, Taxes, and Customs Duties Applied to Charitable Foundations and Associations As Well As Their Subsidiaries and Branches as of November 17, 1999 # 502 in its Section 5 confirms this tax exemption in application to all “non commercial organizations”, and not just “religious and public associations and charitable foundations.” However, it further subjects application of the exemption to cases specified in the Tax Code or by the President/ Government. Hence, practical implementation of this exemption is a problem, and it is generally unexplored by NCOs.

⁶³¹ The Decree of the President of Uzbekistan on The Order of Providing Exemptions from Taxes and Dues as of February 26, 2002 # UP- 3038.

⁶³² Section 29 (4) and Section 20 of the Profits Tax Instructions.

⁶³³ Section 32 of the Tax Code.

- ? “institutions serving cultural, public educational, healthcare, assistance with employment, social security, and athletic goals.”⁶³⁴

The lack of a definition of “charitable” and of the process by which an organization may be certified as “charitable” makes it difficult in practice to claim such tax deductions with confidence. Furthermore, the section introduces a new problem by limiting the deductions to “charitable foundations” instead of applying to all types of charitable organizations, with the result that donations to charitable associations/unions are not formally eligible for a deduction.

Up to five percent of the taxable income may be deducted for “funds directed at the development of football (“soccer”), strengthening of the material and technical basis of football clubs and schools.”

A legal entity may also reduce its taxable income by the value or part of the value of certain investments⁶³⁵:

- ? investments in the construction of educational establishments are deductible up to 30 percent of taxable income.
- ? 30 percent of “expenditures on protection of environment” are deductible.

No deductions for donations are available to individual donors.

B. VAT

1. Basic Notions

The procedure for calculation and payment of VAT is established by Sections 65 to 79 of the Tax Code and detailed in several instructions adopted jointly by the Ministry of Finance and the State Tax Committee.⁶³⁶

Legal entities engaging in entrepreneurial activity are taxpayers for the purpose of VAT. Legal entities that do not engage in entrepreneurial activity must still pay VAT on any imported goods, works or services.⁶³⁷

⁶³⁴ The word “institution” is a translation of “*uchrezhdenie*,” which refers to a specific organizational form of NCOs, which is usually state-funded and state-controlled (though the Civil Code and the Law on NNO contemplates the possibility of private entities establishing institutions). It is not clear whether this word choice is arbitrary (i.e. means a general reference to legal entities) or the law is specifically aimed at contributions to such state-run entities.

⁶³⁵ Regulation of the Cabinet of Ministers of the Republic of Uzbekistan is required for implementation of this provision.

⁶³⁶ Instructions are the following: “On the Procedure for of Calculation and Payment of Value Added Tax for Goods, Works, Services Manufactured and Sold” N 383; “On the Procedure for of Calculation and Payment of Value Added Tax for Works, Services, Imported into the Territory of the Republic of Uzbekistan”, N 1123; “On the Procedure for of Calculation and Payment of Value Added Tax for Goods, Imported into the Territory of the Republic of Uzbekistan”, N 1124.

The turnover and import of goods, works, and services are subject to VAT.⁶³⁸

2. VAT Rates

The VAT rate is 20 percent,⁶³⁹ with no discount rates apart from the zero-rating, which applies only to exports, to fuel and lubricants for agricultural enterprises, and to supplies for diplomatic establishments.⁶⁴⁰

3. Registration

Registration is mandatory for those engaging in entrepreneurial activity and there is no turnover threshold for the purpose of registration.

4. Exemptions for Specific Categories of Organizations

The Tax Code provides, with certain restrictions, exemptions for goods, works, and services produced and sold by legal entities owned by public associations of handicapped persons; by the Nuroniy Foundation; and by the Victims of Chernobyl of Uzbekistan Association.⁶⁴¹

There are no other blanket exemptions available to NCOs in connection with supplies or imports. Most exemptions are defined in terms of the nature of goods supplied (Section 71 of the Tax Code, discussed below), though sometimes the identity of the supplier is referred to and should be viewed as a condition.⁶⁴² In cases where the law specifies a type of business as exempt from VAT, the practice is to exempt from VAT only those expenses that are central to that enterprise's business.⁶⁴³

5. Exemption for Specific Categories of Goods and Services

⁶³⁷ Section 66 of the Tax Code.

⁶³⁸ Section 67 of the Tax Code. Taxable turnover includes gratuitous transfers of goods, works, and services. In case of such gratuitous transfers, the taxable turnover is determined on the basis of the existing level of prices (tariffs), without inclusion of VAT, existing for the enterprise at the moment of transfer, however, no less than actual costs of manufacturing (acquisition) of such goods, works, services (Section 68 of the Tax Code). In case of gratuitous transfer of goods, works, services the party transferring them is the taxpayer of the VAT.

⁶³⁹ Section 73 of the Tax Code.

⁶⁴⁰ Section 73 of the Tax Code vests the Cabinet of Ministers with the authority to establish discount rates, but only on certain socially important foodstuffs.

⁶⁴¹ Section 71 (35) of the Tax Code. The restrictions are the following: a) disabled individuals must make up at least 50 per cent of the workforce; b) imports and excisable goods are not exempt from VAT; c) trading, intermediation, supply and marketing services, and procurement services are not exempt.

⁶⁴² For instance, Section 71 (7) of the Tax Code exempts childcare services provided by preschool establishments.

⁶⁴³ For instance, Section 71 (43) of the Tax Code exempts "legal entities licensed to engage in concert tour activities" from VAT payment. This exemption applies only, though, to expenses incurred in the actual preparation for and production of concerts. VAT paid in relation to any side businesses or otherwise unrelated expenses will apparently not be VAT-exempt.

The following goods, works, and services, likely to be supplied or imported by NCOs, are exempt from VAT.⁶⁴⁴

- 1) provision and transfer of loans;
- 2) services associated with care for the sick and elderly;⁶⁴⁵
- 3) patent fees, registration fees, and license payments for acquisition of rights to intellectual property objects;
- 4) goods manufactured by enterprises specialized in the production of prosthetic and orthopedic appliances and tools for the disabled and rendering prosthetic services to the disabled, goods manufactured by medical and industrial work shops within at healthcare institutions;
- 5) scientific-research and innovation works under state contracts carried out within the framework of scientific and technical programs of the State Committee for Science and Engineering of the Republic of Uzbekistan;
- 6) housing and communal services, as well as maintenance services rendered to the population;
- 7) services rendered in the public education domain associated with education and production process, as well as tuition fees charged in for higher and specialized secondary education establishments;
- 8) services associated with rituals and ceremonies rendered by religious organizations and associations;
- 9) medical, recreational and sanative services, travel and excursion services, services by institutions for fitness and sports as the main line of their activity, as well as services provided by children's camps;
- 10) goods manufactured by and services rendered by publishing houses, editorial offices, printing plants, the Teleradiobroadcasting Company and the National Information Agency of the Republic of Uzbekistan as the main line of their activity;
- 11) services associated with the teaching of the official language and record-keeping in the official language (Uzbek);
- 12) property imported to the Republic with the purpose of providing assistance to victims of natural disasters, armed conflicts, and accidents, as well as imports of humanitarian aid;
- 13) equipment, materials, works and services imported by the legal entities including non-residents of the Republic of Uzbekistan at the expense of loans and grants provided by the international and foreign governmental financial and economical organizations under contracts (agreements) concluded by the Republic of Uzbekistan;
- 14) imported medicine and medical items;
- 15) legal entities licensed to engage into concert tour activities
- 16) wholesale books, audio-visual materials for schools, and medical supplies.

6. VAT Rebate Procedure

⁶⁴⁴ References are to the numeration of Clauses of Section 71 of the Tax Code.

⁶⁴⁵ Childcare services by pre-school establishments are also exempt by virtue of this Section 71 (7) of the Tax Code, but were mentioned above in B4 as related to the specific category of organizations.

Any excess of input VAT over output VAT during the reporting period (which is one month) is credited towards the following reporting period. At the end of each quarter the accumulated excess may be applied towards the payment of other taxes if the taxpayer requests this in writing.⁶⁴⁶ Reimbursement of excess VAT paid is available only to exporters.

C. Property Tax (Including Real Estate)

1. Applicable Taxes.

The property tax is paid by physical and legal persons owning property. For legal persons, taxable property is fixed assets, intangible assets, and unfinished construction. Land tax is paid by physical and legal persons owning, possessing, or otherwise using land parcels.

Property tax is calculated on the average annual residual value of the property at the rates established annually by the Cabinet of Ministers of the Republic of Uzbekistan and paid, in the case of legal entities, in monthly installments.⁶⁴⁷ For 2003, the rate is 3 percent⁶⁴⁸.

Land tax is calculated at the rates established by the Cabinet of Ministers of the Republic of Uzbekistan and paid in quarterly installments. With no uniform tax rate, amounts of land tax payable vary from one region to another, with the rates fixed not in percentages but in fixed amounts.

2. Tax Benefits

NCOs are exempt from both the property tax⁶⁴⁹ and the land⁶⁵⁰ tax, subject to conditions discussed below.

The property tax exemption does not apply to property used in entrepreneurial activities.⁶⁵¹ Under a literal interpretation of the law, even an occasional or one-time use of a particular property for entrepreneurial purposes would lead to the loss of the exemption for this particular property.

⁶⁴⁶ Section 10 (4) of the Instruction On the Procedure for of Calculation and Payment of Value Added Tax for Goods, Works, Services Manufactured and Sold, approved by the Ministry of Finance and the State Tax as of December 5, 1997 N 383 (with subsequent amendments of January 1, 2001.)

⁶⁴⁷ Sections 90 and 94 of the Tax Code.

⁶⁴⁸ The Regulation of the Cabinet of Ministers on The Forecast of Major Economic Indicators and Parameters of the State Budget of the Republic of Uzbekistan For the Year 2003 as of December 30, 2002, # 455

⁶⁴⁹ Section 92 of the Tax Code.

⁶⁵⁰ Section 102 of the Tax Code.

⁶⁵¹ Section 92 of the Tax Code.

The land tax exemption does not apply to non-commercial organizations that “use land parcels in entrepreneurial activities.” So, unlike in the case of the property exemption, the use of a single land parcel would lead to taxation of all land.

In practice, the tax authorities do not interpret the property and land taxes so strictly. Instead, they calculate the percentage of an organization’s revenue that consists of entrepreneurial income and charge property and land tax in proportion with this entrepreneurial activity. For instance, if 40 percent of an organization’s income comes from entrepreneurial business and 60 percent is received on a gratuitous basis, the organization will pay only 40 percent of the property and land tax that would normally be assessed.

The following exemptions from payment of the property tax may be relevant:⁶⁵²

- a. “property used for the needs of institutions of peoples’ education and culture;”
- b. “property owned by public associations of the disabled, by the Nuroniy Foundation and by the Victims of Chernobyl of Uzbekistan Association, provided that no less than 50 percent of the employees of such organizations are disabled.”⁶⁵³

The following other exemptions from payment of the land tax may be relevant:⁶⁵⁴

- ? “institutions for culture, education, healthcare, assistance with obtaining employment, social protection of the population, regardless of their subordination, for land plots provided to them for implementation of their objectives;”
- ? “[legal entities] owned by public associations of the disabled, by Nuroniy Foundation and by Victims of Chernobyl of Uzbekistan Association, provided that no less than 50 percent of the employees of such organizations are disabled,”⁶⁵⁵
- ? “[legal entities] licensed to engage in concert tour activities.”

There are also exemptions for plots of lands used for specific purposes, such as for sport and recreation facilities.⁶⁵⁶

C. Miscellaneous

1. Other Exemptions and Benefits

⁶⁵² *Id.*

⁶⁵³ *Id.* Except for enterprises engaging in trading, intermediation, supply and marketing, and procurement activities.

⁶⁵⁴ Section 102 of the Tax Code.

⁶⁵⁵ See footnote 45. Except for enterprises engaging in trading, intermediation, supply and marketing, and procurement activities.

⁶⁵⁶ Section 101 of the Tax Code.

Only legal entities engaging in “manufacturing of goods, performance of works, and rendering of services” are taxpayers of the ecological tax.⁶⁵⁷

NCOs are exempt from water-use tax unless they use water sources in entrepreneurial activities, in which case the water used for entrepreneurial purposes is taxed.⁶⁵⁸

Under the Law on State Fees⁶⁵⁹, public associations of the handicapped and certain institutions and enterprises thereof are exempt from fees in courts.

⁶⁵⁷ Section 110 of the Tax Code. Method of prorating, analogous to those noted in the context of the property and land taxes, are used to calculate ecological tax when organizations engage in entrepreneurial activities.

⁶⁵⁸ This does not directly follow from the Tax Code (relevant Sections are 120 and 121), but is established by Section 8 of the Instruction on the Procedure for Calculation and Payment of the Tax on the Use of Water Resources, adopted by the Instruction of the Ministry of Finance #7 and of the State Tax Committee #2002-8, as of January 14, 2002. Further exemptions apply to organizations employing a certain minimum percentage of disabled persons; to preschools; to organizations conducting concert tours, etc., subject to conditions and limitations analogous to those imposed in connection with other taxes discussed above.

⁶⁵⁹ The Law of Uzbekistan on State Fees as of December 9, 1992.