



# ANALYSIS OF KOSOVO LEGISLATION IN REGARD TO PHILANTHROPY AND NGOs





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Prishtina, March 2019



This project is funded by the European Union and co-funded by the Balkan Trust for Democracy. The content of this publication is the sole responsibility of FIQ and does not reflect the views of donors.



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## 1. INTRODUCTION

The Forum for Civic Initiatives has been continuously engaged in the development of philanthropy in the Republic of Kosovo. In 2015, FIQ conducted a comprehensive analysis of philanthropy entitled “Analysis of Kosovo’s legislation on philanthropy and NGOs with a special focus on endowments”<sup>1</sup>. This report was one of the most extensive reports in this field, which aimed to address the current situation in regard to philanthropy in the Republic of Kosovo. It addressed Kosovo’s legislation on the functioning of civil society organizations, including legislation on the establishment and forms of organization of NGOs, tax legislation and other applicable legal frameworks affecting the non-governmental organization sector. In addition, it addressed issues of NGO funding, and how favorable Kosovo’s philanthropy-related legislation is, and how much sustainable funding to non-governmental organizations it enables. However, about 4 years have passed since this analysis, therefore, as a result there have been changes in terms of the legal and institutional framework that covers the field of philanthropy in the Republic of Kosovo. Therefore, through this report, FIQ has once again analyzed the entire legal framework that covers philanthropy in the Republic of Kosovo.

This report does not aim to analyze the capacities of civil society in Kosovo, issues of functioning of NGOs in practice, as well as other sectoral problems for which rather specific preliminary analyzes have been conducted. This report also does not intend to analyze the work of the relevant institutional mechanisms which are competent for the implementation of legal provisions in force, whether in the Ministry of Public Administration, the Ministry of Finance, or in other institutions. However, part of it will also address public funding for NGOs, including the legal framework in a concise manner, as the 2015 report provided no accurate publicly available information on public funding for NGOs, nor were unified topical rules applied.

Civil society in Kosovo is mainly funded by foreign donors, public institutions, and less by the private sector.<sup>2</sup> Given that foreign donor support has declined in recent years, and may continue to decline in the future, the civil society sector should be oriented towards funding and financing to be provided within Kosovo. In this regard, in addition to government funds that are extremely necessary to keep alive the activities of civil society, it is necessary to shift the focus on the private sector, including businesses and citizens. To this end, the state, in cooperation with civil society representatives, must identify the necessary interventions in the legal and institutional framework in order for civil society in Kosovo to continue to have sustainable funding. Therefore, the concept of philanthropy must be further developed in Kosovar society, while the state must support this concept through legal and institutional mechanisms.

An improvement in the legal framework relating to civil society, including the clarification of legal provisions on taxation affecting the civil society sector in Kosovo, could be expected to have positive effects on the growth and development of the concept of philanthropy. Also, removing the contradictions between the legal provisions on taxation and those on the functioning of NGOs<sup>3</sup> would contribute to this

1 See: [https://www.fiq-fci.org/file/repository/Raport\\_analitik\\_lidhur\\_me\\_legjislacionin\\_qe\\_ku\\_te\\_beje\\_me\\_filantropine\\_ne\\_Kosove\\_nentor\\_2015\\_820508.pdf](https://www.fiq-fci.org/file/repository/Raport_analitik_lidhur_me_legjislacionin_qe_ku_te_beje_me_filantropine_ne_Kosove_nentor_2015_820508.pdf)

2 For more regarding civil society funding in Kosovo, see Kosovar Civil Society Index, KCSI, April 2014, p. 25.

3 It is mainly about the differences between the legal provisions regarding the public benefit sta-

spirit. The adoption of criteria, standards, and procedures for public funding of NGOs has advanced as a whole the concept of public funding of NGOs in the Republic of Kosovo. Therefore, the adoption of Regulation MF-No. 04/2017 on the criteria, standards and procedures of public funding of NGOs, for the first time has enabled Kosovo to begin building a structured approach in terms of institutional financial support for the civil society sector. The government and the municipalities should from now on focus on respecting this legal framework. This means raising and developing institutional capacities in the implementation of these criteria and standards, to provide this public financial support to NGOs in a more transparent, structured manner and on the basis of clear and predetermined criteria. This would avoid corrupt and political influences and deter the use of support for civil society to support certain political entities or individuals. In this respect much work remains to be done and to achieve such standards.

Kosovo does not have a special law in force in which philanthropy issues are generally regulated. It has often been emphasized that a law on philanthropy would encourage and recognize the support of businesses and individuals to support in various ways the various charitable activities that benefit society. Such a law would recognize the status of philanthropists as an recognition for their support. However, Kosovo has chosen to regulate these issues through specific laws, such as tax laws, the Law on Freedom of Association in Non-Governmental Organizations, the Law on Social Enterprises, the Law on Sponsorships in the Field of Culture, Youth and Sports, and other specific laws and bylaws. The legal framework that covers this area provides almost everything that is regulated and provided by the countries of the region and those of the EU in this area. In some areas, however, it can be noted that Kosovo offers more than the countries in the region. However, the practical applicability of this legal framework remains challenging due to many factors.

In 2017, the Assembly of Kosovo adopted Law No. 05/I -090 on Sponsorships in the Field of Culture, Youth and Sports, drafted several years earlier at the initiative of the Ministry of Culture. In addition, the criteria and procedures for certification of sponsorship are set out in Regulation (MCYS) No. 01/2018 on determining the criteria, procedures and form for certification of sponsorship in the field of culture, youth and sports. However, in terms of the applicability of this law, so far it does not seem to have had any success in practice. One of the most frequently discussed reasons for not applying it, is its non-compliance with tax legislation.

This report aims to create a concise approach to the whole field covered by the concept of philanthropy. This includes analyzing the legal framework related to this area, focusing on the legal framework for the functioning of NGOs, legislation on taxation and sponsorship, but without forgetting the public funding of NGOs, as one of the sources of funding that has increased in recent years in the Republic of Kosovo.

The Government of the Republic of Kosovo, through the Draft Strategy for Cooperation with Civil Society, has foreseen the development of a concept for philanthropy, which would show in detail the direction of development of the field of philanthropy in Kosovo. From the consultations with the responsible actors it is understood that this concept will be developed by the Ministry of Finance. Considering as necessary a comprehensive analysis of this field, and in order to prepare such a comprehensive

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tus, which are not the same in the tax legislation and that of the Freedom of Association in Non-Governmental Organizations.

concept, FIQ has conducted two in-depth analyses regarding the field of philanthropy in the Republic of Kosovo. The development of these analyses aims to enable the Government of the Republic of Kosovo to have a baseline analysis, which could be used as a starting point for the development of a concept related to philanthropy. In addition, FIQ is preparing an analytical report that addresses the issue of endowments from the perspective of applicable legislation, including the need for changes, or not, in this area. Therefore, this report is one of the reports that deals with the concept of philanthropy as a whole in the Republic of Kosovo.

## 2. KOSOVO LEGISLATION ON FREEDOM OF ASSOCIATION IN NON-GOVERNMENTAL ORGANIZATIONS

The basic legal framework for freedom of association in non-governmental organizations in the Republic of Kosovo is covered by the Law on Freedom of Association in Non-Governmental Organizations, which was amended in 2018 and entered into force in 2019.<sup>4</sup> The provisions of this law regulate in detail the issue of establishment, registration, internal organization and leadership, operation, as well as the manner and procedures of termination and deregistration of legal entities organized in the form of non-governmental organizations.<sup>5</sup> The provisions of this law leave room, in case specific issues from the scope of this law are not regulated in detail, to issue by-laws by the Government of the Republic of Kosovo upon the proposal by the Ministry of Public Administration. This law defines when the public benefit status is obtained, and states that NGOs with this status benefit from tax relief in accordance with applicable tax legislation.

The Law on Freedom of Association in Non-Governmental Organizations, which entered into force in March 2019, has made a number of improvements compared to the 2011 law, in order to better regulate this area. The law was initially adopted by the Assembly of the Republic of Kosovo on November 7, 2018, but was not enacted and at the end of November 2018 was returned to the Assembly by the President. One of the main reasons why the law was not enacted was the fact that amendments were recently passed in the Assembly that allowed the assets of an NGO, after its dissolution, to be transferred to other institutions, including private businesses. Such a change has been considered by Civil Society Organizations as a violation of the basic principle on which NGOs operate, the principle of non-profit. On same issue was had previously ruled the Constitutional Court, when the law on banks provided for such a transformation for microfinance institutions.<sup>6</sup> However, these contradictory provisions were avoided on the occasion of the second adoption in the Assembly, and the law was published in the Official Gazette on April 24, 2019, to enter into force 15 days later.

### 2.1 Forms of organization and manner of establishment of Non-Governmental Organizations

The provisions of the Law on Freedom of Association **in Non-Governmental Organizations**, in addition to stipulating that the purpose of establishing non-governmental organizations is for public benefit or mutual interest, also provide for possible forms of functioning of non-governmental organizations in Kosovo.

#### 1) **Associations:**

which operate on the basis of membership, which can be established by at least 3 members (persons), of which at least one must reside or operate an office in Kosovo.

#### 2) **Foundations:**

4 Law No. 06/L043, Official Gazette of the Republic of Kosovo: <https://gzk.rks-gov.net/Act-Detail.aspx?ActID=19055>

5 The provisions of this law do not apply to political parties, trade unions, religious organizations or other forms of organization regulated under other laws.

6 Judgment of the Constitutional Court KO 97/12 on the Law on Banks.

which are non-member organizations, established for the management of properties and assets, and can be created by at least one person<sup>7</sup>, provided that at least one of the founding persons resides or operates an office in Kosovo. When it comes to the establishment of foundations, they can also be established by will, or by inheritance,<sup>8</sup> if the will contains the required information of the founding act including the official name, the official acronym, and the official symbol of the foundation; the form of organization as foundation, the address, goals and activities, the name and address of the founder, the name and other necessary information of the authorized person, and if there is a time limit for which the foundation is established.<sup>9</sup> This required information must be contained in every founding act of a foundation. It should be noted that the Law on Freedom of Association adopted in 2019, for the establishment of the Foundation requires an initial capital of no less than 1000 Euros.<sup>10</sup> For the cases of establishment through inheritance or will, it is not mentioned what the value of such capital should be.

### **3) Institutes**

The Law on Freedom of Associations in NGOs of 2019, for the first time has also foreseen “institutes”, a new form of organization of NGOs, which in essence is foreseen as a similar form of organization with foundations. This form of organization is thought to be the most appropriate form of organization for institutes whose main purpose is research. Institutions are also envisaged as NGOs without membership, established to achieve legitimate goals for the public good or for mutual interest.<sup>11</sup>

According to the report of the Kosovar Civil Society Index, published by KCSF in 2018, which takes into account the latest data of 2017,<sup>12</sup> a total of 9,545 NGOs are registered in Kosovo, of which 9,015 are local NGOs and 530 are foreign NGOs.<sup>13</sup> This number includes about 1,493 NGOs which are sports clubs, sports federations and religious organizations.<sup>14</sup> About 96% of local NGOs are registered as associations and only 4% as foundations.<sup>15</sup> Moreover, data from the Kosovar Civil Society Index show that only about 1,000 NGOs are active.<sup>16</sup> The above figures show that NGOs organized in the form of foundations are in much smaller numbers in proportion to the NGOs organized in the form of associations. Consequently, this implies that the concept of asset and financial management and fundraising for the benefit of the public, which is mainly a concept that applies to foundations, is less developed in the Republic of Kosovo.

Regarding other issues of internal organization and functioning of NGOs, whether

7 The term person used in the Law on Association Freedom in NGOs means a natural or legal person.

8 Article 17, Para. 3, Law No. 06/L- 043 on Freedom of Association in NGOs.

9 Article 15, Para. 3.

10 Article 17, Para. 3, Law No. 06/L- 043 on Freedom of Association in NGOs.

11 Article 18, Para. 1, Law No. 06/L- 043 on Freedom of Association in NGOs.

12 KCSF, Kosovar Civil Society Index 2018, December 2018, p. 5, available online at: <https://www.kcs-foundation.org/wp-content/uploads/2018/12/Indeksi-Kosovar-i-Sho-q%C3%ABris%C3%AB-Civile-2018.pdf>

13 Ibid, p. 10.

14 Ibid.

15 Ibid, p. 11

16 Ibid, p. 12

in the form of associations or foundations, Kosovo legislation leaves wide space for these issues to be regulated by NGOs themselves through their statute and other internal documents. This includes the appointment of governing bodies.

## 2.1 NGO Funding Sources

### 2.2.1 Possible funding sources under the Law on Freedom of Association in NGOs

The provisions of the Law on Freedom of Association in NGOs can be considered as provisions that create a wide space in terms of the functioning of non-governmental organizations in Kosovo. They also provide for sources of funding for NGOs, including donations, insurance income, securities, inheritance, membership, gifts, grants, movable and immovable properties, income from invested funds, and other income generated through any lawful activities of the NGO with its assets and funds.<sup>17</sup> Thus, the sources from which NGOs in Kosovo can be funded are rather complementary and as such can be considered in line with the practices of countries in the region and beyond.

According to the Law on Freedom of Association in NGOs, NGOs can also engage in economic activities in order to support their non-profit activities, provided that the income generated through economic activities is used exclusively to achieve the goals stated in the statute of the NGO.<sup>18</sup> In addition, NGOs can own and manage properties and assets to achieve their own nonprofit goals.<sup>19</sup>

Compared to the provisions of the 2011 Law on Freedom of Association, the 2019 law includes as an innovation the “income from invested funds”, which can be an important source of funding for NGOs in the future. It is precisely these provisions that deal with the issue of NGO engagement in economic activities and their right to manage assets, including the realization of income from the assets they have in management, are sufficient grounds for the realization of the concept of endowments, which is a widespread practice in the United States and in many European countries, and is also recognized by the legislation and practices of countries in the region. According to this concept, through the generation of income from donations, in principle without transforming it (the base), but with income generated from the investment or use in various forms, NGOs in many countries around the world manage to keep their activities alive. Moreover, in order to finance a part of their activities, such funds are also used by educational, health, cultural institutions, etc.

### 2.2.2 Funding through public funds

Regarding the public funding of Civil Society in Kosovo, such funding until recent years has not been structured, and in principle, each of the public institutions, within their scope can support the activities of civil society, based on their own rules, and in most cases this has been done without predefined rules. Such a situation was also presented in the report prepared by FIQ in 2015. However, compared to 2015, Kosovo has managed to advance, especially in terms of establishing basic rules on transparency, including criteria and procedures for public funding of NGO projects. The 2015 Report prepared by FIQ stated that “*Although the Ministry of Finance of the Republic*

17 Article 35, Para. 2, Law on Freedom of Association in NGOs.

18 Article 35, Para. 1, Law on Freedom of Association in NGOs.

19 Article 35, Para. 3, Law on Freedom of Association in NGOs.

of Kosovo has pledged to determine the basic criteria for the allocation of grants, subsidies and donations, such rules have not yet been drafted. In their absence, line ministries such as the Ministry of Culture, Youth and Sports, the Ministry of Public Administration, the Ministry of European Integration, and other institutions, have issued applicable rules regarding this area, which cover only these institutions.<sup>20</sup> Most municipalities have acted in the same manner.

Compared to 2015, when the FIQ report was published, we can emphasize that Kosovo has made significant progress in determining a funding model for NGO projects and programs. Regulation MF-No. 04/2017<sup>21</sup> of the Ministry of Finance on the criteria, standards and procedures of public funding of NGOs, which entered into force on July 1, 2017, has established standard rules on transparency through which the public funding of NGOs will be accomplished in a transparent manner, and on the basis of predetermined and competitive criteria. In addition, it provides a single approach to application in terms of all public funding of NGOs. The adoption of this regulation is presented as an achievement of the Republic of Kosovo in the Progress Report of the European Commission of 2017, which states that “the determination of criteria and procedures for public funding of NGOs has paved the way for improving governance and enhancement of more transparent use of public funds.”<sup>22</sup>

It should be noted that the countries of the region and of the EU have defined different models in terms of public funding for NGOs, including centralized, decentralized and mixed models, an issue elaborated in section 4 of this report on comparisons with the countries of the region. Therefore, the definition of a model for public funding of civil society in Kosovo has taken into account the practices of other countries in the region. The regulation adopted by the Ministry of Finance sets single criteria for implementation, while, in terms of the possibility of providing funding from budget organizations has continued to support a decentralized model, whereby such institutions, based on their priority areas, also determine the level of public funding support, including their planning, execution and monitoring.

Although in the legal sense, the system in place can be said to be extremely transparent and well thought out, its implementation in practice, at least so far, has been challenged due to lack of capacities and proper will on the part of many institutions. This is also confirmed by the reports prepared by the Office of the Prime Minister, which clearly emphasize that these rules and procedures have not been implemented satisfactorily.<sup>23</sup>

The Government of the Republic of Kosovo has also praised in the Progress Reports of the European Commission for enhancing the transparency of public funding of

20 Forum for Civic Initiatives, Analysis of Kosovo Legislation on Philanthropy and NGOs, with Special Focus on Endowments, p. 7. Electronic version at: [https://www.fiq-fci.org/file/repository/Raport\\_analitik\\_lidhur\\_me\\_legjislacionin\\_qe\\_ka\\_te\\_beje\\_me\\_filantro-pine\\_ne\\_Kosovë\\_nentor\\_2015\\_820508.pdf](https://www.fiq-fci.org/file/repository/Raport_analitik_lidhur_me_legjislacionin_qe_ka_te_beje_me_filantro-pine_ne_Kosovë_nentor_2015_820508.pdf)

21 See link to Official Gazette: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=14831>

22 Kosovo 2018 Report, f. 9, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

23 Report on public funding support for NGOs from the institutions of the Republic of Kosovo for 2017, Office of the Prime Minister, April 2018, p. 6, 12, 16, 22. Electronic version accessible at: <http://kryeministri-ks.net/wp-content/uploads/2018/06/Raporti-i-financimit-te-OJQve-2017-ALB.pdf>

NGOs.<sup>24</sup> This includes the adoption of the above-mentioned regulation itself, but at the same time the beginning of its implementation. The Government of the Republic of Kosovo has prepared and published data on public funding of NGOs for the years 2015-2016 and for 2017, which for the first time provide a clearer and more official overview of NGO funding through public funds. Reports published by the Government of the Republic of Kosovo during the last two years show that a significant part of the funding for NGOs in Kosovo is provided by public institutions at the Central and Local Levels. From the Report of Public Funding of NGOs for 2017, published by the Office of the Prime Minister, it can be seen that there is a continuous increase in public funding for NGOs. In 2017, about 16 million Euros were financed by the public sector, of which about 10 million at the central level and about 6 million at the local level. Compared to public funding data in 2016, 2017 marks an increase of about 2 million Euros. This data does not include funding provided to individuals or their projects.<sup>25</sup>

From the same data we get an overview of the territorial extent of the beneficiary NGOs, as well as the approximate number of beneficiary NGOs. In 2017, about 600 non-governmental organizations received financial support at the level of Ministries, while a total of 813 NGOs benefited at the municipal level. In 2016, the number of beneficiary NGOs, both locally and centrally, was even higher. Improving monitoring and reporting by public institutions remains one of the biggest challenges in this process, in addition to implementing transparent public calls and in line with the requirements of adopted legislation.

### **2.2.3 Current NGO Funding Sources in Kosovo**

Although there is no accurate and confirmed data on all current sources of funding for NGOs, from reports published by the Government and NGOs, we can acquire a rough overview of the structure of public funding for NGOs. What is noticeable from both the Reports published by the Government of the Republic and the Reports published by the Civil Society Sector, is the increase in public funding for NGO projects and programs in recent years. While donor funding until recent years ranked first in terms of share, in 2017 support through public funding increased to around 33.6% of funding sources, and from foreign donors made up 28.7%.<sup>26</sup> The rest of the financing is realized from the income from membership, donations from local private companies, individual donations, sale of goods and services, etc.<sup>27</sup> The increase in public funding for NGOs is also confirmed by the reports of the Government of the Republic of Kosovo, according to which in 2017 about 16 million Euros were granted for funding of NGO projects and programs.<sup>28</sup> In 2018, this amount increased even further and amounted to about 23 million Euros.<sup>29</sup>

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24 Kosovo 2018 Report, p. 9, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

25 Report on public funding support for NGOs from the institutions of the Republic of Kosovo for 2017, Office of the Prime Minister, April 2018. Electronic version accessible at: <http://kryem-inis-tri-ks.net/wp-content/uploads/2018/06/Raporti-i-financimit-te-OJQve-2017-ALB.pdf>

26 KCSF, Kosovar Civil Society Index 2018, December 2018, p. 36, available online at: <https://www.kcs-foundation.org/wp-content/uploads/2018/12/Indeksi-Kosovar-i-Sho-q%C3%ABris%C3%AB-Civile-2018.pdf>

27 Ibid.

28 Annual Report on Public Funding Support for Non-Governmental Organizations in the Republic of Kosovo for 2017, p. 8, available online at: <http://kryeministri-ks.net/wp-content/uploads/2018/06/Raporti-i-financimit-te-OJQve-2017-ALB.pdf>

29 Annual Report on Public Funding Support for Non-Governmental Organizations in the Republic of Kosovo for 2018, p. 11, available online at: <http://kryeministri-ks.net/wp-content/up->

### **2.3 Public benefit status and its scope**

The issues addressed in the 2015 FIQ report are current and there has been no change in terms of the public benefit status. The public benefit status means that the operations and activities of the non-governmental organization are activities that are in the best interest of the society/public, therefore engaging in such activities allows the organization to benefit from this status. The benefits are mainly related to tax relief.<sup>30</sup> According to the provisions of the Law on Freedom of Association in Non-Governmental Organizations, the public benefit status belongs to NGOs whose goals, operations and activities include: humanitarian aid and assistance, support for people with disabilities, charitable, education, health, culture, youth, sports, environmental protection and progress, economic reconstruction and development, protection and advancement of human rights, support for democratic practices and civil society activities, or any other activity that is in the service of the public good.<sup>31</sup> In addition to these areas, it is possible to obtain the public benefit status in the field of health and education, but under the conditions that NGO services are provided free of charge or below market value.<sup>32</sup> Regarding the exercise of economic activities and the acquisition by the NGOs of the public benefit status, the provisions of the law emphasize that it can be considered for the benefit of the public only if it is undertaken for the benefit of individuals and groups in unfavorable conditions.<sup>33</sup>

Upon acquiring this status, NGOs are subject to benefits in terms of tax exemptions provided by the legislation in force in the Republic of Kosovo. However, given that tax issues are regulated exclusively by tax legislation, the provisions of this law only provide for the possibility that NGOs with the public benefit status will benefit from tax exemptions under tax legislation. Therefore, the inclusion of the public benefit status within the law on freedom of association in non-governmental organizations and the acquisition of this status by NGOs, did not make them direct beneficiaries of tax relief. This is due to the fact that tax relief should be regulated by tax legislation, and also, Kosovo tax legislation is narrower in terms of areas in which the public benefit status can be employed to be entitled to tax relief.

Regarding the public benefit status, the law does not provide any restrictions on which forms of NGOs can enjoy this status, therefore both associations and foundations have the potential to benefit from this status if their scope falls within the fields elaborated above, in which this status can be obtained. The areas in which the public benefit status the tax legislation provides for relief will be discussed in this report, in the section about tax legislation.

The acquisition of the public benefit status by NGOs, in addition to being a right, also entails additional obligations for NGOs that retain this status. They must justify the benefit of the public from their activities.<sup>34</sup> This status can be revoked if the NGOs holding this status do not comply with the requirements of the law.<sup>35</sup>

[loads/2019/07/Raporti-p%C3%ABr-financim-t%C3%AB-OJQ-ve-2018-shqip.pdf](#)

30 Article 37, Para. 4, Law on Freedom of Association in NGOs.

31 Article 37, Para. 1, Law on Freedom of Association in NGOs.

32 Article 37, Para. 2, Law on Freedom of Association in NGOs.

33 Ibid.

34 Article 38. Law on Freedom of Association in NGOs.

35 Article 39, Law on Freedom of Association in NGOs.

### 3. TAX LEGISLATION AND LEGISLATION ON MANAGEMENT OF PUBLIC FINANCES

#### 3.1 Law on Corporate Income Tax

Given that associations and foundations established for non-profit purposes and with recognized public benefit status, carry out activities for the benefit of the public, these entities are not taxable under the corporate income tax. Therefore, the income they generate from non-economic activities and economic activities is not taxable under corporate income tax.<sup>36</sup> Consequently, the acceptance by NGOs with the public benefit status of donations in cash, securities, contributions in goods, inheritances, membership fees, gifts, grants, movable and immovable properties, as well as other income from commercial activities that they realize according to the law in force in the Republic of Kosovo, is not subject to corporate income tax. They are considered as financing in order to carry out non-profit activities for the benefit of the public for which such an association or foundation, which has been granted the public benefit status, has been established. The main condition is that the revenue generated from their activities be used only for public benefit purposes. Article 8, Paragraph 1.1 of the Law on CIT states that "with exception of cases provided under Article 34 of this Law, the income of organizations registered under Legislation on the Registration and Operation of non-governmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for public benefit purposes".<sup>37</sup> In this context, the Law on Corporate Income Tax, which entered into force in 2019, has not changed from the previous legislation in force in this field.

Other non-governmental organizations, which do not enjoy the public benefit status, are not exempt from corporate income tax if they engage in activities that result in commercial or profitable activities. For any activity that results in the creation of taxable income under applicable law, they must pay corporate income tax.<sup>38</sup> The provisions of Article 34, Paragraph 1 of the Law on CIT emphasize: "A non-governmental organization that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such business activity, reduced by any deductions that are directly related to the carrying on of such business and which are allowed by this Law".<sup>39</sup> So, for commercial activities that are not related to public benefit, NGOs pay corporate income tax, which is 10%. However, the activities of other organizations, which do not enjoy the public benefit status, are exempt from corporate income tax. In particular, projects funded by foreign donors, whose funding is tax-exempt.

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36 Law No. 06/L-105 On Corporate Income Tax, Article 8, Para. 1.1. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20988>

37 Law On Corporate Income Tax, Article 8, Para. 1.1.

38 Article 34, Para. 1, Law On Corporate Income Tax, online at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20988>

39 Ibid.

### **3.1.1 Permissible deductions for businesses in case of contributions (donations) to NGO activities of public interest**

Article 10 of the Law on Corporate Income Tax stipulates that contributions for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are considered as contribution paid for public interest and are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted, provided that the contribution is made to a non-governmental organization that is registered under the law on NGOs.<sup>40</sup> Paragraph 2.1 of the Law on CIT states that “an organization registered under relevant applicable legislation on the Establishment and Operation of Non-Governmental Organizations that has received and maintained public benefit status.”<sup>41</sup> Unlike the Law that was in force until 2019, these provisions are more restrictive, as such a contribution is defined to go only to NGOs that have or have had the public benefit status. The previous law only stated, “an organization registered under relevant applicable legislation on the Establishment and Operation of Non-Governmental Organizations”.

In addition, the contribution of the same amount, i.e. 10% of taxable income, is allowed for any other non-commercial organization that directly carries out activities of public interest and not for profit, such as: health institutions; educational institutions; environmental protection organizations; religious institutions; institutions that care for the disabled or the elderly; orphanages and institutions in support of science, culture, sports or the arts.<sup>42</sup> This relief aims to promote the concept of philanthropy in the Republic of Kosovo, not only in cases where the beneficiaries are NGOs but also other entities, whether public or other, which exercise the activity mentioned above.

Legal provisions explicitly stipulate that if such a contribution directly or indirectly benefits the donor themselves or persons close to the donor, such a deduction is not permissible under Kosovo law, which is in line with the laws of countries of the region and European ones. For each case of such contributions for activities of public interest of NGOs or other entities mentioned above, the taxpayer/business must submit the relevant payment receipts to the Tax Administration of Kosovo at the end of the fiscal year.<sup>43</sup>

The Law on Corporate Income Tax does not clarify whether these contributions can also be made in items of economic value, and as such to be tax deductible, therefore, this leaves room for interpretation. The provisions of the law should not be limited to contributions in cash, but should also include donations of material items. As an illustration, if we have the case of donating products by a manufacturing or trading business, it is pointless that those donated items are not considered as expenses for the purposes of Article 11 of the Law on Corporate Income Tax, and the tax deduction is not recognized. Paragraph 4 of Article 11 of the Law on CIT states that “Any taxpayer requesting a permissible deduction must submit to the TAK the proof of payment for such a deduction.” In the sense of this article, the proof of payment gives the impression that the taxpayer can make such donations only in monetary payments but not in

40 Law On Corporate Income Tax, Article 11, Para. 1 and 2.1, Official Gazette of the Republic of Kosovo No. 24, 2015.

41 Law on CIT, Article 11, Para. 2.1

42 Ibid, Para. 2.2.

43 Ibid, Article 11, Para. 4.

items of economic value.

It should be noted that the level of the permissible percentage of contributions was increased by the Law on CIT adopted in 2015 from 5% as defined by the previous law, to 10%, and for specific cases of taxpayers who will contribute in certain areas, this law allows up to 10% additional deduction if provided by special laws in Kosovo. However, these provisions of the law have not been employed by businesses, or at least have been minimally employed, and neither has the increase in the percentage from 5% to 10%, or even 20% for specific cases, has had any significant impact at the level of contributions from the business sector.

It should be noted that the provisions of the Law on Corporate Income Tax do not limit businesses to donations which exceed the amount of 10% of taxable income computed before this charitable contribution is deducted. Businesses have the opportunity to make even larger donations, but they must also pay tax for the part that exceeds the amount of 10%. The Kosovo Law on Corporate Income Tax does not provide for the possibility that such donations by businesses that exceed the amount of 10% of taxable income for the fiscal year can be carried over to the following fiscal year, which is allowed by legislation in EU countries primarily.

The Law on Corporate Income Tax that entered into force in 2019 is more restrictive compared to the Law on CIT that was in force until 2019, as it requires that the beneficiary NGOs have the public benefit status. When it comes to the areas provided for in the Law on CIT versus the meaning of the areas in which NGOs can obtain the public benefit status under the law on freedom of association in NGOs, this provision is also more restrictive. Consequently, if a taxpayer decides to donate to a non-governmental organization which has acquired the public benefit status according to the provisions of the law on freedom of association, e.g. in the field of protection and advancement of human rights in Kosovo, the taxpayer, based on these provisions of Article 11 of the law on corporate income tax, does not enjoy such deductions.

The Law on Corporate Income Tax defines the contributions of the taxpayer in the form of donations and sponsorships. This, of course, creates some ambiguity in terms of what is meant in this case by sponsorships. If the sponsorship included in this provision implies that the taxpayer, on the occasion of sponsoring activities for the public benefit of the NGO or other entities, will benefit through the display of any advertising sign, then the equation of these two concepts is unfair, as in that way it cannot be considered without profit and the same as a donation. The amendments in 2019 in the law on CIT, where in Article 11, Par. 1.1 is included the reference that the Contributions given by taxpayers in the field of culture, youth and sports, are calculated according to Law No. 05/L-090 on Sponsorships in the field of Culture, Youth and Sports, is a novelty, and can be considered as further advancement in this field.

Given the intentions of the concept of philanthropy, which does not mean that the donor has any benefit in the case of his contribution, the tax exemption for the donated amount can be considered as a stimulus for businesses and individuals who have true philanthropic goals, despite not benefiting directly from these provisions. However, it remains to be seen whether other incentives are needed for the private sector to use such tax relief for philanthropic purposes.

### 3.2 Law on Personal Income Tax

The provisions of the law on personal income tax follow the same concept as those in the law on corporate income tax. Even the provisions of the Law on Personal Income Tax, when it comes to providing contributions to non-governmental organizations that enjoy the public benefit status, enable similar deductions for the taxpayer.

The Law on Personal Income Tax, in Article 28 speaks of permissible deductions, and it stipulates that contributions for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted, provided that the contribution is made to a non-governmental organization that is registered under the legislation on the establishment and operation of NGOs.<sup>44</sup>

In addition, the contribution of the same amount, i.e. 10% of taxable income, is allowed for any other non-commercial organization that directly carries out activities of public interest and not for profit, such as: health institutions; educational institutions; environmental protection organizations; religious institutions; institutions that care for the disabled or the elderly; orphanages and institutions in support of science, culture, sports or the arts.<sup>45</sup>

Legal provisions explicitly stipulate that if such a contribution directly or indirectly benefits the donor themselves or persons close to the donor, such a deduction is not permissible under Kosovo law, which is in line with the laws of countries of the region and European ones. For each case of such contributions to NGOs or other entities mentioned above, the taxpayer must submit proof of such payments to the Tax Administration of Kosovo.<sup>46</sup>

Similarly, the Law on CIT and the Law on Personal Income Tax do not clarify whether these contributions can be made in items of economic value, and as such to be tax deductible, therefore, this leaves room for interpretation, although the law does not forbid such a thing. The provisions of the law should not be limited to contributions in cash, but should also include donations of material items. Paragraph 4 of Article 28 of the Law on PIT states that the taxpayer requesting a deductible deduction, in addition to the annual tax return, must submit to the Tax Administration of Kosovo a "receipt of payment" for such a deduction. In the sense of this article, the proof of payment gives the impression that the taxpayer can make such donations only in monetary payments but not in items of economic value. This creates uncertainty for the taxpayer and can negatively affect contributions in values other than monetary ones.

Even the law on Personal Income Tax, similarly to the Law on Corporate Income Tax and the amendments to the Law on Personal Income Tax, in addition to the amount of 10% mentioned above, in specific cases, taxpayers who will contribute in specific areas, will have an additional relief of up to 10% if provided by special laws in

<sup>44</sup> Law No. 05/L-028 On Personal Income Tax, Article 28, Para. 1 and 2.1, Official Gazette of the Republic of Kosovo No. 22, 2015. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11014>

<sup>45</sup> Ibid, Para. 2.2.

<sup>46</sup> Ibid, Para. 4.

Kosovo.<sup>47</sup> However, although the law entered into force in 2015, and the base % was increased from 5% to 10% and additional deductions of up to 10% were allowed, these provisions of the law have not been employed by businesses, or at least are minimally employed, which makes us realize that we need to think of another, more flexible and encouraging approach for businesses, perhaps more in reducing excessive bureaucracy in terms of statements than in terms of permissible deductions, so that these measures can have a positive impact on the level of contributions by the business sector.

Even in the Law on Personal Income Tax, these contributions of the taxpayer are defined in the form of donations and sponsorships. Here, too, it remains unclear what is actually meant by sponsorship in the sense of this law. If the sponsorship included in this provision means that the taxpayer on the occasion of sponsoring the activities of the non-governmental organization or other entities included in the law, will benefit through the display of any advertising mark, then the equalization of these two concepts, i.e. donation and sponsorship, is unfair, as in that way it cannot be considered without profit and the same as a donation. The same approach is followed in the Draft Law on Personal Income Tax of 2018, which was pending adoption in the Assembly of the Republic of Kosovo.

### 3.3 Law on Social Enterprises

In 2018, the Assembly of the Republic of Kosovo adopted a Law on Social Enterprises,<sup>48</sup> which stipulates that legal entities in any form of organization, including NGOs, can be transformed into any of the forms of social enterprises. The law provides for some tax relief for these forms of social enterprise. This law is a novelty for the legal system of the Republic of Kosovo, and it remains to be seen what its effect will be during practical implementation. It provides for two categories of social enterprises. Category A Social Enterprises<sup>49</sup> provide services that guarantee the inclusion of marginalized people to improve their well-being in some of the areas of social, health, family, disability services, etc. Category B Social Enterprises<sup>50</sup> are enterprises that employ at least thirty percent (30%) of employees from vulnerable groups and engage in the provision of useful services to society, or in the cultivation, processing, production, processing of products for sale, and carry out activities in specific production and service delivery fields. The provisions of this law state that the distribution of profit is not allowed.<sup>51</sup>

According to the Law, a Social Enterprise is any legal person regardless of the manner of establishment. This normally includes non-governmental organizations in any of the forms of their organization, such as associations or foundations.

However, the provisions of this law are not sufficiently clear in terms of their implementation in practice. The main question is whether an NGO, established under the law on Freedom of Association in NGOs, can become a social enterprise or does it

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47 Law No. 05/L-028 On Personal Income Tax, Article 28, Para. 5. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11014>

48 Law No. 06/L-022 on Social Enterprises, Official Gazette of the Republic of Kosovo No. 20, 26 November 2018.

49 Ibid, Article 5, Para. 2.

50 Ibid, Article 5, Para. 3.

51 Ibid, Article 4, Para. 1.2.

only receive the status of a social enterprise, but continues to remain an NGO? The legal provisions state that “In order to obtain the status of social enterprise, the legal entity shall submit the request and the social business plan to the respective department of the Ministry”.<sup>52</sup> Since these provisions refer to the legal entity, this implies that those who are already registered as legal entities in any of the forms of organization of the legal entity, including NGOs, can also apply to register as social enterprises. Article 9 of the Law states that “Registration procedures of social enterprises shall be regulated by a sub-legal act which is proposed by the Ministry and issued by the Government of Kosovo.” In addition, this includes issues of competence between different public institutions, which according to special laws are competent to register different forms of legal entities. Therefore, a detailed and careful regulation through bylaws is extremely necessary to clarify many of the ambiguities left by the law. The Ministry of Labor and Social Welfare has drafted the Draft Regulations deriving from this law, and it is foreseen that in addition to registration in any of the forms of organization of legal entities, the status of social enterprise must be obtained, which will be issued by the Ministry of Labor and Social Welfare.

The law also provides for tax relief. In Article 27, Par. 1 states that “Regardless of the forms of the organization and the activity they exercise, social enterprises shall be exempt from tax on profit they generate in the course of discharge of such activities.”<sup>53</sup> These provisions are very contradictory to the applicable tax legislation. For NGOs that will receive the status of social enterprise, these provisions will not be problematic, but the same cannot be said for other forms of organization of legal entities. Whereas, Article 27, Paragraph 2 which states that “the import of raw materials, production lines and machinery or equipment for use in the production process or service delivery shall be subject to a zero value (0) of Value Added Tax (VAT)”, will be more easily applicable given that such tax relief is already in force as part of the tax legislation.

### **3.4 Law on Public Financial Management and Accountability**

Regarding Kosovo’s Legislation related to Public Financial Management, we will address it only in terms of its provisions related to grants, donations and subsidies that public authorities can make for civil society organizations, in order to carry out activities that are in the public interest. In this regard, the Law on Public Financial Management and Accountability has generally regulated the awarding of grants, donations and subsidies<sup>54</sup> by public authorities, defining the only criterion for them to be included in the annual Law on Budget Allocations.<sup>55</sup>

Paragraph 3 of Article 53 of the Law on Public Financial Management and Accountability stipulates that the Minister of Finance shall issue specific rules to determine the conditions for awarding grants, donations and subsidies. Based on these provisions, the Ministry of Finance has issued Regulation MF-No. 04/2017 on the criteria, standards and procedures of public funding of NGOs. Therefore, since 2017, Kosovo for the first time has started to implement unified rules and a more structured approach in terms of institutional financial support for the civil society sector. This regulation con-

52 Article 11, Para. 1, Law on Social Enterprises.

53 Article 27, Para. 1, Law on Social Enterprises.

54 Article 53, Para. 1, Law on Public Financial Management and Accountability No. 03/L-048, as amended by Laws No. 03/L-221, No. 04/L-116 and No. 04/L-194.

55 Ibid.

tains norms regarding the selection of beneficiary projects that are from non-governmental organizations. Among other things, these rules clearly define the process of selecting beneficiaries, the manner of information, and other rules for a transparent process, including monitoring and reporting. At the same time, there are rules on the publication of public funding support for NGOs, including the preparation of annual reports on such support. This will provide structured support for civil society organizations, increase transparency in the provision of public funding to NGOs, and avoid discriminatory, corrupt practices, as well as reduce political influence in support of civil society in Kosovo. Contrary to the findings of the 2015 FIQ Report, which clearly stated that the absence of such rules had created an unfavorable situation in providing public support to NGOs, this area is now much better regulated. Further advancement of this field is one of the strategic objectives of the strategy of the Republic of Kosovo for cooperation with civil society. Now it remains for this legislation to be implemented in practice, affecting the increase of transparency and accountability of budget organizations. In addition, it is necessary that in accordance with the requirements of Article 53 of the Law on Public Financial Management and Accountability, and Regulation MF-No. 04/2017, public institutions must plan on the basis of their priorities and clearly include in their budget lines the budget planning for NGOs in the form of grants, donations and subsidies, providing clear identification. Improving the implementation of these rules, including the clear definition of public calls, reporting by public institutions, etc., remain challenges for public institutions to address in the future.

## 4. COMPARISON WITH COUNTRIES IN THE REGION AND EU COUNTRIES

### 4.1 Comparison with countries in the region in terms of tax legislation

When comparing the legal tax regulations related to non-governmental organizations in Kosovo with that of the countries in the region, we notice that Kosovo has included in its legislation a similar approach to that of the countries in the region, but when it comes to permissible deductions for taxpayers who provide donations to civil society organizations that have the public benefit status, the percentage (%) of such permissible deductions is higher than in the countries of the region.

The following table presents the comparison in key taxes that affect NGOs, without taking into account the form of their organization as associations or foundations. In particular, it is important to analyze the permissible deductions for taxpayers such as corporations and individuals, in cases where they contribute to NGOs with the public benefit status, as this directly affects the increase of philanthropic contributions. In addition, the following table also shows whether NGOs are required to pay profit tax or not, and similar comparisons.

Country/type of taxation	Corporate Income Tax	Permissible deductions from Corporate Income Tax for donations/contributions	Permissible deductions from Personal Income Tax for donations/contributions	Inclusion in permissible deductions for Contributions in items of economic value	Tax on donations	Public benefit status	Carry-over to next year (carry-over)
Kosovo	Public benefit NGOs exempt from corporate income tax	Permissible deductions up to 10% of gross taxable income  Additional deductions up to 10% for specific cases	Permissible deductions up to 10% of gross taxable income  Additional deductions up to 10% for specific cases	It is not explicitly provided, but is not prohibited by either Law on Corporate Income Tax or Law on Personal Income Tax.	Exempt from taxation	Legislation on the functioning of NGOs defines the areas in which the public benefit status can be awarded. However, tax legislation is more restrictive in terms of areas.	No carry-over in the next year is allowed for deductions from corporate and personal income tax
Macedonia	Exempt from taxation	Permissible deductions up to 5% of gross taxable income	Permissible deductions up to 20% of gross taxable income	Explicitly allowed	NGOs with public benefit status are exempted	Benefit status has differences and is not consistent.	Law contains no provisions on taxation

<b>Croatia</b>	Excluded from corporate income tax when their activity is in the public interest	Permissible deductions up to 2% of gross taxable income	Permissible deductions up to 2% of gross taxable income	Explicitly allowed	NGOs are exempt from tax on donations	Public benefit status defined by the legislation on the organization of NGOs in associations, funds and foundations	Carry-over in the next year is allowed for deductions from corporate and personal income tax
<b>Slovenia</b>	NGOs are in principle exempt from corporate income tax if income is used for public benefit purposes	Permissible deductions up to 0.3% of gross taxable income	Permissible deductions up to 0.5% of gross taxable income	Explicitly allowed	Exempt from taxation	The tax legislation mainly includes areas in which the public benefit status can be obtained.	
<b>Germany</b>	Excluded from corporate income tax while they are organized and acting for the public good	Permissible deductions up to 20% of gross taxable income	Permissible deductions up to 0% of gross taxable income	Explicitly allowed	CSOs are exempt from tax on donations	Regulated by tax legislation.	Carry-over in the next year is allowed for deductions from corporate and personal income tax

#### **4.1 Comparison with the countries in the region in terms of the model of public financing of civil society**

The funding of civil society activities by public authorities is regulated in various forms by countries in the region and the EU. What all these models of funding of civil society organizations share are these are transparent rules that have been set before. A public funding model for CSOs should contain rules that enable equal treatment, free and fair competition, accountability, and be oriented towards achieving the priority goals of government and society. In the following section we will address in principle some of the practices of the countries of the region which could be applied in the case of Kosovo.

Croatia: In 2007 it adopted the Code of Practice, Standards and Good Criteria for Allocating Grants for Programs and Projects of Associations. This document obliges public authorities to adhere to these rules when allocating public grants directly to active CSOs in the relevant field. Thus, the Croatian model is a decentralized model in terms of institutions that can allocate grants to civil society organizations, but on the basis of rules issued at the central level.

Macedonia: allocates funds for CSOs at the government level, through various ministries or agencies. Even in the case of Macedonia, the funding procedure is based on the principles of the *Code of Good Practices for Financial Support of CSOs* adopted in 2007. Macedonia's model is also a decentralized model in terms of institutions that can allocate grants to civil society organizations, but on the basis of rules issued at the central level.

Kosovo: Kosovo has built since 2017 a system with unified rules at the central level which determines the manners and procedures of funding for CSOs. These rules apply to all budget organizations, including municipalities. The system is decentralized in terms of planning and providing public funding support, but centralized in terms of rules.

## 5. ENDOWMENTS

### 5.1 Concept of endowments and its functioning in Kosovo

The implementation of the concept of endowment funds means that donations, whether in cash or in assets, serve to generate continuous income through which a certain public, educational, health, humanitarian, scientific or other goal would be achieved. So, through the investment of funds donated by donors, the “principal”, it is intended to keep alive activities in specific areas and the return on investment, whether monetary or proprietary, is spent for the purpose for which the fund/organization exists. The expenditure of the base, i.e. of what the donor has donated, is allowed only under specific conditions when a greater goal is achieved, and only in accordance with the prior agreement with the donor. As a principle, the goal is for the donor's base or donation to remain invested, while only the generated income is spent. In this form, it is important to achieve the goals of the organization that has received the donation, but also the purpose of the donor that these funds be spent for a specific purpose for the benefit of the public or a cause.

The concept of endowments is a concept that has not yet been developed in Kosovo by foundations. When it comes to the legal basis that allows NGOs to engage in the creation of such funds, we consider it exists in the law on freedom of association in non-governmental organizations, and the concept of donating or establishing management funds of cash or assets can be realized through NGOs which are established as foundations, as Kosovo legislation does not provide for other forms of organization of non-governmental organizations except their organization in the form of associations and foundations.

Even with regards to the tax legislation, i.e. the legislation related to corporate income tax, we can say that it is favorable for organizations that aim to realize the concept of endowment funds, in particular those that have the public benefit status, as they are exempt from this tax in the case of investment of assets they have in management. Also, Kosovo still does not have any tax on donations, and as a result, any donation that foundations or associations accept in order to carry out their non-profit activities, is exempt from tax. It remains to be seen whether this part needs to be regulated in terms of investing and managing donated funds. In the future, this concept could create a stable public funding base for NGOs in Kosovo.

## 6. CONCLUSIONS AND RECOMMENDATIONS

From the analysis of the tax legislation in the Republic of Kosovo that directly or indirectly affects the functioning of Non-Governmental Organizations in Kosovo, we can draw the following conclusions and recommendations:

- When it comes to corporate income tax exemptions, all NGOs that have the public benefit status have the right to be exempt from this tax.
- When it comes to permissible deductions for taxpayers who make donations to NGOs with the public benefit status, the public benefit status described in the provisions of the law on corporate income tax and of the personal income tax is not the same and includes narrower areas compared to the law on freedom of association in non-governmental organizations, as a result of which some important areas have been left out of these provisions.
- Carry-over to the next year of the amount exceeding 10% of the taxpayers' contributions to NGOs with the public benefit status, is not currently regulated by either the Law on Corporate Income Tax or the Law on Personal Income Tax. Such changes in these two laws would make them in line with the practices of EU countries, and could also affect the growth of philanthropy in specific cases.
- Donations of items of economic value are not explicitly defined in the existing Law on Corporate Income Tax and the Law on Personal Income Tax. Although according to the provisions of these two laws non-financial contributions are not exempt from permissible deductions, their explicit inclusion in the provisions of these two laws could result in increased levels of philanthropy in Kosovo.
- Greater information to businesses and individual taxpayers about permissible tax deductions in the case of donations to NGOs, could increase the level of philanthropy.
- Kosovo's legislation does not set any limits on the maximum amount that businesses or individuals can donate to NGOs with the public benefit status. The above restrictions in the amount of 10% of taxable income are restrictions only on deductible tax exemptions, however, businesses can make donations that exceed this amount, but the share exceeding 10% is not exempt from taxes.
- The Law on Corporate Income Tax of 2019 is more restrictive in terms of permissible deductions for NGOs, as it requires that such donations be made to the NGO with the public benefit status.
- In the tax legislation, a clear distinction should be made between donations and sponsorships, which have been given the same status with the tax legislation. Therefore, the concept of sponsorship should either clarify what it entails, or leave it to a special sponsorship law that may be passed in the future. The Law on CIT of 2019 makes a reference to Law No. 05/L-090 on Sponsorships in the field of Culture, Youth and Sports, which can be considered the greatest innovation, given that due to the contradictions between these two laws, it has been impossible to realize in practice the benefits provided by Law No. 05/L-090.
- Although existing tax laws do not define it, that is neither restrict nor explicitly

prohibit unspent donations from being carried over in the following fiscal year, and in practice such a thing is permitted by TAK, it should be explicitly stated in the law that unspent funds may be carried over to subsequent years. This issue is left entirely to the agreement between donors and NGOs that are beneficiaries of such funds.

- The Law on Public Financial Management stipulates that for grants, donations and subsidies provided by public authorities, rules must be issued by the Minister of Finance which determine the criteria for their allocation, the method of selecting beneficiaries, the amount, etc. This field is further regulated through the Regulation MF-No. 04/2017 on the criteria, standards and procedures of public funding of NGOs. Therefore, since 2017, Kosovo for the first time has started to implement unified rules and a more structured approach in terms of institutional financial support for the civil society sector. The decentralized model chosen by this regulation in terms of public authorities that can allocate grants, subsidies and donations, but with rules set at the central level, is a model that can be more easily implemented in the case of Kosovo. This is due to the fact that we have institutions that have so far established good practices in the allocation of grants, subsidies and donations, including adequate regulations for the areas they cover. Also, this mixed model with centralized and decentralized rules in terms of institutions that provide grants, enables easier identification of needs in the relevant sectors under the scope of public authorities than a completely centralized model, which would lack professional capacities for an adequate assessment. Since 2017, we can consider that there have been positive developments in increasing transparency and competitiveness in terms of public funding of NGOs.
- In the law on the Budget of the Republic of Kosovo, public institutions must clearly identify the budget lines in which funds are provided for the financing of civil society activities. This would help increase transparency, reduce political influence and misuse of grants by public institutions.
- From the analysis of the legislation related to the operation of non-governmental organizations in Kosovo, in particular the Law on Freedom of Association in Non-Governmental Organizations and tax legislation, regarding the concept of endowments, we can reach the conclusion that the Law on Freedom of Association in Non-Governmental Organizations provides for three forms of organization of NGOs: 1. Associations; 2. Foundations, and; 3.institutes. When it comes to NGOs organized in the form of Foundations, the provisions of the law explicitly provide that NGOs organized in the form of foundations are established to manage assets and properties. Therefore, from the content of these legal provisions we can conclude that the existing legislation in Kosovo, although it does not explicitly provide for a form of organization of NGOs in funds such as endowments, it allows NGOs registered as foundations to be able to engage in the realization of such a concept through the management of the assets and properties they dispose of, investing such funds to realize income, which can be used to implement the purpose for which they were established.
- Since the provisions of the law on freedom of association in NGOs stipulate that the founders of foundations can be legal entities, this leaves room for non-governmental organizations which are organized in the form of associa-

tions to be founders of foundations.

- The Kosovo Law on Freedom of Association or other secondary legislation does not contain provisions related to rules on investment of funds managed by NGOs operating in the form of foundations, which must be invested according to the concept of endowments. These rules should guarantee, insofar it is possible, a safe investment of such assets, enabling returns and not risking the funds received from donors for a specific purpose.
- Regarding the issue of secure investment of endowments that NGOs as foundations have in management, including investment criteria, this issue should be regulated at the legal level, i.e. at the level of the primary legal basis, by amending the law on Freedom of Association in NGOs, or through the adoption of a special law on endowments.
- In terms of the tax legislation of Kosovo in regard to permissible deductions in corporate and personal income tax, which provide the possibility of additional deductions in specific cases, one of the areas of interest could be the support for the establishment of endowments. This issue could possibly be regulated with secondary legislation.



