

Article

LEGISLATION ON FINANCING PUBLIC BENEFIT ACTIVITIES FROM TAX DESIGNATION IN POLAND

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Regulations concerning public benefit activities in Poland were adopted with the Act on Public Benefit Activity and Volunteerism of April 24, 2003 (the *Dziennik Ustaw* journal of laws of 2003 no. 96 item 873). In this way a special type of nongovernmental organization (NGO) was introduced into the legal system, known as the public benefit organization (PBO). PBOs had been operating in Poland long before the introduction of the Act, but it was only then that they received a special “public benefit status” that ensures legal recognition of organizations performing public benefit activities. Nongovernmental organizations of different legal forms (such as associations, foundations, and religious organizations) can get the public benefit status after meeting certain formal requirements. Such status gives them access to certain benefits reserved for PBOs. Should they lose this status, they can continue with their activities but no longer have access to these benefits.

The main benefit is the right to collect a 1 percent tax designation from personal income tax. Polish taxpayers have the right to assign part of their tax liability to public benefit organizations. Other CEE countries that adopted such solutions include Hungary, Slovakia, Lithuania, and Romania.

NGOs that carry out socially useful activity within the realm of public tasks and meet certain criteria can become PBOs. Organizations eligible to become PBOs include the following:

1. Nongovernmental organizations that are not units of the public-finance sector and do not act in order to achieve profit.
2. Legal persons and organizational units of churches or religious organizations.
3. Local government associations.
4. Social cooperatives.
5. Joint-stock companies and limited-liability companies and sports clubs that do not operate in order to achieve a profit and that assign all profits to the implementation of their statutory objectives.

The following entities cannot become PBOs:

- Political parties.
- Trade unions and organizations of employers.
- Professional associations.
- Foundations created by political parties.

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Thus public benefit organizations encompass institutions implementing social functions and not seeking profits. They may be both religious and secular.

Two groups of tasks qualify as public benefit activities in Poland. First are public tasks carried out by organizations themselves, including social aid and charity; activity for the benefit of national minorities; protection and promotion of health, science, education and upbringing; activities supporting the development of local communities; and promotion of voluntary service (Art. 4(1) of the Act). Another group includes activities that organizations implement in cooperation with public administration bodies, including the following:

1. Performing public tasks delegated by administrative bodies.
2. Sharing information and cooperation in order to harmonize planned activities.
3. Consulting draft legislation in areas concerning statutory activities of these organizations.
4. Creating joint advisory and initiative teams comprising representatives of NGOs, entities enumerated in Art. 3(3) of the Act, and representatives of bodies of public administration.
5. Concluding contracts and partnership agreements for the execution of local initiatives and development policies.

Public tasks may be outsourced to organizations in two ways: delegating the tasks with grants for financing them, or supporting the tasks with grants for co-financing them.

Statutory activity of organizations may be carried out as unpaid or paid activity. The difference lies in receiving remuneration for statutory activities of the organization.

Organizations that apply for public benefit status must meet the following criteria, defined in detail in Art. 20(1) of the Act:

- Carry out statutory activity to benefit the general public or a certain group of entities, on condition that such a group is singled out on the basis of a particularly difficult situation or material status.
- Carry out business activity only in addition to public benefit activity, and the excess of revenues over expenses must be spent on statutory activity.
- Have a statutory supervisory or control body and a statute containing the clauses required by the Act.
- Have a management authority whose members have not been convicted by a final judgment for a publicly prosecuted intentional offense or a fiscal offense.
- Have conducted uninterrupted operation concerning public benefit for at least two years before applying for public benefit status.

A nongovernmental organization receives public benefit status when entered into the National Court Register. It loses this status after being crossed off the register.

A PBO is obliged to file an annual narrative report from its activities. Since 2013, entities with an income of less than 100,000 zlotys may file simplified narrative reports (Art. 23(6c)–(6e) of the Act). Besides the narrative report (or simplified narrative report), the organization must

prepare financial reports. Both approved documents should be published by entities on their website or elsewhere. The organization is also obliged to publish both reports before July 15 of the following year on the website of the office of the minister for social welfare. If an organization fails to meet this condition, it loses the right to apply for 1 percent of tax. That is, the organization is excluded from the list of organizations to which taxpayers can dedicate their tax designation.

Financing Public Benefit Activities from Tax Designations

When the mechanism of financing public benefit activities from 1 percent designations was introduced into the Polish legal system, it was accompanied by a number of limitations. In the regulations for the years 2004-2007, the group of taxpayers who had the right to allocate 1 percent of their income tax was narrowed down: the right could not be exercised by entrepreneurs who paid their tax according to the so-called flat rate of 19 percent, or taxpayers of lump sum taxes or capital gains tax. Also, in order to effectively contribute the 1 percent, the taxpayer had to pay the chosen organization themselves, before filing a tax return. Amounts from the 1 percent of tax were returned to the taxpayer after the tax office settled the tax return. Another problem was requirement that the taxpayer provide complicated information about the beneficiary organization in the tax return.

Despite these problems, the number of organizations applying for the public benefit status rose annually. The number rose between 2004 and 2005 by 82 per cent, exceeding the rate of growth in the following years. Obtaining such a result was possible thanks to the large-scale conversion of NGOs into organizations with the public benefit status. There was also an annual increase in the number of taxpayers making 1 percent designations and in the amounts transferred to the accounts of organizations. In 2004 80,320 taxpayers jointly allocated 10,365,000 zlotys to organizations. In the following year, more than 680,541 taxpayers allocated 41,616,000 zlotys. Both the number of taxpayers and the amounts assigned from 1 percent of tax grew every year, despite the existing restrictions.²

In 2008 the mechanism for allocating the 1 percent was simplified. In 2008, as a result, 33 percent more organizations applied for PBO status than in 2007. Allocating 1 percent of tax was made easier by shifting the burden of the transfer of money from taxpayers to tax offices. Since 2008, taxpayers have been obliged only to mark in the tax return the organization to which they want to allocate the 1 percent and the amount that the tax office is to transfer. Also in 2008, more types of taxpayers were permitted to designate the 1 percent.

Changes introduced into the regulations on public benefit activity and voluntary service in the years 2008-2012 also concerned conditions that need to be met by organizations to apply for the 1 percent.³ In 2010 the obligation of filing annual narrative and financial reports to the minister responsible for social security was introduced, as a condition of placing an entity on the list of PBOs entitled to receive the tax designation, which is updated every year. In the narrative report, the organization must reveal the purposes for which the money from the 1 percent

² Summary of data elaborated on the basis of information from the Ministry of Finance for each year: http://pl.wikipedia.org/wiki/1%25_podatku (accessed on September 5, 2014).

³ Act on Public Benefit Activity and Volunteerism (Elaborated on the basis of: Dziennik Ustaw of 2010, no. 234, item 1536, of 2011 no. 112, item 654, no. 149, item 887, no. 205, item 1211, no. 208, item 1241, no. 209, item 1244, no. 232, item 137), consolidated text published <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20030960873> (accessed on September 6, 2014).

designation has been spent. The report must also be published on the organization's website. In addition, since 2011 organizations have been able to apply for public benefit status and gain the right to 1 percent allocations only if they have operated uninterruptedly for at least two years. Also funds obtained from the 1 percent may be used only to finance public benefit activity, so campaigns whose aim is to obtain the tax designation must be financed from other sources.

In 2013 simplified narrative reports were introduced that must only be published on the website of the office of the minister responsible for social security. This obligation concerns those PBOs whose profit did not exceed 100,000 zlotys in a given financial year.⁴

These legal changes were aimed at decreasing the number of PBOs operating primarily for activities funded by the 1 percent mechanism. Another goal was increasing financial transparency of organizations' activities. A step toward support for small, mainly local organizations was limiting the requirements of making and publishing reports.

Influence of Legal Regulations on Financing Public Benefit from Tax Designations

At the end of 2011, 8,669 organizations were registered as having public benefit status. Of them, 62 per cent were associations, 23 per cent foundations, and the rest were organizations with other legal structure. The largest number of organizations operate in the Mazowieckie (1,406) and Dolnośląskie (1,060) Voivodships, and the smallest in the Świętokrzyskie Voivodship (168). In the following years there were no significant changes in the number of organizations and in their activity in each voivodship.⁵

Table 1 – 1 percent of tax in each year

Year	Number of taxpayers allocating 1 percent	Taxpayers allocating 1 percent as percentage of taxpayers entitled to do so	Allocated amount in PLN
2004	80,320	0.33 percent	10,365,000
2005	680,541	2.78 percent	41,616,000
2006	1,156,510	4.71 percent	62,332,000
2007	1,604,142	6.49 percent	105,438,000
2008	5,134,675	no data	291,594,362.90
2009	7,324,953	no data	380,133,384.70
2010	8,623,928	33 percent	357,141,279.41
2011	10,134,625	38 percent	400,241,359.84
2012	11,165,578	43 percent	457,315,813.63
2013	11,537,414	44 percent	480,042,179.27

Figures: own elaboration on the basis of data published by the Ministry of Finance, <http://www.finanse.mf.gov.pl/pit/statystyki;jsessionid=A72ECE7A3B59C6228CBD6185B90AF975>

⁴ Art. 23 (6c–6e) of the Act on Public Benefit Activity and Volunteerism - consolidated text published <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20030960873> – access on 6 September 2014.

⁵ See <http://wiadomosci.ngo.pl/wiadomosci/933303.html> - access on 6 September 2014.

The above table presents the number of taxpayers making the tax designation each year and the amounts transferred to PBOs.

The number of taxpayers who allocate 1 percent of tax to a selected organization each year (and in the years 2004-2007 the money was transferred directly to organizations' accounts) increases each year. In the first year the tax designation was made by only 80,320 people, but in the following year it rose to 680,541 people. The highest increase occurred between 2007 and 2008, from 1,604,142 to 5,134,675 people. As previous research showed,⁶ the main reason for the growing number of taxpayers declaring 1 percent of tax between 2007 and 2008 was the change in regulations that made it easier to allocate money to organizations. (Organizations surveyed in the Silesia Voivodship declared that they carried out information and promotional activities before 2008, but they reported a significant increase in amounts obtained from the 1 percent allocation in 2008, after the introduction of changes in regulations.) Also, the amounts allocated to organizations increased. In 2004 a total amount of PLN 10,365,000 was allocated, in the following year it was PLN 41,616,000 and in 2008, after a change in the principles of allocating the tax designation, the amount increased to PLN 296,227,000. In each following year the amount was higher. The year 2010 was an exception; in tax returns filed for 2009, the adjustment of tax brackets was accounted for, which led to lower taxes due and as a consequence lower amounts of the 1 percent.

A specific solution allowed in the Polish legal system is creating individual accounts, called sub-accounts, by organizations for collecting funds for individuals and sometimes also for other organizations. By providing the possibility of creating an individual account, an organization can collect funds from a tax designation and then make them available to a particular person or organization. Such a solution really contradicts the idea of public benefit, because organizations in fact support the private benefit of certain beneficiaries. Also, they switch the responsibility for gathering and spending the obtained amounts to beneficiaries. In Poland, organizations that collect money on sub-accounts get the highest amounts every year.⁷ In the case of collecting money on sub-accounts, usually the beneficiaries must seek support in their environment, also using traditional or social media to collect money. Some people deal with collecting money on sub-accounts better than others. This approach may help people who are most resourceful rather than those with the greatest need. Purposes most often financed from tax designations via sub-accounts are healthcare and rehabilitation.

Summary

Regulations introduced in Poland concerning financing public benefit from amounts declared by citizens who allocate their tax designation to a certain organization changed the attitude of Poles to activities for the benefit of the third sector. In the first years after the Act was introduced, when allocating money required the taxpayer to take certain actions, much less money was transferred to organizations' accounts, but at the same time it was allocated to organizations the taxpayers identified with to some extent. After amendment of the regulations, the activities have become large-scale and declaring funds often became accidental (research

⁶ See chapter 5.1. (pp 59-78), G. Piechota, *Organizacje pożytku publicznego – w drodze do społeczeństwa obywatelskiego? (Public benefit organizations - on the way to a civil society?)*, <http://sbc.org.pl/dlibra/docmetadata?id=30220&from=publication> (accessed on September 12, 2014).

⁷ In 2013 one organization that collects money on sub-accounts received a total of 25 percent of the whole amount allocated in the year.

shows that many Poles do not pay attention to choosing an organization to which they declare their 1 percent, and a few weeks after the declaration they do not remember the organization they have chosen).⁸

The highest budget allocation is given to organizations that in fact execute tasks that belong to the state, including healthcare, rehabilitation of the disabled, and social assistance. This happens mainly due to the possibility of creating sub-accounts for individuals. The legal possibility of creating sub-accounts and allocating tax designations to certain people, rarely organizations, additionally leads to a situation in which private benefit, not public benefit, is supported.

The main purpose of introducing the regulations, included in the justification of the draft Act,⁹ was to create a mechanism independent of state and local authority for financing NGOs that perform public benefit tasks. The regulations also ought to create incentives for citizens to support organizations that contribute to common benefit with their tax designation, at the same time shaping habits of civil engagement of individuals in other areas. In sum, the tax designation was intended to support the development of civil society, particularly in the local dimension. But the construction of legal regulations concerning public benefit activity and the established practice of executing them have not so far provided any indications that civil society in Poland has been strengthened.

The Act, however, significantly influenced the growing professionalism of NGOs that have public benefit status and apply for tax designations. Due to the social advertisements and other activities that are carried out every year in order to encourage people to declare their tax designations, the organizations have become an important subject of public life. Also, communications competence in organizations grew, as well as transparency of activities. These two elements are particularly important because, as research shows, Poles are interested in how funds from their tax designations are spent. Therefore, organizations are obliged to communicate their aims and expenditures.

It should also be added that such a construction of the existing regulations has indirectly led to the increase of the level of healthcare in Poland, which is financed from the state budget. Thanks to allocation of funds to organizations of public benefit that implement tasks concerning healthcare or rehabilitation of people who are ill or disabled, Polish NGOs are able to save lives and increase the quality of life of the ill and the disabled as well as their families.

To sum up, regulations concerning the tax designation in Poland have not fulfilled the basic goals that had been set: locally active public benefit organizations have not been supported. Social effects of the regulations have been obtained in other areas, which should lead to reflecting upon amending the regulations.

⁸ More in *Organizacje pożytku publicznego – w drodze do społeczeństwa obywatelskiego? (Public benefit organizations - on the way to a civil society?)*, e-book, Śląska Biblioteka Cyfrowa, Katowice 2011, http://www.sbc.org.pl/dlibra/docmetadata?id=30220&from=&dirids=1&ver_id=&lp=1&QI= (accessed on September 30, 2014).

⁹ See [http://orka.sejm.gov.pl/Druki4ka.nsf/\(\\$vAllByUnid\)/BCA6153FDEC2F609C1256B660044D29F/\\$file/263.pdf](http://orka.sejm.gov.pl/Druki4ka.nsf/($vAllByUnid)/BCA6153FDEC2F609C1256B660044D29F/$file/263.pdf) – (accessed on September 30, 2014).