

# CROSS BORDER GIVING IN NEW EU MEMBER STATES

BRUSSELS, SEPTEMBER 14, 2005

**Dragan Golubovic,**  
European Center for Not-for-Profit  
Law (ECNL), Budapest, Hungary



# CROSS BORDER GIVING IN NEW EU MEMBER STATES

## CASE 1:

**NON-RESIDENT DONOR GIVING TO RESIDENT NON-  
GOVERNMENTAL ORGANIZATIONS (NGOs).**

## CASE 2:

**RESIDENT DONOR GIVING TO NON-RESIDENT NGOs.**



## CROSS BORDER GIVING IN NEW EU MEMBER STATES

### *DISTINCTIVE FEATURES OF NGOs:*

- LEGAL ENTITY IN PRIVATE LAW.
- INDEPENDENT FROM THE GOVERNMENT STRUCTURE.
- ESTABLISHED FOR NOT-FOR-PROFIT PURPOSE.
- MEMBERSHIP OR NON-MEMBERSHIP ORGANIZATION  
(*associations, foundations, non-profit corporations, public benefit corporations, etc*).



## CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO

### *GENERAL RULE IN NEW MEMBER STATES:*

- FOR INCOME TAX PURPOSES, TAX TREATMENT OF GIVING (DONATION) BY A NON-RESIDENT DONOR (CORPORATION, INDIVIDUAL) IS BASICALLY THE SAME AS THE ONE OF RESIDENT DONOR.
- PRIMARY SOURCES: DOMESTIC LAWS AND TAX TREATIES.

## CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO

*ICNL SURVEY OF TAX LAWS AFFECTING NGOs IN  
CENTRAL AND EASTERN EUROPE (2003):*

- **NEARLY ALL COUNTRIES PERMIT CORPORATIONS TO CLAIM TAX BENEFITS FOR GIVING TO NGOs (Slovakia).**
- **BENEFITS USUALLY IN THE FORM OF DEDUCTIONS.**
- **BENEFITS LIMITED TO GIVING TO QUALIFYING NGOs (*charitable, cultural, educational, religious, scientific, or humanitarian organizations*).**

## CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO

*ICNL SURVEY OF TAX LAWS AFFECTING NGOs IN  
CENTRAL AND EASTERN EUROPE (2003):*

- **DEDUCTIONS FOR INDIVIDUALS GENERALLY ON THE SAME CONDITIONS AS FOR CORPORATIONS, EXCEPT THAT LIMITATIONS ON THE AMOUNT OF THE DEDUCTION MAY DIFFER.**
- **SOME COUNTRIES DO NOT PERMIT INDIVIDUALS TO CLAIM BENEFITS FOR GIVING TO NGOs (*Lithuania, Slovakia*).**

## **CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO**

### ***GIFT AND ESTATE TAX:***

- **PRIMARY SOURCE DOMESTIC LAWS:  
NO TAX TREATY OF NEW MEMBER  
STATES ADDRESSES GIFT AND  
ESTATE TAX EXEMPTIONS.**

## **CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO**

### ***GIFT AND ESTATE TAX (ICNL TAX SURVEY):***

- **ALL NGOs EXEMPT (*Hungary, Croatia,  
Romania*).**
- **PBOs EXEMPT (*Czech Republic, Poland,  
Slovakia*).**
- **TAX IMPOSED ON RECEPIENT (*Latvia*).**

## CASE 1: NON-RESIDENT DONOR GIVING TO RESIDENT NGO

### *SUMMARY:*

- TAX FRAMEWORK IN NEW MEMBER STATES GENERALLY FAVORABLE, PARTICULARLY FOR (NON-RESIDENT) CORPORATIONS.
- CRITICAL ISSUE: DEFINITION OF A QUALIFYING ORGANIZATION (RELATIVELY NARROW CONCEPT OF PUBLIC BENEFIT/CHARITY).

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

- *NO NEW MEMBER STATES PERMITS TAX BENEFITS FOR RESIDENT DONOR GIVING TO NON-RESIDENT NGO.*

- *LEGAL AVENUES TO EXPLORE:*



- ARE TAX BENEFITS PROVIDED FOR GIVING TO RESIDENT NGO OPERATING ABROAD?
- MAY RESIDENT NGO BE USED AS INTERMEDIARY FOR GIVING TO (INDEPENDENT) NON-RESIDENT NGO?
- ARE THERE OTHER LEGAL OPTIONS AVAILABLE?

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *GIVING (DONATION) TO RESIDENT NGO OPERATING ABROAD:*

- RESIDENT NGO HAS TO BE ESTABLISHED FOR QUALIFYING PB/CHARITY PURPOSES.
- NO STATUTORY RESTRICTIONS ON NGOs OPERATIONS ABROAD (ESTABLISHING SUBSIDIARY OR BRANCH OFFICE, CHARITABLE GRANT-MAKING).
- THERE HAS TO BE AN UNDERSTANDING BETWEEN A DONOR AND A RESIDENT NGO THAT DONATION WILL BE USED TO SUPPORT RESIDENT NGOs PROGRAMS ABROAD: TACIT AGREEMENT OR WRITTEN AGREEMENT.

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *GIVING (DONATION) TO RESIDENT NGO OPERATING ABROAD:*

- CONTROL DETERMINATION: RESIDENT NGO CANNOT BE USED AS A CONDUIT OF A SUBSIDIARY ABROAD.
- CORRESPONDING PB/CHARITY DETERMINATION MAY HAVE IMPACT ON THE TAX STATUS OF GRANTS OF PARENT/ SUBSIDIARY NGO, BUT WILL NOT NECESSARILY IMPACT ON DONOR/DONATION.
- RESIDENT NGO MAY BE SUBJECT TO REQUIREMENTS SIMILAR TO EQUIVALENCY OR EXPENDITURE DETERMINATION.

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *RESIDENT NGO AS INTERMEDIARY FOR GIVING TO INDEPENDENT NON-RESIDENT NGO:*

- RESIDENT NGO TO BE ESTABLISHED FOR QUALIFYING PB/CHARITY PURPOSES.
- NO STATUTORY RESTRICTIONS ON GRANT-MAKING ABROAD.
- THERE HAS TO BE AN UNDERSTANDING BETWEEN A DONOR AND A RESIDENT NGO THAT DONATION WILL BE USED TO SUPPORT RESIDENT NGO'S PROGRAMS ABROAD: TACIT AGREEMENT OR WRITTEN AGREEMENT.

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *RESIDENT NGO AS INTERMEDIARY FOR GIVING TO INDEPENDENT NON-RESIDENT NGO:*

- CONTROL DETERMINATION: LIKELY A STRICTER SCRUTINY THAN IN THE CASE OF PARENT/SUBSIDIARY RELATIONSHIP.
- CORRESPONDING PB/CHARITY DETERMINATION: MAY HAVE IMPACT ON THE TAX STATUS OF GRANTS OF PARENT/ SUBSIDIARY NGO, BUT WILL NOT NECESSARILY IMPACT ON DONOR/DONATION.
- RESIDENT NGO MAY BE SUBJECT TO REQUIREMENTS SIMILAR TO *EQUIVALENCY* OR *EXPENDITURE DETERMINATION*.

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *OTHER LEGAL OPTIONS?*

- “FRIENDS OF” OR “FEEDER” RESIDENT NGO LIKELY NOT TO QUALIFY AS PBO (CHARITY) IF IT IS ESTABLISHED WITH A PURPOSE TO SUPPORT FOREIGN NGO.
- TRANSNATIONAL GIVING AGREEMENTS PERMISSIBLE?

## CASE 2: RESIDENT DONOR GIVING TO NON-RESIDENT NGO

### *SUMMARY: AN ENABLING FRAMEWORK OR ISSUE SIMPLY NEGLECTED?*

- STILL NOT A HOT ISSUE IN NEW MEMBER STATES.
- IF THIS TYPE OF CROSS BORDER GIVING EMERGES IN GREATER FREQUENCY, THOSE COUNTRIES MAY CHOOSE TO REVISE THEIR RESPECTIVE LEGISLATION SO AS TO INTRODUCE GEOGRAPHIC CLAUSE AND OTHER RESTRICTIVE MEASURES.
- PRIMARY LEGAL CHALLENGE: IDENTIFYING ORGANIZATIONAL FORM FOR RECEIPTS TO ENSURE THAT FUNDS AND GOODS ARE USED FOR PB PURPOSES.

## Contact information:



Apaczai Csere Janos u.17, 1st floor,  
Budapest 1052,Hungary  
phone: + 361 318 6923  
fax: + 361 266 1479  
[www.icnl.org/ecnl](http://www.icnl.org/ecnl)

Email: [dragan@ecnl.org.hu](mailto:dragan@ecnl.org.hu)