

GUIDELINE
No. 19, dated 9.7.2019

**ON THE SUPERVISION OF NON-PROFIT ORGANISATIONS FOR THE
PURPOSE OF PREVENTING MONEY LAUNDERING AND TERRORISM
FINANCING”**

Pursuant to point 4 of Article 102 of the Constitution, paragraph 1, of Article 10 of Law No. 9920, dated 19.5.2008 “Për procedurat tatimore në Republikën e Shqipërisë”, as amended, as well as Article 41 of Law No. 8788, dated 17.5.2001 “Për organizatat jofitimprurëse”, as amended, the Minister of Finance and Economy,

INSTRUCTS:

Article 1
Purpose

This guideline regulates the procedures followed by the tax authorities, as the supervisory authority, for the inspection of the activity of non-profit organisations, in order to prevent the possibility of their use for money laundering or terrorism financing.

The guideline aims to unify and establish contemporary standards to ensure accuracy in the exchange of information between the General Directorate of Taxation (DPT) and the General Directorate for the Prevention of Money Laundering (DPPPP), for the purpose of identifying suspicious cases of money laundering or terrorism financing by non-profit organisations.

Article 2
Definitions

For the purposes of this guideline, the following terms have the following meanings:

“Non-profit organisations” refers to associations, foundations, and centres, whose activities are carried out independently and without state influence, in accordance with the definition given in Law No. 8788, dated 7.5.2001 “Për organizatat jofitimprurëse”, as amended.

“Civil Society Organisations (CSOs)” refers to civil society organisations, which may be non-profit organisations or other civil society entities, that are not registered as non-profit organisations, but carry out activities for the benefit and interest of the public, in accordance with the definition given in Law No. 119/2015 “Për krijimin dhe funksionimin e Këshillit Kombëtar për shoqërinë civile”.

“Money laundering” is the circulation and recycling of money that originates from criminal offences, as well as the changing, transmitting, transforming, and disguising of proceeds and property arising from criminal offences, which aim to conceal the illegal source of origin, according to the definition given in Article 287 of the Criminal Code of the Republic of Albania.

“Source of funding” is considered the income of the non-profit organisation according to the provisions of Article 35 of Law No. 8788, dated 7.5.2001 “Për organizatat jofitimprurëse”, as amended.

“Terrorism financing” has the same meaning as in Articles 230/a to 230/d of the Criminal Code.

“Central unit” has the same meaning as in Guideline No. 16, dated 16.2.2009 “Për parandalimin e pastrimit të parave dhe për të luftuar financimin e terrorizmit në sistemin e tatim-taksave”.

“Case reporting” is the completion and submission of the Suspicious Activity Report (SAR), the form in Annex II attached to Guideline No. 16, dated 16.2.2009 of the Minister of Finance “Për parandalimin e pastrimit të parave dhe për të luftuar financimin e terrorizmit në sistemin e tatim-taksave”.

“Economic activity” means activity organized by a non-profit organization, with the aim of generating income in exchange for providing services or goods, to enable the organization’s mission, provided that economic activity does not constitute the organization’s primary purpose, and is used for fulfilling the objectives set out in the statute and the founding act, in accordance with the definition given in Law No. 8788, dated 7.5.2001 “Për organizatat jofitimprurëse”, as amended.

Article 3

Registration and deregistration of NGOs

Non-profit organizations are registered with the tax administration, after they have first completed registration in court, in accordance with the relevant legislation.

Registration of non-profit organizations is carried out at the Regional Tax Directorate of jurisdiction, pursuant to the provisions of Law No. 9920, dated 19.5.2008, “Për procedurat tatimore në Republikën e Shqipërisë”, as amended, and Guideline No. 24, dated 2.9.2008 “Për procedurat tatimore në Republikën e Shqipërisë”, as amended.

Deregistration of non-profit organizations is carried out by the court pursuant to the provisions of Law No. 9920, dated 19.5.2008 “Për procedurat tatimore në Republikën e Shqipërisë”, as amended, and Guideline No. 24, dated 2.9.2008 “Për procedurat tatimore në Republikën e Shqipërisë”, as amended.

Article 4

Periodic reporting for NGOs

The Regional Tax Directorates of jurisdiction identify and report every six months to the Central Unit at the General Directorate of Taxes, regarding NGOs that operate without being registered, NGOs with passive status, and NGOs that do not submit tax declarations pursuant to the provisions of the applicable legislation.

The Central Unit at the General Directorate of Taxes sends to the General Directorate for the Prevention of Money Laundering, within 15 days from receiving the information, the identified cases, which then conducts a more in-depth analysis of the case.

If the General Directorate for the Prevention of Money Laundering discovers additional information related to the cases sent by the General Directorate of Taxes, it must forward it for further follow-up to the Central Unit at the General Directorate of Taxes, which, after processing and analyzing the case, refers it through administrative or criminal proceedings.

Article 5

Retention and administration of documentation

The Regional Tax Directorates of jurisdiction administer, in the files of registered NGOs, all documentation of establishment, registration, changes post-registration, as well as the tax documentation as provided for by the current tax legislation and Law No. 8788, dated 7.5.2001 “Për organizatat jofitimprurëse”, as amended.

The files of NGOs are kept in a separate section of the archive of the Regional Tax Directorate.

The detailed rules for the retention and administration of NGO data by the Regional Tax Directorates are determined by regulation, which shall be approved within 3 months from the entry into force of this guideline.

Article 6

On-site inspection of NGOs

The verification and control structures of the tax administration, according to territorial competence and jurisdiction, identify NGOs that operate in their territory and periodically check

registration with the tax authority, updating of registration data, declaration of employees, as well as the development of economic activity in accordance with the legal requirements in force.

Article 7

Inspection of the financial statements of NGOs

The Regional Tax Directorates (RTDs) of jurisdiction assign specialized and trained employees for the review of the financial statements of NGOs, depending on the number of NGOs they administer, who specifically analyze, but are not limited to:

- a) the sources of financing of the NGO;
- b) the economic activity of the NGO, if it carries out economic activity;
- c) the use of funds and the manner of their circulation;
- d) the assets of the NGO and the source of their creation.

The Regional Tax Directorates of jurisdiction inform the "Central Unit" at the General Directorate of Taxes regarding NGOs that have not submitted financial statements, and also about the administrative measures undertaken against them.

For cases of financing that present a risk based on the typologies in the appendix attached to Guideline no. 16, dated 16.2.2009 of the Minister of Finance "Për parandalimin e pastrimit të parave dhe për të luftuar financimin e terrorizmit në sistemin e tatim-taksave" and on the indicators in Appendix 1 attached to this guideline, they request the control structures in the RTD to conduct in-depth operational inspection.

Article 8

Operational inspection of NGOs

The tax authorities of jurisdiction, the structures of the Directorate of Tax Inspection, carry out in-depth operational inspections of NGOs, according to the definition of the last paragraph of Article 7 of this guideline. During the operational inspection, the following must be taken into consideration, but not exclusively:

1. Identification of sources of funding, agreements for obtained grants, agreements for donations and gifts, documentation of membership fees;
2. Verification of whether the NGO conducts economic activity and whether it has income from this activity;
3. Verification of the declaration to the tax authority of the bank account number where donations are transferred;
4. Verification of whether the funds of non-profit organizations are held in bank accounts and whether the transfer or financial transactions related to these funds are carried out through the banking system, in accordance with the provisions of the applicable legislation;
5. Execution of duties by the highest decision-making body, the board of directors or the general meeting of members, according to Article 20 of Law No. 8788, dated 7.5.2001 "Për organizatat jofitimprurëse" regarding:
 - a) approval of the financial statements submitted by the executive body;
 - b) supervision of the non-profit organization, with the aim of preventing the use of the organization's resources for terrorist purposes, in accordance with the applicable legislation on the prevention of money laundering and terrorist financing;
 - c) agreements for grants, donations, and contributions;
 - ç) verification of whether the collected funds have been used for the declared purpose.
6. If non-profit organizations that carry out economic activities and generate profits use them for the fulfillment of the objectives defined in the statute and in the act of establishment.

Article 9

Reporting of suspicious cases

The Regional Tax Directorates of jurisdiction, if in the course of their work in accordance with the procedures defined in this guideline, identify cases of financing that present a risk according to the typology of annex 1 attached to guideline no. 16, dated 16.2.2009 of the Minister of Finance “Për parandalimin e pastrimit të parave dhe për të luftuar financimin e terrorizmit në sistemin e tatim-taksave” and the indicators of annex 1 attached to this guideline, within 15 days shall report the identified suspicious cases of the use of non-profit organizations for money laundering or terrorist financing to the Central Unit in the GDT, according to the provisions of the aforementioned guideline.

The Central Unit in the GDT, after evaluating the case, forwards it to the GDPML in accordance with the provisions of Article 18 of Law No. 9917, dated 19.5.2008 “Për parandalimin e pastrimit të parave dhe financimin e terrorizimit”, as amended.

Article 10

Interinstitutional cooperation

The General Directorate of Taxes cooperates with the General Directorate for the Prevention of Money Laundering:

1. Once every six months, they exchange data regarding:
 - a) findings from tax inspections for NGOs;
 - b) data on NGOs that carry out suspicious transactions;
 - c) identification of risks in the field of taxation and those of AML/CFT.
2. Once a year they update suspicious typologies for NGOs as follows:
 - a) from joint findings and investigations;
 - b) based on violations of risk indicators;
 - c) from joint inspections;
 - c) from various national/international manuals/regulations, which are approved by specialised institutions in the field of AML/CFT.
3. They identify NGOs at risk based on ongoing exchanges of information between them. This material is confidential and is kept for work purposes by the respective Directorates.
4. They issue a joint regulation for the identification and detailing of the points of this guideline and update it whenever necessary. This regulation is internal and serves only to orient the work of the respective Directorates.
5. They officially publish annual reports on the issues identified in NGOs and provide general statistics on cases handled, measures taken, findings, etc. These publications have an informative effect for the public, but never disclose confidential information about suspicious NGOs.

Article 11

Confidentiality

The information provided by the tax authority as a supervisory authority is confidential in accordance with the provisions of Law No. 9920, dated 19.5.2008 “Për procedurat tatimore në Republikën e Shqipërisë”, as amended.

Every employee of the tax administration and DPPPP who has access to personal data processed within the framework of this guideline is obligated to sign the confidentiality statement, which is administered by the respective Institutions in their capacity as employer.

The obligation to maintain confidentiality continues even after officials or employees are no longer employed by the tax authority and DPPPP.

The information exchanged between the two institutions is carried out on the basis of mutual confidentiality.

Article 12

Protection of personal data

The personal data of individuals involved in the supervisory process by the tax authorities and DPPP, in order to avoid the possibility of their use for money laundering or terrorist financing, are processed only for the purpose of Law No. 60/2016 “Për sinjalizimin dhe mbrojtjen e sinjalizuesve”. In any case, the processing of personal data is carried out according to the principles and procedures of the applicable legislation on the protection of personal data.

In cases where, during the implementation of this law, non-compliance with the personal data protection legislation is found, the issue is referred to the Commissioner for the Right to Information and Protection of Personal Data.

Article 13

Indicators of suspicious activity for NGOs

Apart from cases of financing that present risk based on the typologies in annex 1 attached to Guideline No. 16, dated 16.2.2009 of the Minister of Finance “Për parandalimin e pastrimit të parave dhe për të luftuar financimin e terrorizmit në sistemin e tatim-taksave”, annex 1 attached to this guideline identifies the terrorist financing risk indicators related to NGOs.

In every operational inspection carried out by the tax administration, special attention will be given to these indicators and any suspected case will be reported according to the provisions of Article 9 of this guideline to the DPPP.

Article 14

Final provisions

With the entry into force of this guideline, Guideline No. 22, dated 19.11.2014 of the Minister of Finance, “Për mbikëqyrjen e OJF-ve, nga organet tatimore, në funksion të parandalimit të pastrimit të parave dhe financimit të terrorizmit”, is repealed.

This guideline enters into force after publication in the Official Gazette.

MINISTER OF FINANCE AND ECONOMY
Anila Denaj

ANNEX 1

RISK INDICATORS OF TERRORISM FINANCING RELATED TO THE NGO SECTOR:

1. The use of monetary couriers for transferring NGO funds to areas with known terrorist activity;
2. Transactions of Fragmented NGO funds, to avoid reporting by financial entities;
3. Cases where requests for the transfer of NGO funds are accompanied by vague justifications;
4. NGOs obtain financing from fictitious organizations or companies;
5. NGO representatives do not declare monetary values, negotiable instruments, or precious stones/metals at the border crossing points; negotiable or precious stones/metals at the border crossing points;
6. NGO bank accounts are used by entities subject to sanctions;
7. NGO funds are transferred to entities believed to be engaged in terrorist activities;
8. NGOs receive funds from entities believed to support terrorist activities;
9. NGO funds are co-mingled with personal or business-source funds;
10. Concealment of bank accounts related to certain programs or activities;
11. NGO funds are transferred to entities not related to the declared programs or activities;
12. NGO premises are frequented by individuals believed to support terrorist activities;
13. NGOs procure dual-use goods;

14. The resources of an NGO provide or transfer funds from/to an entity known for involvement in terrorist activities or supporting them;
15. NGOs share their property with an organization believed to support terrorist activity;
16. NGOs that, through their activity, provide support to individuals or organizations whose identity corresponds to those of entities listed by the United Nations Security Council; listed by the United Nations Security Council;
17. Existence of reliable information suggesting that an NGO or its representatives are linked with third parties that support or are engaged in terrorist activities;
18. Entities operating in areas with known terrorist activities deposit funds into the bank accounts of an NGO, its management, or its employees;
19. NGOs transfer resources or carry out activities in an area where terrorist entities are known to have a substantial presence;
20. NGO data is kept in an area with a known presence of terrorist organizations;
21. Representatives of NGOs frequently travel to areas where terrorist entities are known to have a substantial presence;
22. NGOs have activities, programs, or partners that are pre-reported;
23. NGOs use an unusual financial network to carry out their operations;
24. NGOs avoid mandatory reporting requirements;
25. Explanations of NGO programs and activities to supervisory bodies or regulatory, are unclear;
26. Third parties are used to open NGO bank accounts or to carry out transactions on their behalf;
27. NGO expenditures are not consistent with its programs and activities;
28. The NGO is unable to provide data on its income and the use of its resources;
29. Public data on NGO involvement in activities related to terrorism;
30. NGOs merge with another organization believed to support terrorist activities;
31. Humanitarian assistance from NGOs aims to support individuals directly linked to terrorist entities;
32. The leaders of an NGO are or have been leaders or employees of other organizations believed to support terrorist activity;
33. NGOs suffer from an internal conflict, where one faction is known to be sympathetic to or to actively support terrorist entities;
34. The NGO has inconsistencies in its reporting of financial statements and other mandatory reports;
35. NGOs have frequent changes in their leadership/decision-making structure;
36. NGOs or their representatives use fraudulent documents;
37. NGOs support terrorism or terrorist entities through publications or preaching by their representatives;
38. The leaders or employees of an NGO engage in activities that support the recruitment of individuals for international conflict zones.