

## EFC COUNTRY PROFILE JANUARY 2011: HUNGARY

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### I. Legal framework for foundations

- **Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?**

A foundation is a legal person.

Private persons, legal persons, and unincorporated business associations (hereinafter referred to collectively as 'founders') shall be entitled to form a foundation in a charter in order to serve a long-term public interest.

- **What purposes can foundations pursue?**

A foundation needs to serve a long-term public interest.

“Long-term” generally means an activity which is durable (continuous provision of a service).

“Public interest” means an activity which serves the interest of society or other kind of community (this does not depend on the number of beneficiaries).

- **What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

A foundation is deemed established once it has been registered by the court. A foundation is registered by the county court of where the foundation's registered office is situated or by the Metropolitan Court of Budapest (hereinafter referred to collectively as 'the court'). The court shall adopt its decisions concerning registrations in non-litigious proceedings. The court shall also send a copy of its decision on registration to the public prosecutor's office.

The foundation may commence operations on the operative date of the resolution on its registration.

The founder sets up the board of trustees (board), opens the bank account, provides the capital, and submits the undermentioned documents of the foundation to the county court with jurisdiction over the locality where the foundation's registered office is situated or to the Metropolitan Court of Budapest.

The application for registration shall be submitted to the court by the founder with the undermentioned documents:

- Charter
- Statement of the representative
- Certificate of the allocated sufficient assets

- Registered seat certificate

The charter of a foundation shall contain the fund's:

- Name
- Objective
- Assets and the manner in which they are to be utilised, and
- Registered address

If a foundation is a public benefit organisation (PBO):

For registration under public benefit status the organisation's charter shall include:

- The list of public benefit activities conducted by the organisation and, if the organisation has members, a statement that it does not preclude parties other than its members from benefiting from its public benefit services
- A clause stating that the organisation conducts entrepreneurial activities solely in the interest of and without jeopardising its public benefit objectives
- A clause stating that the organisation does not distribute its business profits, but rather utilizes such profits for the activities defined in its charter
- A clause stating that the organisation is not involved in direct political activities, furthermore, that it is independent from and does not provide financial aid to political parties

For registration under priority public benefit status, the charter shall include:

- A clause stating that the organisation performs public duties which, by virtue of law or in accordance with the provisions of other legal regulations based on the authorisation granted by law, are to be provided by a state agency or by a local government
- A statement that the organisation publishes the principle data and information on its activities set forth in its charter in a media publication with local or national circulation

If the supreme body of the PBO is made up of several members (persons), the charter shall lay down the rules:

- On the intervals of meetings of the executive body, to be held at least once a year, on the procedure of calling such meetings and notification of the agenda, on public access and quorum of the meetings and the procedure of adopting resolutions
- On cases of conflict of interest of the PBO's executive officers,
- On the establishment, jurisdiction and operation of a separate body, other than the executive body, if such is required to be established or appointed to supervise the operations and financial affairs of the PBO (hereinafter referred to as "supervisory body")
- On the manner of approval of the PBO's annual report

The charter or, by virtue of authorisation granted therein, the internal regulations of a PBO shall prescribe:

- To have records maintained to identify the contents, date and scope of decisions passed by the executive body, and the numerical ratio of those (including names where possible) in support of or against such decisions
- The manner of announcing or publishing the decisions of the executive body to those concerned

- The order of review of documents related to the operation of the PBO
  - The operation of the PBO, the method of using the services and the publication of its annual report
- **Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )**

See above (court).

- **Do foundations have to register? If yes, in what register?**

See above (court).

If foundations are registered, what information is kept at the register?

The Court of Registration keeps the following data:

- Number of registration
- Number of registration decision of the Registration Court, date of legally binding decision of Court of Registration in connection with the foundation's registration
- Name of foundation
- Registered seat
- Representative of foundation
- Residence of representative
- Purpose of foundation
- Type of foundation
- Procedure related to use of foundation assets
- Open foundation / closed foundation
- Board of trustees, names and residences of members of the board of trustees,
- Signature date of Charter
- Amendment of registered seat, termination of foundation

The Court of Registration can also keep the following data:

- In case of amendment of the Charter
  - i. Date of amendment
  - ii. Date of legally binding decision of Court of Registration in connection with amendment of Charter
- In the case that a person is nominated to exercise the rights of the founder
  - i. Personal data (name, residence) of person who has right to exercise the rights of founder
  - ii. Condition of nomination
  - iii. Date of nomination
- In cases where an organisation has PBO legal status
  - i. Date to get PBO legal status
  - ii. Scope of PBO legal status
  - iii. Modification, or removal as PBO
- In the case that the founder confers legal personality upon an organisational unit

- i. Name of organisational unit
- ii. Registered seat of organisational unit
- iii. Representative and administrative body of organisational unit

If foundations are registered, is the register publicly available?

Yes, the register is publicly available, but it is not yet online.

Anyone is able to check the registration data via the competent Registration Court.

➤ **Is a minimum capital required?**

The foundation's endowment shall be at least 100,000 - 250,000 Hungarian forints (HUF) (approximately €400 -1000). No minimum amount is prescribed by law. For this reason, the endowment must be sufficient for the activity of the foundation described in the charter of the foundation. It is up to the competent court to accept or reject the amount of the endowment indicated in the foundation's deed. If the court rejects the indicated amount, the founders of the foundation are obliged to increase the endowment.

➤ **What governance requirements are set out in the law?**

Is it mandatory to have a supervisory board?

No, but if a foundation is a BPO:

If the annual revenues of a PBO exceed five million HUF, a supervisory body shall be created, separately from the executive body, even if such obligation does not exist by virtue of some other legal regulation.

The supervisory body shall oversee the operations and financial management of the PBO. In this function, it may request reports from the senior officers and information from the employees of the organisation; furthermore it may review and audit the PBO's books and records.

Members of the supervisory body may participate with the right of consultation in the meetings of PBO's executive body, or shall do so if expressly stipulated by legal regulation or in the charter.

The supervisory body shall notify, and request a meeting of the executive body with the power to act in the event of finding:

- Any legal violation in the course of operation of the organisation or any other event (omission) otherwise causing severe injury to the interests of the organisation, the termination or abatement of which requires the decision of the executive body with the power to act
- Any fact substantiating some degree of liability of a senior officer

The executive body with the power to act shall be convened at the initiative of the supervisory body, within thirty days of the filing of such. In the event of failure to convene such meeting within the aforementioned deadline, convening such meeting shall fall within the jurisdiction of the supervisory body.

If the body with the power to act fails to implement the measures necessary to restore legal operation, the supervisory body shall be required to notify the agency exercising legal supervision without delay.

What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

Any adult natural person can be a member of the board.

A founder shall be entitled to designate a board in the charter or create a separate organisation for such purpose.

The founder may install a clause in the charter to outline conditions related to the term of office (e.g. fix a period of time, or make membership of the board subject to one or more specific conditions). This provision, however, shall become effective only when the new board or the new member is registered by the court, even after the fixed period has expired or the aforementioned condition has occurred.

The court shall order the appointment of a board if the founder has failed to provide for one or if the board declined to undertake to perform this task.

There is no a minimum/maximum number of board members specified.

A board member is entitled to resign from his membership at any time.

What are the duties and what are the rights of board members, as specified by national legislation?

They represent the foundation.

What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

A founder may not withdraw a foundation after registration.

A founder shall be entitled, in justified cases, to amend the charter, without causing any injury to the foundation's name, purpose, or assets. When implementing such amendments the provisions on the registration of a foundation shall be duly observed.

A founder shall be entitled to designate a board in the charter or create a separate organisation for such purpose.

If the activities of the board jeopardise a foundation's objectives, the founder shall be entitled to dismiss the board and appoint another board to replace it.

The founder may install a clause in the charter to designate a person to exercise his rights provided by this Act in his name and on his behalf under specific circumstances, such as his death or dissolution. The said person shall be subject to the same provisions as the founder. This clause may not be withdrawn after the foundation is registered.

What are the rights of beneficiaries (e.g. right of information)?

If the foundation is PBO:

- Right of information (annual report)
- Taking part on the meetings (board)

What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

A board in which the founder is entitled, directly or indirectly, to exercise any controlling influence regarding the utilisation of the foundation's assets may not be appointed or established.

There is no legal definition of a conflict of interest.

If a foundation is a PBO:

A person may not take part in an executive body resolution, if, by virtue of such resolution, he or a close relative or spouse (hereinafter jointly referred to as "relative") of his:

- Is released from obligations or liabilities, or
- Receives any other benefit, or is otherwise interested in the legal transaction. A non-pecuniary service provided by a PBO as a designated provision which may be used by anyone without restriction, or a designated provision provided, by virtue of membership, by a non-governmental organisation to its member in accordance with its charter shall not be construed as a benefit.
- Is in the employment of the PBO perform work other than his official duties or is in any other work-related legal relationship, unless otherwise provided for by law
- Benefits from a designated provision of the PBO not including a non-pecuniary service provided to and used by anyone without restriction and a designated provision provided, by virtue of membership, by a non-governmental organisation to its member in accordance with its charter
- Is a relative of any of the persons described in the points above

Can staff (director and/or officers) participate in decision making? How and to what extent?

Yes, the staff can participate in decision making. The board decide how and what extent.

➤ **Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation?**

The board shall be the official representative of the foundation.

The founder, if establishing a separate organisation for the management of the foundation, shall prescribe the composition thereof in the charter and designate the person authorised to represent the foundation. If more than one person is authorised to represent the foundation, the founder shall also prescribe the manner and extent to which the right of representation

can be exercised. Any limitation on the right of representation shall have no effect *vis-a-vis bona fide* third persons.

Do the director and officers have powers of representation?

The founder may install a clause in the charter to entitle the managing body (organisation) to authorise an employee of the foundation to represent the foundation specifying the manner and extent to which the right of representation can be exercised.

➤ **Liability of the foundation and its organs**

What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

The foundation shall be liable for any damages caused to a third person by the board or a member thereof in the course of fulfilling its/his responsibilities. A member who causes damage to the foundation shall be liable for the damage caused in that capacity in accordance with the general rules of civil law.

There is no difference between voluntary (unpaid) and paid board members.

Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

There is no “business judgment rule” in Hungarian legislation.

What is the liability the directors and officers?

The foundation shall be liable for any damages caused to a third person by the director or the officers thereof in the course of fulfilling its/his responsibilities. A director or the officers who causes damage to the foundation shall be liable for the damage caused in that capacity in accordance with the general rules of civil law.

Can the founder modify the standard of diligence for board members in the foundation’s statutes?

No

Can board members be held **civilly** and/or **criminally** liable in the following cases?

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation’s statutes.		X			
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).		X			
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					X

The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.	X				
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.	X				

➤ **Are economic activities allowed (related/unrelated)?**

Yes, economic activities are allowed (related and unrelated too), but:

- A foundation may not be formed for the principal purpose of performing economic activities
- It may conduct such activities only in the interest of pursuing its primary public interest objective

➤ **Are there any rules/limitations regarding foundations' asset management?**

No

➤ **Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Yes

➤ **What are the requirements for an amendment of statutes/amendment of foundations purpose?**

A founder shall be entitled, in justified cases, to amend the charter, without causing any injury to the foundation's name, purpose, or assets. When implementing such amendments the provisions on the registration of a foundation shall be duly observed.

➤ **What are requirements with regard to reporting, accountability, auditing?**

Reporting requirements: Do annual reports and/or accounts of foundations need to be made publicly available?

No. If a foundation is a PBO:

PBO shall publish their report on public benefit activities on their official website by 30 June following the year to which it pertains, or in some other forum that is accessible by the general public.

What type(s) of report must be submitted (annual report including details of finances and activities, public benefit report, tax report/tax return, other reports e.g. on 1% schemes)?

There is no obligation to submit reports. If a foundation is a PBO:

PBO shall prepare a report on public benefit activities simultaneously upon approval of the annual report.

Who checks (supervisory/tax authorities)?

If a foundation is a PBO:

Approval of the report on public benefit activities shall fall within the exclusive jurisdiction of the supreme body.

Where is the required information publicised?

If a foundation is a PBO:

PBO shall publish their report on public benefit activities on their official website by 30 June following the year to which it pertains, or in some other forum that is accessible by the general public.

Reports on public benefit activities shall contain the following:

- The accounting report
- The utilisation of budgetary subsidies
- A statement on the utilisation of property assets
- A statement on designated provisions
- The amounts of subsidies received from budgetary organs, off-budget state funds, local governments or associations of community local governments, or from agencies of such
- The value or amount of any remuneration extended to the senior officers of the PBO
- A brief description of the public benefit activities

What are the legal requirements concerning external audit? Is external audit required by law for all foundations?

There is an obligation to use external audit if the enterprise income of the foundation has been on average more than 100 Million HUF (approx. €365,000) in the 2 business years prior to the current business year.

If the foundation is a PBO:

There is an obligation to use external audit if:

- The enterprise income of the foundation has been on average more than 100 Million HUF (approx. €365,000) in the 2 business years prior to the current business year or
- They employ more than 50 people

By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

The audit should be undertaken by a person or organisation who is a member of the Hungarian Auditor Chamber.

➤ **Supervision (which authority – what measures / sanctions?)**

Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?

The public prosecutor's office has judicial supervisory competence over foundations.

If a foundation is a PBO:

Public benefit organisations shall be supervised by the state tax authority for tax purposes, by the State Audit Office for auditing the appropriation of budgetary subsidies, by the internal control body described in specific other legislation for monitoring the appropriation of financial aid received from the central government or from local authorities, or from international sources, and, in accordance with the applicable provisions, by the public prosecutor's office - with regard to public benefit operations - for judicial purposes.

What is the extent of the supervision? Does the body review reports and make inquiries? Are public benefit organisations subject to inspection?

The public prosecutor's office:

- Shall initiate to release, modify or annul some rules of the statute
- Shall to inspect into decisions, provisions, and other documents
- Shall to launch inquiry (shall to enter in office spaces)
- Shall to request information

The public prosecutor shall be entitled to file for court action if the legitimacy of a foundation's activities cannot be otherwise ensured. The court shall order the foundation's management to restore the lawful operation of the foundation by a specific deadline. The court shall terminate the foundation if the management fails to comply by the aforementioned deadline.

Is approval from the authority required for certain decisions of the Board of Directors?

No

Is it mandatory to have a state supervisory official on the board?

Yes

What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public benefit status?

➤ **When and how does a foundation dissolve?**

A foundation is deemed terminated upon removal from the register. The relevant provisions concerning the registration of a foundation shall be duly applied to removal.

The court shall remove a foundation from the register if:

- The objective defined in the charter has been realised
- The period of time defined in the charter has elapsed

- The condition defined in the charter has occurred

A foundation shall also be removed from the register if the court orders it to be terminated or merged with another foundation.

On the basis of a petition filed by the public prosecutor's office, the court shall order the termination of a foundation if it has become impossible to achieve its objective, or if the foundation's registration is to be refused owing to a change in the law. If requested by the founder, the court shall order the termination of a foundation if it has become impossible to achieve its objective.

The court may terminate a foundation if any of the activities of the managing body (organisation) jeopardise the objective of the foundation and the founder, despite a court order, fails to dismiss the managing body and appoint another body (organisation) to replace it.

Unless otherwise stipulated in the charter, the assets of a terminated foundation shall be allocated by the court for the support of another foundation with a similar purpose.

Upon the joint request of the founders, the court shall, for the purpose of establishing a new foundation or merging with another foundation, be entitled to order the merger of the foundations, if such merger is in consonance with realizing the objectives of the foundations concerned. For the court proceeding, the new or duly amended charter, containing stipulations for the succession of the terminated foundation, shall also be attached to the application for the merger of foundations, while the provisions pertaining to the registration of foundations shall be applied with regard to other issues.

➤ **Under what conditions does the civil law in your country recognise a foreign foundation?**

Foreign foundations can conduct activities in Hungary, but there are no special rules applicable to them.

➤ **Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?**

Foundations can conduct activities abroad without limitations.

## **II. Tax treatment of the foundation**

### **What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?)**

Foundations can be classified as public benefit organisation or a prominently public benefit organisation (hereinafter referred to as: PBO and PPBO) and tax benefits vary according to the status.

#### Corporate Income Tax (Act No 81 of 1996)

The foundation not classified as a PBO or PPBO) is not obliged to pay corporate income tax provided that its income deriving from entrepreneurial activity does not exceed a maximum of 10 million HUF (approx. €36,500) and 10% of its total annual income (see point a) of subsection 1 of Article 20)

In case the foundation is classified as a PBO the benefited (exempt) entrepreneurial income of the organisation is 10% ratio of its total annual income up to a maximum of 20 million HUF (approx. €73,000). If the foundation is classified as a PPBO, the benefited (exempt) value is 15% of the total annual income of the organisation (see subsection 7 of Article 9).

The following activities are not declared as entrepreneurial activities of the foundation (see Chapter A) of Annex 6 of the Act):

- Public benefit activity (in case of a PBO, PPBO) and purpose related activity (in case of a single foundation not classified as PBO or PPBO), including donations granted for supporting these activities
- Counter value gained against the sale of intangible and tangible assets and reserves serving exclusively public benefit activities (in case of a PBO, PPBO) or purpose related activities (in case of a single foundation not classified as PBO or PPBO)
- The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation.

#### VAT (Act No 127 of 2007)

Public welfare activities listed by the VAT Act are VAT exempt if pursued by public welfare service provider organisations. The public welfare activities referred to by the VAT Act are as follows (only exempt if they are provided by public welfare service provider organisations): Social care service, children and youth care service, infants' nursery service, general and higher education service, services connected to sports and training provided to individuals, sale of peasant art products. Single foundations and foundations classified as PBOs or PPBOs are declared public welfare service provider organisations in connection with their statutory activities by virtue of the VAT Act (see Article 85 of the VAT Act).

The sale of the product is VAT exempt in case this specific product was used exclusively for the provision of public welfare activities formerly (see Article 86 of the VAT Act)

Duties (court, administrative and property acquisition duties, Act No 93 of 1990):

The foundation is entitled for taxpayer exemption only if it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection with which the taxpayer exempt status is claimed.

In case of a court or administrative procedure, the foundation is obliged to make the corresponding statement at the time of the initiation of the process. In case of an acquisition of a duty obliged property, the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority *ex officio*.

In case the aforementioned statement is passed preceding 1 of June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (for points a-c. see Article 5 of the Act).

Donations granted for foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty (see point a) of subsection 1 of Article 17 of the Act).

The court registration procedure of foundations is exempt from the procedure duties (see point e) of subsection 1 of Article 57 of the Act).

➤ **What are reporting/proof requirements to claim tax exemptions?**

Duties:

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process, in case of an acquisition of a duty obliged property the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority *ex officio*.

Local Tax:

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act, foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

➤ **Is specific reporting required for the use of state funds?**

If a foundation is a PBO the annual public benefit report outlines the utilisation of budgetary subsidies.

➤ **Is there an obligation to report on donors and beneficiaries?**

No. If a foundation is a PBO:

The PBO shall prepare a public benefit annual report, which contains the accounting report too.

➤ **Are there specific accounting rules for foundations?**

Government Decree No 224 of 2000

The government decree mentioned above includes specific regulations regarding the bookkeeping and accounting requirements applicable for normal foundations and those which possess public benefit or prominently public benefit status. The summary of the most relevant regulations is as follows: The government decree includes the specific provisions applicable for various organisations considered by the Act on Accounting as “other type of organisations” including to foundations. A foundation with public benefit status is classified as a “public benefit other type of organisation).

The format of the report of the organisation is determined by the actual activity, the cumulated annual income and the method of bookkeeping.

In case of:

- Single bookkeeping method: The report can be a simplified report (simplified balance sheet and appropriation of profit) or simplified public benefit report (simplified balance sheet and appropriation of profit, with regard to the public benefit status, and informative data)
- Dual bookkeeping method: A simplified annual report (balance sheet and profit and loss statement) or simplified public benefit annual report ((balance sheet and profit and loss statement, and informative data) can be produced
- According to its own selection, made according to the regulations of the Act on Accounting, the organisation can produce an annual report or simplified annual report. If the organisation performs entrepreneurial activity alongside its purpose related activities, it is obliged to indicate the revenues deriving from and expenditures on the entrepreneurial and purpose related activities separately from the earnings before taxes value of the entrepreneurial activity.

An organisation which applies the single bookkeeping method, which pursues only purpose related activity or whose income deriving from its total (entrepreneurial and purpose related) activity does not exceed the annual limit of 50 million HUF (approx. €182,500) in two consecutive calendar years is obliged to produce simplified report. Similar regulations apply to PBOs applying single bookkeeping method regarding the adoption of public benefit simplified report.

An organisation applying a dual bookkeeping method is obliged to produce a simplified annual report, if its income deriving from its total (entrepreneurial and purpose related) activity exceeds the annual limit of 50 million HUF (approx. €182,500) in each of two consecutive calendar years. Similar regulations apply to PBOs applying a dual bookkeeping method regarding the adoption of public benefit simplified annual report.

Organisations preparing simplified reports or public benefit are obliged to apply the single bookkeeping method (these organisation have the option to switch the bookkeeping method to the dual way from 1 of January of each business year, but those organisations whose total annual income has exceeded 50 million HUF (approx. €182,500)in at least two consecutive years are obliged by law to change to the dual system). Application of the dual bookkeeping

method is mandatory for organisations preparing simplified annual reports or public benefit simplified annual reports. Organisations preparing a simplified annual report or public benefit simplified annual report are obliged to apply the dual method.

The decree includes provisions regarding:

- The requirements for the separation of incomes deriving from and expenditures on the purpose related and entrepreneurial activities
- Procedural rules applicable during the change of the bookkeeping method
- The items of the balance sheet
- The content of the appropriation of profit and the profit and loss statement
- Audit requirements
- Disclosure requirements of the reports

➤ **Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.**

Public benefit activity means the following designated activities as set forth in the organisation's charter for the benefit of society and for the common interests of individuals:

- Health preservation, disease prevention, therapeutic and medical rehabilitation activities
- Social activities, family counseling, care for the elderly
- Scientific activities, research
- School instruction and education, personal ability development, dissemination of knowledge
- Cultural activities
- Preservation of cultural heritage
- Preservation of historical monuments
- Nature preservation, animal protection
- Environmental protection
- 1 Children and juvenile protection, children and juvenile advocate services
- Promotion of equal opportunity within society for underprivileged groups
- Protection of human and civil rights
- Activities in connection with ethnic minorities living in Hungary and with Hungarian nationals living outside of Hungary
- Sports, not including sports activities involving professionals and those performed under contract within the framework of a civil law relationship
- Protection of public order and traffic safety, voluntary fire fighting, rescue, and disaster preparedness and response activities
- Consumer protection
- Rehabilitative employment
- Promotion of employment and training for underprivileged groups in the labor market, including placement by the hiring-out of workers, and associated services
- Promotion of the country's Euro-Atlantic integration
- Services provided to and available solely for non-profit organizations
- Activities associated with flood and water damage control
- Activities associated with the construction, maintenance and operation of roads, bridges and tunnels
- Crime prevention and protection of victims
- The supply of electronic public services as basic services

- **Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.**

The same (see above).

- **Support of “the public at large”**

Do the activities of a tax-exempt foundation generally have to benefit “the public at large”?

No, because the legal status of the tax-exempt public benefit foundation depends on the purpose of the foundation, not on the number of persons supported.

If yes, can a tax-exempt foundation support a small number of disadvantaged/underprivileged individuals?

Examples: Do the following purposes promote the public at large?

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants	X				
For benefit of the inhabitants of a village with 10,000 inhabitants	X				
For benefit of the employees of a company	X				
For benefit of the members of a family	X				
For benefit of the students of a university	X				
Award for the best student of a university	X				

- **Non-Distribution Constraint**

Does a tax-exempt foundation generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc?

Yes

What happens with the foundation’s assets in case of dissolution?

Unless otherwise stipulated in the charter, the assets of a terminated foundation shall be allocated by the Court of Registration for the support of another foundation with a similar purpose.

➤ **“Altruistic” Element**

Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Remuneration is allowed and there are no limits. The sum of the remuneration depends on the decision of the board of trustees.

Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

Only if it does not bring a financial advantage to the donor/founder.

Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined?

No

➤ **Hybrid Structures (elements of private benefit in public benefit foundations)**

Does the **civil law** of your country accept the following provisions/activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					X
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					X
A foundation distributes a (small) part of its income to the founder or his family.					X

Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants.					X
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is					X

subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					
A foundation distributes a (small) part of its income to the founder or his family.					X

Are there any other examples from your country (in **civil law** and/or **tax law**) regarding such “hybrid structures” (e.g. law provisions, court decisions, etc.)?

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Yes

Are they allowed to be set up for a limited period of time only?

Yes

Does the **civil law** and/or the **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year?

No

Does the **civil law** and/or the **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a “payout rule”?

No

Example: Does the **civil law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.	X				

Example: Does the **tax law** of your country accept the following activities of a public benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.	X				

Are there any examples or cases from your country (in **civil law** and/or **tax law**) regarding the question of “timely disbursement” (e.g. law provisions, court decisions, etc.)?

➤ **Does activity abroad put the tax-exempt status at risk?**

No. The mere fact of pursuing activity abroad does not endanger the tax-exempt status of the organisation.

➤ **Income tax treatment**

Grants and donations

Public benefit activity (in case of a PBO, PPBO) and the purpose related activity (in case of a single foundation not classified as PBO or PPBO), including the donations granted for supporting these activities are not declared as entrepreneurial activities of the foundation

Investment income (asset administration)

The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation are not declared as entrepreneurial activities of the foundation.

Economic activities (related/unrelated)

n/a

Major shareholding - considered as an economic activity and taxed accordingly?

n/a

Income deriving from grant expenditure towards public benefit purpose/programme activities (such as loans, guarantees, equities)?

n/a

➤ **Capital gains tax, where separate from income tax**

The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation are not declared as entrepreneurial activities of the foundation.

➤ **Withholding tax on foreign investment income?**

n/a

➤ **Gift- and inheritance tax**

In Hungarian law this levy is called “duty” instead of tax. The following information regarding tax exempt status applies here:

The foundation is entitled to taxpayer exemption only if it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection which the taxpayer exempt status is claimed.

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process. In case of an acquisition of a duty obliged property, the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority ex officio.

In case the aforementioned statement is passed before 1 June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (see Article 5 of the Act).

Donations made to foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty (see point a) of subsection 1 of Article 17 of the Act)

➤ **Value added tax (VAT)**

➤ **Capital taxes on value of assets, where applicable?**

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

➤ **Taxes on the transfer of assets?**

Duties (court, administrative and property acquisition duties, Act No 93 of 1990)

The foundation is entitled for taxpayer exemption only in the case it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection which the taxpayer exempt status is claimed.

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process, in case of an acquisition of a duty obliged property the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority ex officio.

In case the aforementioned statement is passed before 1 June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (see Article 5 of the Act).

Donations made to foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty paying obligations (see point a) of subsection 1 of Article 17 of the Act).

The court registration procedure of foundations is exempt from the procedure duties (see point e) of subsection 1 of Article 57 of the Act).

➤ **Other taxes, where applicable (Real property tax)**

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

➤ **Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions?**

The same tax benefits as provided for Hungarian entities shall be provided to foreign subjects or different (more favourable) treatment shall be granted to foreign entities in case a national treaty, factual reciprocity or if binding ruling of the European Union prescribes so.

➤ **What is the tax treatment (inheritance and gift tax) of legacies to non-resident public benefit foundations?**

General rules are applicable without any benefits, namely:

In case of gift duty, the ratio of the duty is:

- In case the gift is not a homing real estate:
  - i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the rate of duty is 21%
  - ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the rate of duty is 30%
  - iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the rate of duty is 40%

- In case the gift is a homing real estate:
  - i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift, the rate of duty is 10%
  - ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the rate of duty is 21%
  - iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the rate of duty is 30%

In case of inheritance duty, the ratio of the duty is:

- In case the inheritance is not a homing real estate
  - i. up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the inheritance duty rate is 21%
  - ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the inheritance duty rate is 30%
  - iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the inheritance duty rate is 40%
- In case the inheritance is a homing real estate
  - i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the inheritance duty rate is 8%
  - ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the inheritance duty rate is 12%
  - iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the inheritance duty rate is 21%

Please see information above regarding international reciprocity and tax benefits for foreign foundations.

- **Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations are protected by the fundamental freedoms of the EC Treaty? Especially: Are the consequences of the Stauffer decision of the European Court of Justice and/or the current infringement procedures of the European Commission discussed by legal scholars or by practitioners? (e.g. publications in law journals) / Have there been any resulting changes to your country's legislation, or are changes being discussed?**

Not as far as we are aware.

### **III. Tax treatment of donors**

- **System of tax credit or tax deduction?**

Tax deduction for corporates.

- **Tax treatment of individual donors**

Donations made by private individuals no longer give rise to a tax advantage. There is no deduction (from the tax base) and no tax credit (as against the tax due).

➤ **Tax treatment of corporate donors**

Donations to “public benefit” charities:

- One-off donations made by corporations are no longer deductible
- Continuing donations (min. 4 years), both in cash and in kind, made by corporations give rise to a deduction of 20 % (i.e. where a donation of 1,000 HUF (approx. €3.65) is made, 200 HUF (approx. €0.73) may be deducted from the tax base)

Donations to “priority public benefit” charities:

- One-off donations, both in cash and in kind, made by corporations to “prominently public benefit” charities give rise to a 50 % deduction on part of the donor (i.e. where a donation of 1,000 HUF (approx. €3.65) is made, 500 HUF (approx. €1.83) may be deducted from the tax base).
- Continuing donations (min. 4 years), both in cash and in kind, made by corporations to “prominently public benefit” charities give rise to an additional deduction of 20 %. (i.e. to a deduction of 50 % + 20 % = 70 % in total; where a donation of 1,000 HUF (approx. €3.65) is made, 700 HUF (approx. €2.56) may be deducted from the tax base).

A combined maximum ceiling is the pre-tax base.

➤ **Tax treatment of donations to non-resident public-benefit foundations**

Donations by individual and corporate donors to non-resident public benefit foundations do not qualify for tax relief.

➤ **Other frameworks such as percentage law systems**

➤ **What are reporting/proof requirements to claim tax benefits?**

**IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

In the case of donations and scholarships received, there is no obligation to pay tax.

**V. Trends and developments**

➤ **Recent trends or developments affecting the legal and fiscal environment for public benefit foundations**

➤ **Impact of anti-terrorist debate**

Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?

There is an Anti-Terrorism Act in force in Hungary, which came into force on 14 December 2007.

If so, has this law introduced new legal and regulatory requirements for foundations (please describe)?

No

Has the foundation supervisory authority introduced new regulatory/oversight requirements to comply with counter terrorism measures/law?

No

Has the foundation supervisory / regulatory authority(ies) introduced guidance tools to assist foundations to comply with counterterrorism measures/law?

No

If so, did the foundation supervisory authority engage in a consultation with the foundation sector on counter terrorism measures/ does it plan such a consultation?

➤ **Public fundraising**

Are there any specific laws that regulate fundraising and do they affect foundations?

No

**Useful contacts**

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