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## **MODEL LAW FOR PUBLIC BENEFIT FOUNDATIONS IN EUROPE**

The European Foundation Centre's (EFC) European Union Committee and its Legal and Taxation Task Forces have developed this draft *Model Law for Public Benefit Foundations in Europe* as part of its project: "Enhancing the Legal Environment for Independent Funders in Europe".

The project began with a review of foundations' operating framework, and with the publication of country profiles of the legal and fiscal environment in which foundations operate in the different European Union Member States. The information provided by this work helped to identify good legal and fiscal rules and practice for public benefit foundations and was the basis on which was drafted the so called "*Fundamental Legal and Fiscal Principles*". This Model Law illustrates *one way* to translate the agreed EFC Fundamental Legal and Fiscal Principles into legislation.

The Model Law could have an effect on the development of **new foundation law** as well as **the revision of existing foundation law at national level**. Foundations and their support organisations might also wish to use this Model Law as a basis to advocate for an enhanced legal and fiscal operating environment for foundations and for improvements in the presently unsatisfactory position as regards the giving and receipt of gifts and grants across borders as well as cross-border activities of foundations. In addition, the drafting of model laws **could assist the development of a European framework for foundations**<sup>1</sup>.

The Model Law comprises two separate but complementary sections, starting with the legal part and concluding with the tax environment.

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<sup>1</sup> The High Level Group of Company Law Experts on a modern regulatory framework for company law in Europe set up by the Commission had suggested in their report published in November 2002 that the drafting of model laws could facilitate the potential development of a European legal form for foundations.

## ***Part I Legal Environment of Foundations***

### ***Article 1***

#### ***Definition of a Public Benefit Foundation***

1. A public benefit foundation shall be an independently constituted and managed body, having the disposal of assets, and/or income, whether or not in the form of an endowment, which have been irrevocably set aside for public benefit purposes.
2. A foundation shall have no members.
3. Foundations may be established in perpetuity or for a specified period of time, as expressed by the statutes.
4. The foundation's assets and any income shall be devoted exclusively to the pursuit of its public benefit objects. No benefits shall be distributed directly or indirectly, to any founder, director, officer, or employee of the foundation.

### ***Article 2***

#### ***Public benefit***

Under this Law a foundation shall be regarded as being of public benefit if, and only if

- a) it serves the public interest at large at domestic and/or international level, and;
- b) its purposes include, but need not be limited to, the promotion of the public interest in one of the following fields:
  - Arts, culture and historical preservation
  - Assistance to, or protection of, people with disabilities
  - Assistance to refugees and immigrants
  - Civil or human rights
  - Consumer protection
  - Development, international and domestic
  - Ecology or the protection of the environment
  - Education, training and enlightenment
  - Elimination of discrimination based on race, ethnicity, religion, disability, or any other legally proscribed form of discrimination
  - Health or physical well-being and medical care
  - Humanitarian or disaster relief
  - European and international understanding
  - Prevention and relief of poverty
  - Protection of, and support for, children and youth
  - Protection of, and support for, disadvantaged individuals
  - Protection or care of animals
  - Science
  - Social cohesion, including the promotion of respect for minorities
  - Social and economic development
  - Social welfare
  - Sports, amateur athletics
  - Any other purpose determined from time to time to be of public benefit.

**Article 3**  
**Legal personality**

A foundation shall have legal personality. It shall acquire it on the day of its registration with the registration authority under Article 6 below.

**Article 4**  
**Legal capacity**

1. A foundation shall be free to act in pursuit of its objects in any manner allowed for in its statutes which is consistent with its public benefit status and which is not against the law.
2. A foundation shall have the right to hold movable and immovable property, and to receive and hold gifts or subsidies of any kind, including shares and other negotiable instruments, and gifts 'in kind' from any lawful source.
3. A foundation shall have the capacity, and be free, to engage in trading or other economic activities provided that any income or surpluses are clearly and directly used in pursuance of its public benefit purposes and do not constitute the main aim of the foundation.

**Article 5**  
**Formation**

1. A foundation shall be created by notarial or trust deed or by will by any natural or legal person or public body. Where a foundation has been created by a public body it shall be managed independently of it.
2. In this Article, 'public body' includes any entity, whether or not legally part of the state, national, regional or local government, or other legally constituted public authority, which provides public services or carries out public functions on a statutory basis.

**Article 6**  
**Registration**

1. There shall be designated or created a registration authority for foundations.
2. The registration authority shall be established on a statutory basis and in any individual case shall act independently of any governmental, quasi-governmental, or other public body or institution, and free of political influence.
3. It shall be the duty of the registration authority to:
  - a) receive and hold, as public records, documents and other information required for the registration of a foundation and its subsequent operation and to make them available for inspection by the public on request;
  - b) determine the registration of foundations, and;
  - c) otherwise ensure that the requirements of this Law are adhered to.
4. Applications for registration as a foundation made to the registration authority shall be accompanied by the following documents:
  - a) the founding documents;

- b) a statement of the assets to be set aside for the purposes of the foundation;
  - c) the statutes;
  - d) the intended business address or addresses;
  - e) the names and addresses of all members of the governing board;
  - f) the names, objects and registered offices of founding organisations where these are legal entities, or similar relevant information as concerns public authorities.
5. The registration authority may refuse to register an applicant otherwise in conformity with the requirements of this Law if, and only if, it deems the purpose of the applicant to be illegal, or it deems the refusal of registration necessary for the protection of public security or safety; for the prevention of crime; for the protection of health; or the protection of the rights and freedoms of others and the maintenance of public order.
  6. The decision of the registration authority shall be published in the Official Journal (or equivalent) together with the information outlined in 4(a) – (f) of this Article.
  7. The registration authority shall reach its decisions without unreasonable delay.
  8. A foundation shall inform the registration authority of any changes to the information outlined in 4(a) – (f) of this Article, and the new details shall be published in the Official Journal (or equivalent).

#### **Article 7** **Statutes**

1. The statutes of the foundation shall include at least:
  - a) the name of the foundation;
  - b) a statement of its public benefit purpose;
  - c) the address of the foundation's registered office;
  - d) the conditions for the admission, expulsion and resignation of members of the governing board;
  - e) the rights and obligations of the governing board and its members;
  - f) the procedures for amending the foundation's statutes;
  - g) the grounds for dissolution;
  - h) the distribution of net assets after dissolution; and
  - i) the rules applicable to the calling and conduct of meetings of the governing board.
2. The foundation's statutes shall also provide for the avoidance of actual or potential conflicts of interest between the personal or business interests of officers, board members, and employees of the foundation, and the interests of the foundation.

#### **Article 8** **Particulars to be stated in the foundation's documents**

Letters and documents sent to third parties by the foundation shall state legibly:

- a) the name of the foundation, followed by the words 'registered foundation';
- b) the number of the foundation's entry in the register kept by the registration authority;
- c) the address of the foundation's registered office; and
- d) where appropriate, the fact that the foundation is the subject of insolvency or dissolution proceedings.

**Article 9**  
**Responsibilities of the governing board**

1. Foundations shall have a governing board, composed of at least three members.
2. It shall be the duty of the governing board to take responsibility for all decisions with regard to the proper administration and conduct of the foundation's affairs. Members of the board, and foundation officers having responsibility under them, shall observe a duty of loyalty in the exercise of their responsibilities, shall act with diligence and care, and shall ensure compliance with the laws and statutes of the foundation.
3. The board shall ensure the return to the registration authority of all documentation required under Articles 6.4 and 11.2 of this Law.
4. It shall be the duty of the governing board and of the foundation's officers to make available to the registration authority all evidence material to any enquiry undertaken under Article 12 below.

**Article 10**  
**Liability of the foundation and board members**

1. The liability of a foundation shall be limited to its assets.
2. The members of the board shall be personally liable to the foundation and to injured third parties for the wilful or grossly negligent performance or neglect of their duties, but shall not otherwise be liable.

**Article 11**  
**Transparency and accountability**

1. A foundation shall be obliged to keep full and accurate records of all financial transactions.
2. A foundation shall be obliged to draw up and return to the registration authority full and accurate annual statements of accounts, and an annual activity report, within 12 months from the end of the accounting year. The annual activity report should list the grants distributed, taking into account the right of privacy of the beneficiary.
3. A foundation with annual revenues in excess of €(x) and /or assets in excess of €(x) shall have its accounts professionally audited.

**Article 12**  
**Supervision**

1. The registration authority shall have the duty to ensure that the governing board acts at all times in accordance with the foundation's statutes and this Law.
2. Where the registration authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation's statutes or this Law, it shall have the power, in carrying out its duty under section 1 above, to enquire into the affairs of that foundation.
3. In the case that there is evidence:

- that the governing board has acted improperly with respect to the foundation's statutes and this law, and;
- the governing board refuses to act on a warning from the registration authority;

the registration authority shall have the power to order the governing board to comply with the foundation's statutes and the foundation law.

4. If evidence of financial impropriety, serious mismanagement and/or abuse is brought to the notice of the registration authority, the authority may designate an independent expert to enquire into the affairs of a foundation.
5. In case of enquiries under sections 2 and 4 above, the registration authority shall have the power to require the managing board and officers of the foundation to make available all and any support material to its effective conduct.
6. The registration authority shall have the power to require the dismissal of any member of the board or officer of the foundation found guilty by a court of financial impropriety.
7. Exceptionally, where the registration authority deems that the assets of the foundation are at serious and immediate risk, the registration authority shall have the power temporarily to freeze the foundation's bank accounts and take such other emergency measures as it sees fit to protect the foundation's assets until such time as the matter can be brought before a court.
8. Where the registration authority is satisfied that the foundation is unable to conduct properly its own affairs, it may appoint an independent receiver and manager to act in place of the governing board. The appointment of a receiver and manager must be reviewed by a court within three months.
9. If the purpose of the foundation has become impossible to fulfil and cannot be amended under Article 13, or any of the circumstances described in Article 6.5 apply, the registration authority may, after having heard the governing board of the foundation, propose to the court the dissolution of the foundation.
10. Nothing in this Article shall empower the registration authority to act in the administration of a foundation.

**Article 13**  
**Change of purpose**

1. Any change to the public benefit purpose proposed by the governing board shall require the agreement of the registration authority.
2. Any amendment of the bylaws, insofar as they affect the purpose of the foundation, must be consistent with the will of the founder.
3. The purpose of the foundation may only be changed if the purpose has been achieved or cannot be achieved or where the original purposes have ceased to provide a suitable and effective method of using the foundation's assets.

**Article 14**  
**Dissolution**

1. The governing board of the foundation may decide upon dissolution of the foundation only if the aim of the foundation has been achieved or cannot be achieved, the time for which it was set up has expired or the total loss of assets has taken place. The dissolution proposed by the governing board shall require the agreement of the registration authority.
2. Upon dissolution under section 1 above or, with the court's agreement, under Article 12.8, and once the creditors have been paid in full, any remaining assets of the foundation shall be spent on public purposes as near as possible to those for which the foundation was created.

**Article 15**  
**Appeal to the courts**

All decisions of the registration authority shall be appealable to the courts.

## ***Part II Tax Treatment of Foundations and their Donors***

### ***Article 16 Qualifying foundation and expenditure***

1. In this Law 'qualifying foundation' means any foundation established for public benefit purposes according to this Law.
2. In this Law 'qualifying expenditure' means expenditure for public benefit purposes, within the country of residence or abroad incurred by a qualifying foundation in relation to a chargeable period (*i.e. tax year*).

### ***Article 17 Income Tax***

Subject to the above, a qualifying foundation shall be exempt from income tax on its qualifying expenditure in any European Union (EU) Member State, even if it uses a reasonable proportion of its income to preserve its endowment and build up reasonable reserves for the sustainable pursuit of its public benefit purposes. A qualifying foundation shall be relieved of income taxation in any European Union Member State on:

- a) ***General income***: Income from whatever legal source, including individual donors, companies, governments or other non-profit bodies whether in the form of a donation or grant or by way of testament, or in payment for services carried out in pursuit of public benefit purposes;
- b) ***Interest, dividends, capital gains***: Income from interest on the assets of the foundation, and in respect of any interest, annuities, dividends or shares wherever held;
- c) ***Income related to real estate***: Income arising in respect of rents and receipts from an interest or right in any land; and

***Trade or business income***: Income arising from trade or business, provided that the profits are applied solely to the public benefit purposes of the foundation, and the trade or business is carried on in the course of the actual carrying out of a primary purpose of the foundation.

### ***Article 18 Capital gains***

A qualifying foundation shall be exempt from capital gains tax on the realisation of any asset whatsoever in any EU Member State provided that the income from such realisation is either reinvested for the purposes of the foundation or expended under Article 16.2 above.

### ***Article 19 Property and land taxes***

1. A qualifying foundation shall be exempt from taxes related to the value and sale of property in any EU Member State insofar as they are not within the discretion of relevant authorities.

2. Competent authorities shall have the power to exempt registered foundations from local property taxes.

**Article 20**

***Donations to domestic and other foundations in the European Union***

1. Individuals giving to any EU-based qualifying foundation shall be entitled to deduct the amount of the donation from their personal income.
2. Companies and other corporate bodies giving to any EU-based qualifying foundation shall be entitled to deduct the amount of the donation from their corporate income.

**Article 21**

***Donations to non-EU foundations***

1. Individuals giving to a foreign foundation pursuing solely public benefit purposes shall be entitled to deduct the amount of the donation from their taxable income, as long as the donor has taken reasonable steps to prove that the foundation is pursuing public benefit purposes.
2. Companies and other corporate bodies giving to a foreign foundation pursuing solely public benefit purposes shall be entitled to deduct the amount of the donation from their corporate income, as long as the donor has taken reasonable steps to prove that the foundation is pursuing public benefit purposes.

**Article 22**

***Beneficiaries***

1. Individual beneficiaries in receipt of a grant or other benefit from a qualifying foundation shall not be taxed in respect of the grant or other benefit received.
2. Public benefit organisations as beneficiaries should be free of tax on the grants/donations they receive from qualifying foundations.

## ***Part III Model Law Explanatory Memorandum***

### **Legal Section of the Model Law**

Two basic principles underlie the draft of a Model Law for public benefit foundations in Europe. First, while legislation needs to be comprehensive, it should also be as *clear* and as simple as possible. The grounds for this are obvious: clarity will help foundations to comply with the law, and those charged with supervision to enforce it. Second, while the Model Law clearly needs to establish the *framework* in which foundations are established, operate, and are accountable, it should not constrict the freedom of foundations to conduct their business more than is strictly necessary, particularly as regards internal governance. Accordingly, while the draft requires certain topics concerning internal governance – for example the rules applicable to meetings of the governing board – to be covered in the foundation’s founding documents, it leaves the framing of those rules to the board.

It goes without saying that the Model Law is intended to illustrate only *one way* in which the Fundamental Legal and Fiscal Principles agreed by the EFC European Union Committee (EUC) and its Task Forces could be translated in legislation. *Translating the Principles into a coherent legal text has inevitably meant that choices have had to be made. For this reason there will be points at which the draft will be incompatible with existing legislation in some Member States.* A case in point is the acquisition of legal personality: in some jurisdictions legal personality is acquired upon the framing of the instrument setting up the foundation. In such cases registration may still be required for purposes of accountability and supervision but will not be linked, as in this text, with the acquisition of legal personality.

#### ***Article 1 – Definition of a foundation***

The Article allows for the creation of time-limited foundations if foreseen in the founding documents. One needs to think about this power in conjunction with Article 14 on dissolution.

The definition of a foundation is based on the Fundamental Principles according to which foundations have no members. It also covers foundations, which start with small assets.

#### ***Article 2 – Public benefit***

Article 2 contains an open list of public benefit purposes, which are subject to change over time so that the notion of public benefit remains responsive to social needs and to public perceptions. The list would need reviewing from time to time by some appropriate authority or means to be decided.

#### ***Article 3 – Legal personality***

A foundation *shall* have legal personality. This does not preclude the existence of non-autonomous foundations without legal personality.

Article 3 ties the acquisition of legal personality to registration. It should be noted that the registration authority has very limited powers under Article 6.5 to refuse to register a foundation.

#### ***Article 4 – Legal capacity***

This Article defines legal capacity as widely and completely as possible. It deliberately goes wider than some EU jurisdictions by allowing foundations to receive the widest possible

range of gifts and income without permission of any public or judicial authority. Note that the trend in Europe is for the relaxation of existing restrictions.

#### ***Article 5 – Formation***

Article 5 includes different ways to set up a foundation, which can be done through a notarial or trust deed, or by a will. The Article also notes that public authorities can create foundations. It is arguable that foundations created by commercial interests should also be managed independently of them.

#### ***Article 6 – Registration***

Note that Article 3 ties the foundation's legal personality to registration. For this and other reasons, the registration authority is an important and potentially powerful body, particularly if, as this text suggests, it also has responsibility for supervision under Article 12. While the powers of the registration authority are significantly constrained – it has to act independently of political influence, act promptly and cannot normally refuse to register an applicant foundation which fulfils the requirements of the Model Law – clause 5 of this Article does give the authority scope to enquire into the real intentions of applicants and to refuse to register bodies which are undesirable for fundamental reasons of public good.

#### ***Article 7 – Statutes***

Article 7 lists 9 key elements that the bylaws of foundations must address. As long as all these matters are addressed, the text assumes that each foundation should be free to decide what other matters should be covered and how. The bylaws would, of course, have to be in conformity with the law, including the present text.

Clause 2 is intended to deal with the question of actual or potential conflicts of interest. The question has been raised whether a conflict would arise where a board member, for example, voted some benefit to be conferred by the foundation by his or her fellow board members at a meeting in which he or she was not present. The present text does not distinguish this particular case from the general run of conflicts of interest.

#### ***Article 8 – Particulars to be stated in the foundation's documents***

As noted above, this Article requires certain topics to be covered in the foundation's governing document, but leaves to the governing board decisions as to how precisely the internal governance of the foundation is to be managed. Note that the names of board members can be obtained from the registration authority under Article 6.4(e).

#### ***Article 9 – Responsibilities of the governing board***

The introduction of this principle is intended to underline the importance of foundations' boards and good governance. It also touches upon the issue of the disclosure of governance structures and practices.

Note that this Article contains a provision, which in 9.4 places a duty on the board to co-operate with any enquiry ordered by the registration authority under Article 12.2 and 3.

#### ***Article 10 – Liability of the foundation and board members***

The liability of the foundation is limited to its assets. The board members would be personally liable to the foundation and to the injured third parties only in case of the wilful or grossly negligent performance or neglect of their duties.

**Article 11 – Transparency and accountability**

A foundation must provide its documents to the registration office, which will make them accessible to the public. Both annual statements of accounts and an annual report of activity should be made publicly available. Accounts provide financial information whereas annual reports describe the foundation's activities in pursuit of its public benefit purpose. Information on grants should also in principle be made publicly available; however, the legitimate privacy interests of beneficiaries should be taken into account.

**Article 12 – Supervision**

It is important to note that the powers of the registration authority to supervise foundations are of two kinds: those which are aimed at ensuring that the governing board respects the statutes of the foundation (and of course the foundation law); and those that are aimed at dealing with mismanagement and abuse. Note also that as drafted the registration authority is also the supervisory authority. These two functions – of registration and supervision – could be separated if it were thought wise to do so. There could, for example be a new body specifically designed to deal with supervision, or the courts could be required to take over investigation and to take remedial action once the regulation authority had evidence of mismanagement or abuse. The difficulty with the latter suggestion is that the problems that are likely to beset foundations are often a complex mix of legal and administrative factors which the courts are not necessarily well equipped to deal with. Furthermore, emergency action might need to be taken, for example to protect the assets of a foundation from an ongoing fraud that could not wait for the relatively slow procedures sometimes involved in obtaining a court order. Any decision of the registration authority in this regard would, of course be subject to judicial review, or the equivalent, to a court injunction if the foundation were able to obtain one, and to appeal.

The question of what powers a supervisory body should possess is, of course, a large one. At present the Article is drafted so as to give the supervisor the minimum power consistent with the capacity to carry out an effective investigation into an errant foundation and to provide an effective remedy. In case the registration authority has reasonable grounds to believe that the governing board of a foundation is not acting in accordance with the foundation's statutes or this Law, it has the power to enquire into the affairs of that foundation. Where there is evidence that the governing board has acted improperly with respect to the foundation's statutes and this Law, the registration authority may warn the foundation and, if it fails to act, may order it to comply. The orders of the registration authority will be enforced according to the national law. In cases of financial impropriety, serious mismanagement and/or abuse, the authority may designate an independent expert to enquire into the affairs of a foundation.

It is important to note in this regard that the current Article 12.6 assumes that the registration authority's powers should cover only the period before the matter can be brought before a court. This means that should a foundation, whose assets have been frozen, decline itself to challenge the authority's decision, the authority would, in effect, have to seek the court's approval for its actions.

Note that the *independent* receiver and manager would be intended to supplant the board during his or her period of operation and otherwise to take over the running of the foundation *for a limited period*. Note that the court has to review the appointment of the receiver and manager within three months. It will also be for the court to decide upon any proposal from the registration authority to dissolve a foundation according to Article 12.8. Note also that the regulatory authority is expressly forbidden to take over the administration of a foundation at any time, including such time as the foundation might be in difficulty.

### ***Article 13 – Change of purpose***

In order to protect the will of the founder, any change to the public benefit purpose needs to be approved by the registration authority. In addition, the purpose may only be changed in clearly defined cases.

### ***Article 14 – Dissolution***

The law should recognise two kinds of dissolution:

***Voluntary dissolution*** (dealt with in this article): The board of the foundation should be able to decide upon dissolution in clearly defined cases (if the aim of the foundation is achieved or the total loss of assets has taken place). In any case the board decision has to be approved by the registration authority. The rationale behind this is to protect the will of the founder as well as the foundation itself.

***Involuntary dissolution*** is dealt with in Article 12.8. The registration authority may propose to the court to dissolve a foundation. The involuntary dissolution of a foundation is therefore the business of the court.

### ***Article 15 – Appeal to the courts***

All decisions of the registration authority need to be subject to appeal to the courts. This is particularly important as regards a refusal to register an applicant foundation and in respect of any exercise of the registration authority of its powers of supervision. Given the length of time that may elapse before full legal proceedings can take place, the court will need to decide in the light of the circumstances in each case whether or not to suspend the action taken or proposed by the registration authority pending the hearing of the appeal.

### ***Fiscal Section of the Model Law***

The rules applying to tax exemptions of foundations as well as to tax incentives for donors should be clear and user-friendly. The taxation section of the Model Law is intended to be no more than a first attempt to set out the basic principles in a form which approximates to that which might be found in legislation, remembering that such legislation would in practice not form part of the foundation law but would form part of tax legislation more generally.

It also needs to be remembered that in all jurisdictions the precise definition of such apparently clear things, such as 'land', 'rents', 'assets', 'income' (as opposed, for example, to 'capital') can be vastly complex, and in any cases counter-intuitive. Furthermore, it will be appreciated that foundations, especially in jurisdictions which do not adequately distinguish between bodies of public and private benefit, are a fertile field for tax evasion. For this reason most tax legislation is hedged around with highly complex provisions designed to prevent tax accountants taking advantage of public benefit organisations in order to evade tax that would otherwise be due.

The tax treatment of 'foreign' and 'national' foundations should, in principle, be the same in each EU country. In particular, cross-border giving and the reception of gifts across borders should attract identical tax relief, as should gifts or giving to or from foundations within or without the EU.

**Article 16 – Qualifying bodies and expenditure**

In this Model Law ‘qualifying foundation’ means any foundation established for public benefit purposes according to this Law. In order to receive tax benefits, the foundation has to spend its income on public benefit purposes only.

**Article 17 – Income Tax**

The question of what precisely is meant by ‘spending’ its income under Article 16 is dealt with in Article 17, which allows the foundation to preserve its endowment by withholding part of its income and to build up reasonable reserves having regard to its needs and circumstances and the field in which it operates.

For the present the text does not deal with the question of the powers of the taxation authority – which will necessarily be distinct from those of the registration authority – to enquire into the affairs of a foundation, (which being registered, is presumed to be of public benefit) in order to establish whether, *in the opinion of the taxation authority*, it qualifies for tax relief. In practice, the fact that a foundation is registered should normally be taken as sufficient *prima facie* evidence that it is entitled to tax relief, though the taxation authorities would be expected to take an interest should the amount set aside by a foundation for preserving its endowment or building up its reserves appear excessive. They may also be expected to have views on any proposal substantially to extend the ambit of public benefit.

As regards income derived from trade or business, the present text allows only what is commonly called ‘related’ income, that is to say, income from economic activity which is integral to the achievement of the foundation’s basic public benefit purposes. The case of ‘unrelated business income’ or income from trade or business which, though useful as a source of revenue for the foundation, is not integral to the achievement of its purposes, is difficult to deal with in legislation. ‘Unrelated’ income is very difficult to define except in context and it is of little help that it should be spent, like any other form of income which the foundation has, on public benefit purposes. In practice much has to do with what the public regards as acceptable in particular national cultures and at particular times. Unrelated business income, which should be taxed, is currently not covered in the Model Law.

**Article 18 – Capital gains**

A qualifying foundation shall be exempt from capital gains tax on the realisation of any asset whatsoever provided that the income from such realisation is either reinvested for the purposes of the foundation or expended under Article 16.2 above.

**Article 19 – Property taxes and land taxes**

Foundations should be relieved of all or a proportion of property and land taxes and from duties on the transfer of property or land. A qualifying foundation shall be exempt from taxes related to the value and sale of property. In many jurisdictions land taxes are in part or in whole the responsibility of local authorities. This being as it were a central government law it does not seem right to do more than exempt qualifying foundations from any property taxes imposed by central government, leaving to local authorities the discretion to relieve foundations of the tax due to them.

**Articles 20 and 21 – Donations to foreign qualifying foundations**

Both companies and individuals should receive tax incentives with respect to donations made to resident and foreign foundations engaged in activities of public benefit. The text currently opts for the system of tax deduction, while one may consider going for tax credit instead. The limits to be applied should be generous.

National tax law should treat donations to domestic and European Union public benefit purpose foundations equally, as stated in Article 20 of this Model Law. The concept of giving tax incentives to donors when donating to public benefit purpose foundations should be understood EU-wide and should not be limited to national perspective. In principle, the tax incentives should be also the same for all European citizens or companies giving to non-European foreign foundations as long as the donor has taken reasonable steps to prove that the receiving foundation is solely pursuing public benefit purposes (see Article 21 of the Model Law).

***Article 22 – Beneficiaries***

In principle, where the beneficiary is a natural person, he/she should be exempt from tax on donations received from public benefit foundations up to a certain ceiling. Public benefit organisations should be fully exempt from tax on donations received from public benefit foundations.

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