

## EFC COUNTRY PROFILE JANUARY 2011: SWEDEN

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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)?**

The main regulation is the Foundation Act/*Stiftelselag* SL (1994:1220) that came into force on 1 January 1996. It covers so-called ordinary foundations/*stiftelser i allmänhet*, fundraising foundations/*insamlingsstiftelser* and collective agreement foundations/*kollektivavtalsstiftelser*.

The Foundation Act (SL) was last modified in 2009 (2009:244). The SL was accompanied by an introductory law/*Lag om införande av stiftelselagen* (1994:1221). Foundations that safeguard employee interests /*tryggandestiftelser*, such as pension and personnel foundations, are covered by a special Act from 1967 *Lag om tryggande av pensionsutfästelse m.m.* (1967:531).

According to Chapter 1 Art. 2 SL, which deals with the setting up of an ordinary foundation, a foundation is described as assets that are managed independently to pursue a specific purpose according to the deed of the founder.

There are two main categories of ordinary foundations: The largest group covers grantmaking foundations that receive their income from the return of invested assets/*avkastningsstiftelse*, the second group consists of operating foundations with some kind of project- or business-related activities/*verksamhetsstiftelse*.

- **What purposes can foundations pursue?**

Foundations can pursue any legal purpose that the founder has specified.

- **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?**

One or more founders, individuals and/or legal entities can establish a foundation. Essential elements for setting up a foundation are the deed of the foundation and the transfer of property in accordance with the deed. The deed must in general be in writing and signed by the founder. It has to describe the purpose of the foundation and the assets. The assets have to be handed over to at least one individual or the administrator of the foundation who has promised to manage the assets in accordance with the wishes of the founder (Chapter 1 Art. 2 SL). The assets have to be sufficient to pursue the stated purpose for a period of at least five or six years.

In the process of establishment, no state approval is needed – a foundation receives legal capacity as soon as it is founded. The foundation has to be given a name containing the word *stiftelse*.

- **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? )**

No

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

As of 2010 all foundations have to register in a foundation register. The foundation register is kept by seven different regional authorities (*länsstyrelser*). The registration is, however, not a prerequisite for the foundation to obtain legal personality.

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

As of 2005, not only the address and telephone number of the foundation, and details of its board members or the administrator have to be included in the registry, but also detailed information on the auditor/*revisor* (see Chapter 10 Art. 2 SL).

If foundations are registered, is the register publicly available?

Yes

- **Is a minimum capital required?**

No

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

Two different forms of foundation management or administration exist according to the SL: Foundations under their “own management”/*egen förvaltning* and “attached management”/*anknuten förvaltning*. In the case of “own management” one or several individuals form a board and administer and represent the foundation. The board shall appoint a chair. Decisions are taken by simple majority if the statutes do not stipulate otherwise. In the case of “attached management”, a legal entity manages the foundation – this legal entity is the administrator/*förvaltare* of the foundation and acts through its governing body. The mandate of being administrator comes to an end once the administrator informs the supervision authority and the person who has appointed him, if this person can be reached.

Is it mandatory to have a supervisory board?

According to the Foundation Act - the board decides in all matters concerning the foundation. Therefore the Foundation Act has no rules about supervisory boards.

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?

A board member may not be under age or in bankruptcy or have an administrator according to Chapter 11 Art. 7 the Children and Parents Code. There is no minimum/maximum number of board members specified in the Foundation Act. The board can appoint and dismiss members of the board if the statutes do not foresee a different regulation.

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

According to provisions in Chapter 2 SL the board of the foundation represents the foundation and ensures that: The wishes of the founder, the statutes, and the law are respected; the assets are well invested; and the accounting is done according to the law. According to Chapter 2 Art. 6 SL, loans and loan guarantees to – among others – the founder or the management of the foundation may not be granted. Board members and administrators may receive reasonable remuneration. The board or the administrator must appoint someone with a residence in Sweden to be the recipient of information on behalf of the foundation in case there is no official representative of the foundation registered in Sweden (see Chapter 2 Arts. 16 a and 23 a SL).

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?

The founder must not be the sole member of the board. The founder has no possibility to make decisions about the foundation.

The founder may however, on behalf of the foundation, sue a board member in cases where the board member has in the discharge of his/her duties, either intentionally or negligently damaged the foundation. The founder can also appear in court to apply for the dismissal of a board member for negligence (*Chapter 5 Art 4 and Chapter 9 kap Art 6 SL*).

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

A prospective beneficiary may, on behalf of the foundation, sue a board member in cases where the board member has in the discharge of his/her duties, either intentionally or negligently damaged the foundation. The beneficiary can also appear in court to apply for the dismissal of a board member for negligence (*Chapter 5 Art. 4 and Chapter 9 Art 6 SL*). A beneficiary has no more access to information than the general public through the documents held by the supervisory authority.

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?

In SL (Chapter 2 Art. 14), there are rules regarding conflicts of interest. Briefly, these imply that anyone who is a member of a foundation board must not enter into agreement with the foundation, or be involved in an agreement between the foundation and a third party, if the board member has substantial interest in the question concerned, which may conflict with the interest of the foundation. A similar provision regarding conflicts of interest exists for foundations with attached management (Chapter 2 Art. 21).

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

The Board may delegate its decision-making to an employee, provided that no foundation decree/statutes prohibit this delegation. The Board may also invite an employee to attend its meetings, provided that this would be in line with the foundation decree/statutes. Such an invited employee may not, however, participate in the decision making.

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

Provisions on governance issues are stated in Chapter 2 SL. The board or the administrator of the foundation represents the foundation.

Do the director and officers have powers of representation?

The board of a foundation can authorise someone else to represent the foundation and sign in its name. Such authorisation must be recorded in the register of foundations. The Foundations Act does not provide for rules regarding the managing director, but there are employees with the title managing director with the power to decide in current affairs in the day to day activities of foundations, in particular in larger operating foundations.

**Liability of the foundation and its organs**

The assets of the foundation are liable for the debts of the foundation according to Chapter 1 Art. 4 SL. Board members, administrators and auditors can be held liable for damages if they have through wilful or negligent performance caused the foundation or different third parties economic damages (Chapter 5 SL). They can also be held criminally liable according to the Criminal Code if they have committed crimes. Board members, the founder, beneficiaries and the supervisory authority, among others, have the right to sue.

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

There is no general standard of diligence for board members stated in the Foundation Act. The Foundation Act does not differentiate between voluntary and paid board members.

But if a board member causes damage to a foundation when fulfilling her/his duties, the issue of having received a fee could be relevant for measuring the actual damage.

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?

No such safe harbour, but the circumstances mentioned will have an impact in a case concerning liability.

What is the liability the directors and officers?

There is no provision in the Foundation Act concerning the liability of a managing director or other officials. An executive director and other officials are however liable, under tort law for pure economic loss through crime. In other cases, liability may arise for any errors or omissions in service pursuant to Chapter 4. 1 § Damages Act.

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

A board member may not be under age or in bankruptcy or have an administrator according to Chapter 11 Art. 7 the Children and Parents Code. The founder may not modify these standards.

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)?**

Foundations may engage in business activities. But this must be in line with the purpose for which the foundation was established. (foundations may nevertheless own real estate)

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

According to the Foundation Act (Chapter 2 Art. 4), a foundation must invest its assets in an acceptable manner. The rule means that a foundation may not engage in speculative investments. There is however, now legal ban on investment in certain asset classes. The founder can provide rules how the assets should be invested – this approach would overrule the above provision for investing in an acceptable manner.

➤ **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)**

It is possible that a foundation is considered to pursue a public benefit purpose if the foundation, according to the foundation decree/ statutes, shall lend money at a low return rate.

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

The main rule is that the board or administrator of a foundation may not change the rules of a foundation unless the *Kammarkollegiet* (a special public board) agrees if the change concerns the purpose of the foundation, rules on investment, form of management, regulations regarding appointment of board members, decision-making, remuneration, rules for accounts and audit, and the right to sue for damages (Chapter 6 Art. 1 SL). A change of the statutes is in this case allowed only if the specific regulation has become useless or incompatible with the wishes of the founder or for other special reasons (Chapter 6 Art. 1 SL).

Regulations that do not relate to the purpose of the foundation may also be amended if there are other special reasons and regulations that relate to the purpose may only be amended if there are particular circumstances. Changes on other points may be made if the supervision authority agrees.

If the founder has stated that the managing body should have the right to change, this is possible except as concerns the purpose which may never be changed unless the *Kammarkollegiet* agrees.

The government has the authority to change the rules of foundations created by the state, with the exception of their purposes (see Chapter 6 Art. 4 a SL).

➤ **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?

Yes

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)?

Foundations (such as foundations with assets of over 1.5 million Swedish Crowns, foundations that conduct business, and foundations set up by the state or municipality) will for each financial year prepare an annual report including an annual activity report, income statements, balance sheets and notes. The annual activity report shall in general terms describe how the purpose has been promoted during the past year.

Smaller foundations must make a statement of their accounts.

All foundations must submit an annual tax declaration to the tax office.

Who checks (supervisory/tax authorities)?

The supervision authority makes checks concerning the annual report and the tax authorities makes checks concerning the declaration.

Where is the required information publicised?

A foundation's annual report should normally be submitted to the regional authority. Those who want to have access to the filed financial statements may ask for them. If the foundation is not required to submit its annual accounts to the regional authority, the person seeking access to accounts may make a direct request to the foundation. The statement of accounts of smaller foundations need only be submitted to the regional authority upon formal request of the authority. Everyone can ask the authority to do such a formal request. Media and the public are always able to get access to a foundation's

annual report or summary.

A foundation's tax declaration is not public.

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

All foundations must have at least one auditor.

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

If there is no regulation on this in the statutes, the board or the administrator of a foundation appoints the auditor. As for the qualifications required of auditors, the SL states that no person may be appointed as auditor unless he has the knowledge and experience of accounting and financial matters that are needed to successfully audit a foundation of this kind and with the respective assets. If a foundation is obliged to prepare an annual report, the SL states that at least one auditor must be either a qualified authorised public accountant or an approved public accountant. Depending on the number of employees (more than 50) or balance-sheet total (more than 25 million Swedish kronor – SEK, approximately €2.7 million) or yearly turnover (more than 50 million SEK, approx. €5.5 million), the requirements are still somewhat stricter.

The auditor has to ensure that general auditing standards are followed. The auditor should, for example, check whether the board or the administrator has invested and used the assets of the foundation in accordance with the statutes and the purpose of the foundation. The yearly audit report is delivered to the board or administrator of the foundation; the audit report is sent to the supervision authority (county government) if the foundation is obliged to send its annual report to that authority.

If the foundation is not required to submit its annual report to the supervisory authority, the person seeking access to the auditor's report must ask the foundation itself for the information.

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

The supervisory authorities are the seven county governments appointed by the national government.

The authority has the power to act if the governing body or the auditor has not acted in line with the deed/statutes or the law according to Chapter 9 Art. 3 SL. The authority has the mandate to oversee the foundation (e.g. check of documents, participate in board meetings and make inspections) according to Chapter 9 Art. 4 SL. It may take action in certain cases (e.g. sue for damages and appoint board members) and give advice.

The authority may apply to the court for the dismissal of a board member who has neglected his duty or caused mismanagement according to Chapter 9 Art. 6 SL. If such an application is lodged at the court, the authority may discharge members of the board for the period until the court has made its decision.

In addition, the supervision authority may appoint an appropriate auditor in case the foundation has failed to do so.

Some foundations fall only under limited supervision, if the founder has decided that "his" foundation should be under limited supervision in the deed of the foundation (if the

foundation is a parent foundation or is engaged in economic activities the founders will is not valid). In case of limited supervision, the authority has less competence.

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 county government is a public administrative body.

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

The body review reports and make inquiries. The body has the mandate to inspect all kinds of foundations.

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

The board must ask the supervisory authority to approve changes to the foundation's statutes pursuant to Chapter 6 § 3 SL (see also answer to question above "What are the requirements for an amendment of statutes/amendment of foundations purpose?" on page 5/6) and the depletion of its assets under Chapter 6. 5 § SL. A foundation can also request a preliminary decision by the authority as to whether a particular intended action is permitted or not. But this is done on a voluntary basis.

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

No

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

The supervisory authority/registration authority (with some very few exceptions, the same county government) may force members of a foundation's board or the administrator of the foundation to perform their duties in a proper manner.

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

A foundation can be declared bankrupt. In the event a foundation with economic activities is in a critical financial situation, the board or administrator has to prepare a special profit and loss account. If the account shows that the assets are less than debts, a petition for liquidation should be filed with the appropriate court. Special regulations on the liquidation of foundations with economic activities are found in Chapter 7 of the SL.

The dissolution of small foundations (provided they do not have any debts) is foreseen if they have not been able to pursue their purposes for the last five years and were set up at least 20 years ago (Chapter 6 Art. 5 SL). In case of dissolution, the assets have to be spent on the same purpose the foundation pursued or used for a similar one.

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

The main principle is that a foreign foundation is recognised as a legal entity, if it is recognised as a legal entity under the law of the country where the board is located or, if the law of the country requires that the foundation is registered to obtain legal personality, the law of the country of registration.

- **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?**

A Swedish foundation must be based in Sweden. This is the only rule on that question.

## **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?)**

If a foundation has a public benefit purpose and uses its income mainly to pursue this purpose, the foundation can receive tax exemptions (Chapter 7 Art. 3-6 IL).

There is no requirement that the foundation is based in Sweden.

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

A foundation that wants to be exempt from income tax on interest, dividends and capital gains must seek such relief in its tax declaration.

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

No

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

No. It is an obligation only if the founder has prescribed such reporting.

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

For foundations covered by the Accounting Act specific regulations apply, but only for certain aspects.

- **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.**

No such definition exists.

- **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 public benefit purposes enumerated in Chapter 7 Art. 4 IL are: The well-being and upbringing of children; education; help to the needy; research; Nordic cooperation; and strengthening the defense of Sweden in cooperation with public bodies.

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

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

No, but if the benefit is limited to a small group of people, e.g. family foundations, no tax exemption will be granted.

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?

It should normally not be dissolved as long as it has any assets. See also question above on how and when a foundation dissolves.

➤ **“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 in civil law. No general limits in the law but the remuneration must be reasonable. The tax law does not have any regulation about this question.

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)

Not really, but a pin or a postcard would be OK.

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?

There is no regulation on this in the laws. But if a foundation seems to spend more than what is reasonable for administration the audit have to react and the supervisory authority. Also the tax authority has to react if the foundation claims tax exemptions.

Fundraising foundations are subject to special provisions (Chapter 11 Art. 2 a).

➤ **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 reversionary 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 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

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.)?

No

➤ **Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Normally the statutes only allow the foundations to spend their return.

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

Yes, but a foundation cannot be set up for less than 5 or 6 years

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?

Civil law: No. But if the founder has decided that the foundation must spend a certain amount of the income the board must follow that regulation.

Tax law: Yes. A foundation has to use approximately 80% of its income during a period of at least five years on the pursuit of its public benefit purpose if it wishes to retain its favourable tax status.

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				

It depends on the conditions under which the foundation has been established.

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	

Due to practice a foundation must use 80 % of its income during a period of at least five years.

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.)?

According to the Income Tax Act, for a foundation to be tax exempt it must spend at least 80% of the returns over a period of several years. According to the legal case *RA* 2001 ref. 17 a five year period should be examined.

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

The Swedish Tax Agency has argued that for some activities the public benefit must take effect in Sweden. This position has been repealed by the Supreme Administrative Court.

➤ **Income tax treatment**

Pension foundations are totally exempt from income tax, according to Chapter 7 Art. 2 IL. Foundations that fulfil the criteria of Chapter 7 Arts. 3-6 IL do not pay taxes on interest, dividends and capital gains.

In addition, a number of foundations and organisations of a special character are exempt from income tax except on business income (Chapter 7 Art. 15 IL). Arts. 16 and 17 IL list organisations and foundations that only pay income tax on income derived from real estate.

Grants and donations

Contributions/grants to a tax-exempt foundation are tax free. Gifts are received free of tax.

Investment income (asset administration)

Foundations that fulfil the criteria of Chapter 7 Arts. 3-6 IL do not have to pay taxes on capital gains.

Economic activities related/unrelated)

Income derived from business activities is taxable.

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

A foundation may have a dominant influence over a public company only if it is in conformity with the foundation's decree/statutes. A foundation's subsidiary company, which may be assumed to be unlisted, is taxed separately. Dividends paid by the subsidiary company to the foundation are tax free.

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

Such income is taxable

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

All foundation's income is taxed according to the Income Tax Act as income from business up to a certain percentage. Capital gains are counted, however, under different rules to those applied to the actual business activity.

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

Yes

➤ **Gift- and inheritance tax**

As of 2005, Sweden abrogated its inheritance and gift law/*lag om arvsskatt och gåvoskatt - 1941:416* (AGL). Before the abrogation, foundations of special public benefit were in any case free from gift and inheritance tax. Other foundations with religious, charitable, social, political, artistic, cultural, sports or similar objectives were free from gift but not from inheritance tax, according to former Art. 38 AGL.

➤ **Value added tax (VAT)**

Foundations pay VAT according to the kind of activity in which they engage.

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

The former capital (property) tax was abolished in 2007.

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

A tax-exempt foundation is tax exempt regarding profits related to disposal/transfer of assets.

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

There is no real property tax in Sweden anymore.

➤ **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?**

Yes. Public-benefit foundations are exempt from taxation of income of capital (dividends, interest and capital gains) according to the Swedish Income Tax Act. These rules apply to all foundations, Swedish or foreign, if their activities are considered public benefit.

However, foreign legal persons are not taxable for capital income in Sweden anyway. They are only taxable for income from business (permanent establishment) and real estate. The latter income is not exempt even for charitable foundations (Swedish or foreign).

With-holding tax is levied on dividends from Swedish corporations. Foreign charitable foundations could be refunded WHT either according to provisions in Double Taxation Treaties or according to case law of the European Court of Justice.

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

No difference.

- **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 you county's legislation, or are changes being discussed?**

The treatment of Swedish and foreign public benefit foundations is the same (except for with-holding taxes). In considering if activities of a foundation are of public benefit or not the Swedish Tax Agency has argued that for some activities the public benefit must take effect in Sweden. This position has been repealed by the Supreme Administrative Court, and thus foreign foundations could expect to be judged in the same way as Swedish foundations. In the light of these circumstances the Stauffer case has not triggered any actions in Sweden.

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

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

Donations from individuals are not tax-deductible nor are donations from corporations generally deductible.

However, companies can deduct some donations as business expenditures if they are related to the business.

- **Tax treatment of individual donors**

There are no tax incentives for individual donors.

- **Tax treatment of corporate donors**

Companies can deduct some donations as business expenditures if they are related to the business.

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

No deductions for donations are granted to foreign foundations

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

No such frameworks.

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

Since there are no tax incentives for giving, there are not any rules concerning criteria for benefitting from such a scheme.

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

##### **Individuals**

The individual receiving a grant from a tax-exempt foundation is also exempt from tax on the the grant.

##### **Legal entities**

A grant from a tax-free foundation to a corporation is taxed at the company.

#### **V. Trends and developments**

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

Recent developments in the Swedish foundation community include the transformation of the wage-earner funds/*löntagarfonderna* during the 1990s into private foundations to support research as well as the transformation of the Swedish state church, a development that led to the establishment of many new foundations. The role of foundations is discussed within the context of the redefinition of the scope of the modern welfare state. The legal framework in Sweden is quite favourable and liberal, as there is no state intervention in the process of establishing a foundation. From a comparative perspective, the lack of fiscal tax incentives for individual and corporate donors is a disadvantage, even though the estimated number of foundations in Sweden is high (over 20,000 in a country of only 9 million people). It could however be added that the tax treatment of foundations involved in business activities is quite liberal.

A proposal for the extension of tax exemptions for foundations is currently being discussed at the Government Cabinet Office. There is also a proposal to introduce tax incentives for natural persons who make gifts to the needy. Although the latter proposal is also currently being discussed by the Cabinet's office, it is not as high a priority as the former proposal for extension of tax exemptions for 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)?

Since 2003 there has been a law in Sweden on penalties for terrorist offenses. It contains provisions for the implementation of the European Union framework decision on combating terrorism. Furthermore, there has been since 2002, a law on the punishment for the financing of particular serious crimes in certain cases. This Act contains provisions for the implementation of the international Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly in 1999.

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

No. But since 2010 the Swedish Foundations Act has required all foundations to register. One reason behind this requirement was that the international organisation, the FATF (Financial Action Task Force) working on the combating of money laundering and terrorism had expressed that Sweden should consider extending the requirement for registration.

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 counter terrorism 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?

The Swedish Foundation Act provides (in Chapter 11.1-2 § §) rules on a special foundation to be known as fund-raising foundation. This type of foundation obtains its resources through the collection of funds.

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Income Tax Act/*Inkomstskattelag* (1999:1229)