



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

BELGIUM – 2014

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The operating environment for foundations

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I. Legal framework for foundations

1. 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 term foundation was not defined, recognised or protected under Belgian law, until recently. In 1921 a law (*Loi du 27 juin 1921 accordant la personnalité civile aux associations sans but lucratif et aux établissements d'utilité publique/Wet van 27 juni 1921 waarbij aan de verenigingen zonder winstgevend doel en aan de instellingen van openbaar nut rechtspersoonlijkheid wordt verleend*) was approved to grant legal personality to non-profit associations/*associations sans but lucratif (ASBL)* and public utility establishments/*établissements d'utilité publique (EUP)*.

This law has been amended by the law of 2 May 2002, which introduces in its Chapter II/*Titre II* significant changes to the legal environment of foundations in Belgium, namely by replacing the term “public utility establishment” with the term “public utility foundation” and by creating a new type of foundation: The private foundation.

The new law states in Article 27 that “the foundation is the result of a legal act from one or several individuals or legal entities that dedicate capital to a specific not-for-profit aim”. The foundation has no members.

Foundations can be recognised as being of public utility when they pursue philosophical, religious, scientific, artistic, educational or cultural aims.

With the approval of the King, private foundations can convert into public utility foundations according to Art. 44 of the Law. The legislation also modernises the regulation of the accounting system.

2. What purposes can foundations pursue?

A public benefit foundation has to serve the general interest. Moreover it can only pursue one of the purposes enumerated by the law i.e. philanthropic, religious, scientific, artistic, educational, philosophical, or cultural purposes.

A private foundation is not required to serve the general interest. It may also pursue private purposes, for instance estate planning for family help enterprises.

3. 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?

Foundations are established through notary deed or by will. In the case of public utility foundations (PUFs), the deed and the statutes have to be submitted to the competent ministry (Ministry of Justice), which must approve the articles of incorporation (Art. 29.2). PUFs receive legal personality by royal decree. Once the statutes are approved, they must be published in the Belgian Gazette/*Moniteur Belge* (Art. 31.4). Private foundations are created once their statutes of incorporation are communicated to the competent court. The statutes have to be published in the Belgian Gazette (Art. 31.4).

According to Art. 28, the statutes of both types of foundations must contain the purpose, the name and address of the foundation as well as the names, places of birth and addresses of the founders.

Furthermore, the procedure for appointment of new board members should be described as well as the conditions when statutes can be changed and the destination of the assets in case of dissolution of the foundation.

4. 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?)

Public benefit foundations: Yes. State approval by Royal Decree

Private foundations: No

5. Do foundations have to register? If yes, in what register?

When a foundation is set up, the notary or the clerk's office at the Court of Commerce has to register the foundation in the register of legal persons of the " *Banque Carrefour des Entreprises*", which delivers an enterprise number.

a) If foundations are registered, what information is kept in the register?

The information to be kept in the register is:

- The statutes and modification thereto; the coordinated statutes following modification
- The decisions concerning nomination, resignation, or termination of directors, persons in charge of the daily management, representatives
- The decisions and deeds on conversion of a private foundation into a public benefit foundation
- The decisions of the general meeting regarding dissolution of the organisation, nullity of the organisation, conditions of liquidation, destination of assets, appointment or resignation liquidators, or closing liquidation
- The decisions and acts concerning the conversion of a private foundation into a public utility foundation, as well as decisions for dissolving or liquidating foundations
- The annual accounts

b) If foundations are registered, is the register publicly available?

Yes, any interested person can consult these documents free of charge and obtain copies.

6. Is a minimum founding capital required? Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime?

Public utility foundations: The law does not stipulate a minimal amount but the Ministry of Justice requires a minimum capital of €25,000 as the initial contribution.

Private foundations: No minimal contribution is required

7. What governance requirements are set out in the law?

A board, composed of at least three members, manages both types of foundations, according to Art. 34. The board represents the foundation. The nomination, revocation and powers of the board have to be regulated in the foundation's statutes. The daily management can be delegated according to Art. 35.

Very large organisations should appoint a statutory auditor. This is relevant for foundations having 100 workers or more, or exceeding two of the following three criteria:

- 50 workers
- €7,300,000 in normal cash receipts
- €3,600,000 for the total of the balance sheet

Individuals as well as legal entities can be board members. Persons other than founders can also be appointed as board members. The bylaws must set out the procedures and conditions for nomination, resignation and dismissal of board members, the length of their terms, and the powers of the board.

Upon request of the public prosecutor, the board or any interested person, the court of first instance can pronounce the dismissal of a board member who has blatantly been negligent, who did not fulfill the obligations stipulated by the law or by the bylaws, or who has used the assets for purposes other than those for which the organisation was set up, or for purposes which are contrary to law or public policy.

According to the law, the board has the power to carry out any activities necessary to achieve the statutory purpose.

The law does not confer any right on founders, once the foundation has been set up.

a) Is it mandatory to have a supervisory board?

Belgian law does not foresee the obligation to have a supervisory board.

b) 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?

The minimum number of members is three. The statutes can foresee a higher number. There is no maximum number imposed by the law. The rules for appointing or dismissing the board members should be determined by the statutes. It should be noted that in certain circumstances the court of first instance can dismiss and replace board members who have been blatantly negligent

Upon request of the public prosecutor, the directors or any interested person, the court of first instance can pronounce the dismissal of the directors who have blatantly been negligent, who did not fulfill the obligations foreseen by the law or by the bylaws, or who have used the assets for other purposes than those for which the organisation has been set up, or for purposes which are contrary to law or public policy. The court can subsequently appoint new directors in line with the statutes.

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

The board members should undertake all the actions that are necessary or useful for the realisation of the statutory purpose.

d) 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 law does not foresee any specific rights for the founder. From a strict legal point of view, once the foundation has been set up the founder no longer plays a role in the foundation.

However it is not excluded that the statutes would attribute some role to the founder. According to the doctrine, it would not be forbidden to foresee in the statutes that some important decisions could only be taken after favourable advice from certain persons mentioned in the statutes, but who do not serve on the board of directors. This could obviously be applied to the founder(s). The obligation of obtaining their advice should however be limited to certain matters listed in the statutes.

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

The beneficiaries of a charitable foundation do not have more rights than third parties (consulting the file at the clerk office of the court of first instance or consulting the annual accounts of big foundations through the website of the "*centrale des bilans*"), unless more rights would be conferred to them in the statutes, or on a separate contractual basis.

f) 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?

According to the law on foundations, the statutes should regulate the way in which conflicts of interest should be solved.

The definition of a conflict of interests should be sought in the law on companies. According to that law such conflict exists if a director has directly or indirectly an opposite interest of patrimonial nature in a decision or an operations in which the board of directors is involved. In that case he should mention this fact to the other board members.

Since the law on foundations does not foresee precise rules for solving the problem of conflicting interests, the statutes could provide a solution. Based on the legislation on companies, the declaration of the director who has an opposite interest should be mentioned in the minutes of the board meeting, as well as the decision of the board itself on this issue. If there are auditors, the board should inform them of this situation. A special report on this issue should also be drafted by the statutory auditors outlining the patrimonial consequence for the foundation of the conflicting interests.

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

The decision belongs exclusively to the board of directors. Of course, the final decision can always be based on preliminary studies, projects, proposals in which staff (officers) can participate.

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

It is the law of 27 June 1921 that specifies that the foundation can only be represented by directors. As far as general representation is concerned, it is up to the statutes to organise this representation by conferring it on all directors, some of the directors, or just one of them. If more directors have representation powers, the statutes should specify whether these persons should act collectively or may act separately.

For day-to-day management, a foundation can however be represented by a director or someone else.

a) Do the director and officers have powers of representation?

As mentioned above, the powers of general representation toward third parties can be delegated by the statutes to one or to more directors, but not to officers.

Officers can only have representation powers in the framework of the daily management, as far as the statutes would foresee it.

9. Liability of the foundation and its organs

The foundation is liable for the actions of its organs. Board members are not personally liable for the debts of the foundation. They can be held civilly liable for damages to the foundation.

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

The general rule is that the directors are not individually liable regarding the obligations of the foundation. Their liability is limited to the execution of their mandate and the damages caused by their mismanagement.

In certain circumstances, civil liability towards the foundation or towards third parties can occur. Board members have a contractual liability towards the foundation in case they do not respect the rules of the mandate or if they violate the statutes or the law. The foundation can initiate a procedure against these members ("*actio mandat*"). However, since there is no general assembly in foundations, the "*actio mandat*" should be initiated by the board. There would then be a problem if a violation of the statutes (or the law) has been committed by all the board members.

The directors can also have an extra-contractual liability towards the foundation (based on Article 1382 of the Civil Code regarding torts) as well as towards third parties in the event they have caused damage through mismanagement/negligent behavior. In such a case, third parties (for instance, creditors of the foundation and employees) can sue the foundation itself or any board members. Such a scenario can take place if the foundation becomes insolvent.

Whether or not the directors are paid does not in principle make a difference as far their liability is concerned. However, according to some sources of doctrine, as far as extra-contractual liability is concerned, the liability of a non-remunerated director is treated less severely than of a remunerated director.

There is a problem when the liability of all the board members is concerned, since the "*actio mandat*" can only be initiated by the board as far as foundations are concerned. In such a case the court that is the supervising authority can revoke the directors and appoint other members.

b) 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?

The determination as to whether a director has caused damage through negligent behavior should be made on the basis of the attitude of a normally cautious and diligent person acting in similar circumstances. The Supreme Court confirmed (29 June 1989) the principle that a director of an ASBL (non-profit association) can be considered as personally liable for the torts he caused to third parties through lack of cautiousness or diligence in the management. The same reasoning can apply to directors of a foundation.

c) What is the liability the directors and officers?

As mentioned above, in cases where the director has committed a fault, there is a contractual liability towards the foundation.

There can also be an extra-contractual liability in cases where the fault has caused a tort to third parties. Finally in some matters enumerated by the law (non-payment of VAT, professional withholding tax, or social contributions) the directors can be considered as jointly and severally liable.

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

No

e) 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		

In all the cases mentioned above, where the liability of board members is involved, it concerns the contractual liability between the foundation and the directors.

The answers in rows 2, 4 and 5 are in the category "probably yes" and "unclear", because the final answer depends on all the circumstances in which the operation took place and whether the director(s) can be considered negligent or not. These facts obviously cannot be mentioned in such a table. For rows 4 and 5, the fact that the price was slightly or significantly too low can be relevant.

10. Are economic activities¹ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

Foundations are not forbidden from undertaking economic activities, even if these activities are not related, provided that they still have a non-profit purpose and that the profits are exclusively used for

¹For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset

statutory purposes. In such a case, however, it should be kept in mind that a foundation risks losing its income tax exemption.

11. Are foundations permitted to be major shareholders?

Foundations are not forbidden from owning shareholdings or even major shareholdings, if this “holding” activity is still subordinated to their statutory purpose and if the income from these assets is used for their statutory non-profit purpose.

12. Are there any rules/limitations in civil and/or in tax law regarding foundations’ asset management? What, if any, types of investment are prohibited?

Foundations are not forbidden from owning shareholdings or even major shareholdings, if this “holding” activity is still subordinated to their statutory purpose and if the income from these assets is used for their statutory non-profit purpose. The same principles apply to alternative investments, hedge funds, or private equity.

13. 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)

Foundations are not forbidden from allocating grant funds towards furthering their public benefit purpose/programmes which also generate income.

14. What are the requirements for an amendment of statutes/amendment of foundations purpose?

According to Art. 30, amendments of statutes of PUFs have to be communicated to the Ministry of Justice. If the amendments make changes relating to Arts. 28.3 and 28.5 to 28.8 (e.g. the purpose, regulation on modification of the statutes, or board appointment), they have to be approved by the King.

Amendments of the statutes of private foundations relating to Arts.28.3, and 28.5 to 28.8 (e.g. purpose, board appointment) must be agreed on by formal decision.

According to Art. 30.3, the court may also change the statutes for both types of foundations under special circumstances. Any amendment must be published in the Belgian Gazette (Art. 31.4).

15. What are requirements with regard to reporting, accountability, auditing?

a) What type(s) of report must be produced?

- annual financial report
- annual activity report
- public benefit/activity report,

administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

- tax report/tax return,
- other reports e.g. on 1% schemes)

The reports that must be submitted annually are:

- The annual accounts and the budget. These documents should be filed at the clerk's office of the court of first instance for public benefit foundations and small private foundations and at the National Bank of Belgium in the case of large private foundations.
- The income tax return (in most of the cases the income tax of legal entities) should be filed at the local tax inspection office. The date of this submission is mentioned in the annexes of the Belgian official Gazette (*Le Moniteur Belge*).
- For the private foundations, ASBL and AISBL a "substitute inheritance tax return" (declaration à la taxe compensatoire aux droits de succession) should be filed. The rate is 0,17% of the assets. Public benefit foundations are exempt from this tax.
- Foundations with more than 20 employees should produce a social balance sheet, with different information on their personnel. This balance sheet makes part of the annual accounts (for large as well as for small organizations).
- Foundations which have been recognized as eligible to receive tax deductible gifts and want to renew their status need to file an activity report on the 2 past years and a description on the activity for the next years.

b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)? ?

Small private foundations, small public utility foundations and large public utility foundations have to file their accounts and annual budgets with the clerk's office of the commercial court.

Large private foundations have to file their accounts, detailed information on board members and the report of the statutory auditors with the National Bank of Belgium/*Banque Nationale de Belgique*.

Public utility foundations and private foundations must keep yearly accounts according to the Law of 17 July 1975, if they fulfil certain criteria enumerated in Art. 37.3, namely two of the following criteria:

- 5 workers,
- 312 500 Euro (VAT excluded) of normal cash receipts,
- 1 249 500 Euro for the total of the balance sheet.

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

The National Bank or the clerk's office of the court do not perform a systematic control, regarding the content of the annual accounts.

As far as tax aspects are concerned, the inspector may perform tax audits in order to determine whether all elements that are subject to the tax on legal entities were properly declared and whether the formalities concerning payments to third parties were completed. He will also check whether the exemption from corporate tax can effectively be claimed by the foundation.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)

Concerning the accounting documents, the “*Moniteur Belge*” indicates only the name and address of the foundation and the date of their publication. The annual accounts of big private foundations can be consulted on the website of the National Bank of Belgium (*centrale des bilans*). For public benefit foundations and small private foundations the annual accounts can be consulted at the clerk’s office of the court of first instance.

Tax documents of foundations (income tax return) cannot be consulted by third parties.

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

Statutory auditors must review the annual accounts of very large foundations, i.e. foundations that exceed the criteria enumerated by Art 37.5 of the law of 1921 (see answer to question 7). The statutory auditor has to be a member of the “*Institut des réviseurs d’entreprises*”. The statutory auditor will audit the accounts of the foundation and issue a report, which should be attached to the accounts to be deposited.

Foundations which are not considered as “very large” are not subject to these formalities

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

The statutory auditors of Belgian foundations should apply the standards foreseen by the Belgian legislation.

16. Supervision (which authority – what measures / sanctions?)

There is no supervision on a periodic (annual) basis. Supervising authorities, like the Ministry of Justice and the court of first instance do however intervene in certain circumstances,

The Ministry of Justice intervenes as the supervising authority upon the creation of a public benefit foundation or in case a public benefit foundation’s statutes are amended. It also intervenes in cases where a private foundation is converted into a public benefit foundation.

The court of first instance can intervene (for private and public benefit foundations) if the assets have not been used for the purpose of the foundation, in cases where the directors have been negligent, or in cases where no annual accounts have been filed during three consecutive years.

The court of justice is also the only authority that takes the decision on liquidating a foundation, appointing a liquidator and closing the liquidation,

Donations of over €100,000 that do not consist of hand-to-hand donations (*dons Manuels/handgiften*) to private or to public benefit foundations must be approved by Royal Decree (via a request to be sent to the Ministry of Justice).

a) 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?

For public benefit foundations, the supervisory authority consists of:

- A governmental body (Ministry of Justice) for the verification of the statutes and the modifications thereto
- A court (court of first instance)

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

The extent of the supervision is quite limited. There are no *ex officio* inspections, reviews of reports, or inquiries. The Court can only take action in specific circumstances, upon a request introduced by the public prosecutor or by a director of the foundation, by its board of directors, or by any interested party.

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

Yes, for public benefit foundations certain modifications of the statutes should be authorised by the Ministry of Justice. This mainly concerns the modification of the objective and the modification of the activities of the organisation.

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

Unlike for some other countries, the Belgian law does not foresee the presence of a state supervisory official on the board.

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

Sanctions for non-compliance:

Failure to comply with the obligation to register or to deposit certain documents at the clerk's office of the court will result in the decisions contained in these documents being unenforceable and claims introduced by the foundation before a court being inadmissible.

Accounting obligations:

Foundations which have not published their annual accounts for three years (dormant foundations) can be liquidated by the Court upon the request of the public prosecutor or any third party. Any claim which would be introduced by a foundation which had not deposited its annual accounts would be inadmissible.

Tax aspects:

Foundations which do not file their income tax returns will receive penalties: A tax of 309% will be imposed on foundations which do not justify in a specific format (statement 325) the payment of professional income to employees or self-employed persons. The eligibility for receiving income tax deductible gifts will not be renewed in cases of infringement of the tax laws, if it appears that the foundation is no longer exempted from the corporate tax or if the foundation has not published their annual accounts.

Enforcement measures:

Upon the request of the public prosecutor, the court of first instance can dismiss directors who have been blatantly negligent and appoint new directors. It can also modify the statutes if the application of the current statutes leads to a paralysed situation or to a situation which was not foreseen by the founder. The court can also dissolve the foundation in the abovementioned circumstances (see below).

17. When and how does a foundation dissolve?

According to Art. 39, only the competent court can dissolve a foundation upon the request of the founder, the board, or of the public prosecutor's department in certain cases, i.e. if the purpose has been achieved or is impossible to achieve; if the foundation uses its estate for other purposes other than the statutory purpose; if the foundation violates the law, or the bylaws, or neglects to submit its accounts for three years.

18. Under what conditions does the civil law in your country recognise a foreign foundation?

Foreign foundations can operate in Belgium through a centre of activity, insofar as they have been validly constituted abroad in accordance with the law of the state to which they belong. In order to be recognised in Belgium, they have to comply with Article 31, § 1 and §§ 3 to 6 of the Law of 17 June 1921 (creation of a file at the clerk's office at the court of Commerce and publications at the Belgian official Gazette, accounting requirements, etc.).

19. 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?

Activities performed abroad are not forbidden or restricted in the civil law. It should however be kept in mind that there are some tax provisions which might restrict such a freedom amongst others the provisions on the eligibility to receive income tax deductible gifts (see answer on question 14 of chapter II)

II. Tax treatment of the foundation

1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?

Foundations are generally exempted from corporate tax, like the other types of non-profit organisations, and are subject to the tax on legal entities. Exemption from corporate tax is only applicable if the entity has a non-profit status (which implies a non-distribution constraint), and does not carry out profit-making operations. If this last condition is not met, the exemption is still granted if the entity performs activities that include only incidentally industrial or commercial operations or which do not involve the use of industrial or commercial methods (Art. 182 of the Income Tax Code – ITC).

Exemption from corporate tax is also applicable to non-profit organisations (NPOs) operating in the so-called privileged sectors as foreseen by the law (Art. 181 Income Tax Code), i.e. distributing social allowances, helping families or elderly people, securing professional interests or working in the field of exhibitions, or providing education.

There is no obligation to pursue a public benefit purpose to benefit from the exemption.

The exemption is not subject to any prior formal agreement by the tax authorities. The tax inspector, however, may challenge the organisation's income tax status later on at any time.

Foreign entities which have a permanent presence in Belgium also benefit from the exemption from corporate tax, but only in certain situations (see chapter II, answer to question 22)

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

As mentioned above, since there is no prior approval procedure, no documents should be submitted in advance. However, in the event of a possible tax audit the inspector will look at the statutes and at the annual accounts and may ask to the non-profit organisation all the necessary information, which will enable him to assess whether or not the organization does carry profit making operations (or can be considered or not as falling in the list of the so called “privileged sectors”)

3. Is specific reporting required for the use of state funds?

There are no specific rules on reporting for the use of state funds, but certain obligations might be foreseen by the national, regional or local subsidizing authority.

4. Is there an obligation to report on donors and beneficiaries?

In the framework of the law on tax deductibility of gifts, the charity can only keep its status if it provides to the tax authorities a statement with the amounts and the name of the donors who benefitted from the tax deduction.

5. Are there specific accounting rules for foundations?

The accounting rules are foreseen by the law of 17 June 1921 on associations and foundations, with different regimes for small and for large associations or foundations. Large associations and foundations have to use a complete accounting system. For the criteria to distinguish large organizations from small organizations, see part I, answer to question 15.

Beside the abovementioned distinction, it should be stressed that different rules have been created for associations or foundations which are active in specific sectors, for instance hospitals and medical care, help to handicapped persons, pension funds, help to youth, education, protection of the environment...

6. 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.

There is no legal definition of the public benefit purpose, The part of the law which concerns public benefit foundations contains an exhaustive list of 7 objectives that can be pursued by a public benefit foundation. The entity can only be agreed as such if its statutory purpose falls within one of these categories.

7. 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 income tax law does not use public benefit as a criterion for the corporate tax exemption. It uses more general criteria such as non-profit purpose and non-profit-making operations.

The inheritance tax legislation refers to the non-profit legal form (associations, foundations) and generally uses this as the sole criterion. However the inheritance tax legislation of Wallonia refers to “activities for public benefit”. The inheritance tax privilege is only applicable if the organization carries

out activities which are enumerated in a specific list (for inheritance tax purposes) which is quite longer than the items enumerated by the civil law (19 versus 7 items)

8. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country:

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights*		X		
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination*		X		
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation	X			
Assistance to refugees or immigrants	X			
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			
Protection of animals	X			
Science, research and innovation	X			
Education and training		X		
European and international understanding		X		
Health, well-being and medical care	X			
Consumer protection				X
Assistance to, or protection of vulnerable and disadvantaged persons	X			
Amateur sports	X			
Infrastructure support for public benefit purpose organisations	X			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>	X			

***Notes:**

- Civil or human rights: Not as such, but it may fall in the category “culture”, sub-category “permanent education”

- Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination: Not as such, but it may fall in the category “culture”, sub-category “permanent education”

9. Support of “the public at large”

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

For corporate tax exemption, the number of beneficiaries concerned (“public at large”) is not a criterion as such.

For the eligibility of the foundation to receive income tax deductible gifts, there is a geographical criterion. According to Art. 104 of the Income Tax Code, the activity scope of organisations in some of the sectors enumerated by the law should be national or at least cover one of the three regions or one of the three communities of Belgium.

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

The criterion “public at large” is not relevant for determining whether tax exemption and income tax deduction should be granted or not. In the below-mentioned examples the income tax exemption for gifts might in some cases not be granted in some cases, since for some types of charities enumerated by the law there are conditions regarding the geographical scope of activity of the foundation which might not be met (second row of the table). For the first row, this criterion would be met if we take the example of Brussels, which is a city, but also a “region” in the sense of Belgian law. Universities (rows 5 and 6) do not meet the criterion of the geographical scope, but are explicitly mentioned by the law as eligible for tax benefits.

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 - income tax deductible			
For benefit of the inhabitants of a village with 10,000 inhabitants			X- income tax deductible		
For benefit of the employees of a company					X -income tax deductible
For benefit of the members of a family					X - income tax deductible
For benefit of the students of a university	X -income tax deductible				
Award for the best student of a university	X - income tax deductible				

10. Non-Distribution Constraint

a) 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, Articles 181 and 182 of the ITC (on corporate tax exemption) refer to non-profit associations and other legal entities that do not pursue a profit making purpose. These terms are not defined in the tax law and should be interpreted in the light of the civil law (Law of 27 June 1921 on non-profit associations and foundations). According to this law, the entity should not provide to its directors, staff or founders with any material gain. Any distribution of surpluses or distribution of assets is forbidden.

b) What happens with the foundation's assets in case of dissolution?

The assets should be transmitted to another entity which has a similar purpose to that of the liquidated organisation. The statutes should indicate which organisation would be entitled to receive the net assets. For public benefit foundations, the attribution of the assets coming from the liquidation will be submitted to the authority of a judge.

11. “Altruistic” Element

a) 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 of directors is not explicitly forbidden in civil nor in tax law. Neither of these establish any ceiling. However, according to the doctrine, the remuneration of directors should never be set as a function of the foundation's income, but only as a function of their work.

b) 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)

If the founders/donors/directors receive some type of benefit from the foundation, this is taxable as a benefit in kind. If benefits are granted on a larger scale, it could contribute to jeopardising the (corporate) tax-exempt status of the foundation.

c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**?

The provisions on the eligibility of an organisation to receive tax-deductible gifts require that the organisation does not spend more than 20% of its resources on administrative costs.

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

12. Hybrid Structures (elements of private benefit in public benefit foundations)

a) 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 - only for private foundations, never for PUFs*				
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					
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.					
A foundation distributes a (small) part of its income to the founder or his family.					

*See comments on private foundations, which are entitled to pursue either a private objective or a public benefit objective (or both) in the questions below.

b) 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 - for private foundations				
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 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

*There is no practice and no jurisprudence on these possibilities in Belgium, since the legal form “private foundation” has only existed since 2002 (see hereunder).

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.)?

As explained in the first question, it should be kept in mind that there are two types of foundations in Belgium: The public benefit foundation and the private foundation, created by the Law of 2 May 2002. For a public benefit foundation, legal personality is only granted when the foundation has been recognised by Royal Decree.

Private foundations, which are not subject to such recognition, are allowed to pursue private (non-profit) objectives as well as public benefit objectives. According to a recent survey, more than 20% of the newly created private foundations appear to have a public benefit purpose.

The private foundation can be used as a “hybrid structure” in the sense that it can pursue private and public benefit objectives at the same time. It can also be an appropriate structure for the use illustrated in the first row of the above table. It can, for instance, be used for the maintenance of a family estate or for ensuring care for a handicapped child after the death of the founder (see preparatory works of the law). It can also be used for keeping intact an enterprise after the death of the founder. Regarding this last possibility, Belgian lawmakers were inspired by the Dutch “*Stichting administratiekantoor*”. A separation is made between the remuneration of the capital (the heirs are still entitled to receive dividends through certificates which are distributed to them by the foundation in exchange for their shares) and the management which belongs to the private foundation.

Private foundations acting as “*Stichting administratiekantoor*” are explicitly exempted from corporate tax if they comply with the conditions stated in Belgian law.

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Yes, as long as these expenses are made to pursue the objectives and activities of the foundation which are mentioned in the statutes.

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

Yes

c) 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? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

No

d) 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 th 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 th 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.)?

n/a

14. Does activity abroad put the tax-exempt status at risk?

For Belgian foundations, activities abroad are not an obstacle to exemption from corporate tax or to the application of the privileged inheritance or gift tax regime.

However, as far as the eligibility to receive tax deductible gifts is concerned, activities on a larger scope than Belgium could put at risk the eligibility of these organisations to receive income tax deductible gifts. This is for instance the case if the activity takes place in a country which is outside the EU or the EEA, excepted for if it concerns help to development countries. There are also some limits for the cultural organizations which are active abroad, even if this activity takes place in one of the EU or EEA countries.

15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.

The law on associations and foundations does not contain specific provisions on grants.

A grant which is received by a Belgian foundation, from Belgian or foreign source, is not subject to corporate tax, nor to tax on legal entities.

A grant which is made by a foundation to a foreign organization is not subject to gift taxes in Belgium.

16. Income tax treatment

Foundations, as well as other NPO's, are generally exempt from corporate tax and are subject to the tax on legal entities. However the exemption from corporate tax does not depend from the sole

condition of being a not-for-profit association. In order to benefit from the exemption, the organization should meet one of the two following conditions:

(i) The organisation can be exempted if it does not carry out operations of a for-profit nature or if the profit making operations are only incidental or if it does not use commercial methods. Operations consisting in investment of funds obtained within the scope of the statutory non-profit purpose will not be considered as "profit making operations."

(ii) An organisation can also claim the exemption on the sole basis that it belongs to one of the privileged sectors enumerated by Article 181 of the Income Tax Code, i.e. distributing social allowances, helping families or elderly people, securing professional interests or working in the field of exhibitions, providing education, or benefitting from the eligibility to receive income tax deductible gifts. (see also below: "economic activities").

Brief description of the tax on legal entities:

Unlike the corporate tax, the tax on legal entities is not applied on global income, but only on income derived from specific sources. Income derived from real estate, movable income, and capital gains on specific items are subject to the tax on legal entities. Movable income is taxed through a final withholding tax,

Income from real estate is taxed through a withholding tax, calculated on the cadastral income (i.e. the annual rental value of the immovable property) or, in case the real estate is used for business purpose by the lessee, on the net rent at a flat rate of 20%.(see example below)

Miscellaneous income – such as income from subletting or transferring and renting of immovable property whether furnished or not, income from the renting of advertising space, or income from the renting of hunting, fishing or bird-catching rights – is taxed through a withholding tax of 15%.

How are the following types of income treated for income tax purposes?

Grants and donations

Grants and donations are not subject to tax on legal entities.

Investment income (asset administration)

Income from investments, e.g. dividends, interest, royalties, is taxed through a withholding tax at the rate of 25%. The lower rate of 15% is now only used for very few exceptions (SICAFI, state bonds issued between November 24 and December 2, 2011).

- Interest from fixed rate bonds are taxed at 25%

An organisation which perceives interest from fixed rate bonds will not lose its exemption from corporate tax.

- Income from equities are taxed at 25%

- Income from leasing of a property that belongs to the foundation:

This type of income will be taxed as follows

The taxation is limited to the real estate tax if the real estate is rented to an individual who does not use it for business purposes or is rented as "farm rent" (bail à ferme)

In the other cases, there will be a taxation at 20% on the part of the rent which exceeds the cadastral income.

Economic activities related/unrelated)

In order to keep the exemption from corporate tax they should fulfill the following condition, as mentioned above: the organization may not carry out profit-making operations. However, certain operations will not be considered as profit making for the application of corporate income tax, amongst others isolated or exceptional operations and “activities that include only incidentally...commercial operations or are not performed by using industrial or commercial methods”.

Fundraising, gala dinners and charitable sales are incidental or ancillary to the main charitable activity and do not put the exempt status at risk

Exemption from corporate tax is also applicable to non-profit organizations (NPOs) operating in the so-called privileged sectors as foreseen by the law (Art. 181 Income Tax Code), i.e. distributing social allowances, helping families or elderly people, securing professional interests or working in the field of exhibitions or providing education. This exemption applies even if the organization carries out more than incidental economic activities.

Economic activities are not subject to the tax on legal entities nor to corporate tax if these activities remain ancillary. If this is not the case, not only the income from these activities but the global income will also be subject to corporate tax. There is no possibility for a partial exemption.

The list with examples which is mentioned below illustrate these principles

- Income from running a hospital/museum/opera

Running a hospital is specifically mentioned in the doctrine as well as in the administrative comment as normally exempted from corporate tax.

Running a museum of an opera would also be exempt from corporate tax because these activities can normally not be beneficiary without being subsidized or receiving grants, gifts or donations

- Income from producing/selling books (e.g. art books sold by a cultural foundation) would not challenge the income tax exemption insofar these activities are ancillary

- Income from running a bookshop inside a museum/opera run by the foundation: idem (incident or ancillary activity)

- Income from running a café in the hospital/museum run by the foundation: idem (incident or ancillary activity)

- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose: If the T shirts are sold in the framework of a charitable sale (the purchase at a higher price than the economic value of the T shirt is in fact a gift) or if the T shirt is a support with the logo of the charity, the operation will not challenge the exempt status

- Income from intellectual property (e.g. royalties and licence fees): This kind of income would not challenge the income tax exemption. It should however be stressed that this income is subject, as any other movable income, to the tax on legal entities at the rate of 25%

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

The recovery of grants is not subject to the tax on legal entities.

Interest income or dividends are subject to the tax on legal entities (taxation through a withholding tax, as explained above).

Is major shareholding considered as an economic activity and taxed accordingly?

There is no legal provision that states that a major shareholding would be considered (and taxed) as a specific economic activity. However in such a case, the tax authorities might challenge the situation of the “parent” non-profit organisation if the boards of directors of the two entities are composed of the same persons.

In all the other cases, income from dividends from this major shareholding would be subject, like any other dividend income, to the tax on legal entities, as explained above.

17. Are capital gains subject to tax? If so, are they taxed as income or liable to a separate tax?

Capital gains can arise on the transfer of assets for free or for monetary compensation.

If the assets are donated by a non-profit organisation (subject to the tax on legal entities), the capital gains realised on these assets are not subject to the tax on legal entities. Only transfers for compensation (e.g. sale or exchange) are subject to the tax on legal entities as follows:

If a non-profit organisation (i.e. foundation) transfers assets for compensation, the capital gain is taxable insofar as it concerns:

- Land or buildings located in Belgium which have been purchased or acquired through a lifetime gift if the capital gain is realised in a certain period after the acquisition
- Substantial shareholdings in commercial companies which are subject to the Belgian corporate tax (i.e. if the NPO has owned a shareholding of at least 25% during the 5 years preceding the transfer of the shares), if the shares are sold to a company which is not subject to the corporate tax in Belgium, i.e. a resident company

18. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?

If a foundation delivers goods or provides services for monetary compensation in the sense of the VAT code, it is subject to VAT. The law foresees exemptions for services of social utility (including health care, education, and culture). These services are enumerated in Art. 44 of the VAT code. It should be mentioned that these exceptions should be interpreted restrictively. The VAT exemption is not optional: It is applicable or not, depending on the exact circumstances or facts relevant to the organisation that renders the services or supplies goods linked to these services.

Foundations which are to be considered exempted taxpayers do not need to charge VAT on their services, but may not deduct input VAT.

19. Is capital tax levied on the value of assets, where applicable?

The substitute inheritance tax (*taxe compensatoire aux droits de succession/tax tot vergoeding der successierechten*) is an annual worth tax levied on non-profit associations created after 10 July 1921, international non-profit associations and private foundations.

Public utility foundations are not subject to this tax.

The tax is calculated on total worldwide assets existing on 1 January, except for real estate located abroad. The rate of this tax is 0.17% of the assets.

The tax is not due if the value of the assets does not exceed €25,000.

20. Are there taxes on the transfer of assets by foundations?

Transfers of real estate for monetary compensation made to a non-profit organisation or from a non-profit organisation are subject to registration duties at the normal rate of 12.5% for real estate located in Brussels Region or in Wallonia and 10% for real estate located in Flanders.

If a foundation transfers real estate for free to another non-profit organisation, there is no gift tax on the transfer, but only a flat tax of €100.

21. Are there any other taxes to which public-benefit foundations are subject there (e.g. real property tax)?

Non-profit organisations are subject to a real estate withholding tax on their immovable assets located in Belgium. This tax is assessed on the cadastral income(i.e. the annual rental value of the immovable property).

Some non-profit organisations can be exempted from real estate tax (Art. 253.1 of the Income Tax Code). In order to benefit from this exemption, the charity should use the real estate, without profit purpose, for one of the purposes enumerated by the law, e.g. church-related aims or aims related to non-religious moral standards, education, health care (hospitals or clinics), holiday homes for children, or homes for the elderly.

22. 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 – if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other?

A foreign foundation operating in Belgium is in principle treated the same way as a Belgian foundation.

As far as corporate tax exemption is concerned, the following comment can be made.

As explained above, the corporate tax exemption can be obtained based on one of the two following grounds:

(i) The organisation can be exempted if it does not carry out operations of a for-profit nature or if it performs only incidental profit making operations or if it does not use commercial methods..

(ii) An organisation can also claim the exemption on the sole basis that it belongs to one of the "privileged sectors" enumerated by Article 181 of the Income Tax Code (for instance, education).

It should be noted that the exception of “privileged sectors” mentioned in article 181 is only applicable to resident organisations. A foreign organisation operating in Belgium that only meets the second criterion (ii) would be subject to corporate tax. The Belgian legislation should be amended on this point, as far as organisations of European Union or European Economic Area (EEA) countries are concerned, since it violates the Treaty of Rome.

As already mentioned above, if the exemption under (i) is claimed, no document should be produced in advance.

Income tax deduction:

Eligibility for income tax deduction of gifts concerns only organisations established in Belgium. Equal treatment has been introduced by the law in December 2009 for organisations established in one of the EEA countries (see section III on the tax treatment of donors: Donations to non-resident public benefit foundations).

Inheritance and gift tax:

Equal treatment is granted in the three regions of Belgium (see details in section III below)

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

Foundations, as well as other NPOs, are normally subject to the tax on legal entities. This regime implies taxation through a withholding tax on movable income (dividend, interest, etc.) For foreign investment income consisting of dividends and interest income, the non-profit organisation should pay the withholding tax if the income was directly received abroad (which implies that no tax was withheld by a Belgian intermediary).

III. Tax treatment of donors of public benefit foundations

1. System of tax credit² or tax deduction³?

Gifts to qualifying organisations, (i.e. charities that are operating in specific areas and which have been recognised by royal decree) give right to an income tax reduction (tax credit) for individuals and tax deduction for companies

²For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

³For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

2. Tax treatment of individual donors

a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

There is a minimum of 40 Euro per gift. The aggregate value of the gifts cannot exceed 10% of the taxable income, with an absolute maximum of 353 000 Euro for the total of the gifts (tax year 2012).

b) Which assets qualify for tax deductibility?

In principle, only gifts of cash to qualifying NPOs can benefit from tax reduction. If the gift is made to a state museum, the Regions, the Communities (Flemish- or French-speaking Communities), the Provinces, or the Public Centres of Social Assistance (CPAS - OCMW), and provided that these bodies transfer these assets to their museums, gifts of works of art are tax deductible under certain conditions. Foundations do not benefit from this exception.

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed

The tax relief consists in a tax deduction

Cash donations of €40 or more are deductible up to 10% of the taxable income, with an absolute maximum of € 380550 (year 2014).

b) Which assets qualify for tax deductibility?

In principle only gifts in cash can benefit from tax deduction. The only exception to this principle concerns gifts in works of art. If the gift is made to a state museum, the Regions, the Communities (Flemish- or French-speaking Communities), the Provinces, or the Public Centres of Social Assistance (CPAS - OCMW), and provided that these bodies transfer these assets to their museums, gifts in works of art are tax deductible under certain conditions. Foundations do not benefit from this exception.

4. Tax treatment of donations to non-resident public-benefit foundations – do donors get the same tax incentive?

On 31 December 2009 the “*Moniteur Belge*” (official gazette) published the law of December 22, 2009 (*Loi portant des dispositions fiscales et diverses*). Part of this law concerns the income tax deductibility for donations or gifts to the so called “recognised institutions”. The law now states that gifts to qualifying domestic institutions or to similar institutions from another member state of the European Economic Area, which are recognised on a similar manner (“*ou aux institutions similaires d'un autre Etat membre de l'Espace économique européen qui sont agréées de manière analogue*”) will benefit from tax reduction. In order to generate tax relief for the donor, the non-resident receiving organisation within the EEA should be considered as comparable to a Belgian institution and should be licensed ‘in a similar manner’ in its country of residence.

5. Other frameworks such as percentage law systems

Not applicable in Belgium.

6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?

What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

For Income tax deduction on gifts to charities located in Belgium and which are recognized by the tax authorities as eligible to receive deductible gifts the conditions are as follows

For gifts to a Belgian qualifying organization: the only document that the donor should provide is an attestation which is made by the recipient for each gift of which the amount is at least 40 Euro

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?

What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required?)? Annual financial report (translation required?)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

Outside of the EEA or EU: Legacies to non-resident public benefit foundations will not benefit from the privileged regime (reduced tax rate).

Within the EU/EEA: According to the new legislation, tax relief (reduced rate) has now been extended to comparable organisations located in EU or EEA countries.

For gifts to organizations located in another EU or EEA Member State: according to recent instructions of the Belgian tax authorities, the taxpayer who claims the deduction for a cross-border gift should keep at the disposal of the tax authorities the evidence showing that the foreign institution can be considered as similar to a Belgian institution dealt with by the law and the documents showing that it has been licensed 'in a similar manner' in its country of residence.

The donor should provide a copy of the statutes of the foreign organization (including the description of the charitable purpose) as well as documents showing that the organization has been recognized as eligible for receiving tax deductible gifts by the administration of the country where it is established and that it can be compared, as far as its activities are concerned, with one of the types of organization listed by the Belgian income tax code. There are no further comments on these conditions in the law, Royal decrees or administrative instructions. The Belgian tax inspector of the donor's jurisdiction will verify whether the evidences are sufficient. There is no verification at a centralized or higher level. Since the collection of these documents might be quite cumbersome, the foreign organization will have to help the Belgian donor.

The Belgian law does not require any procedural condition to the foreign organizations willing to collect deductible gifts in Belgium (like registration) or any obligation to file documents. In that sense it follows closely the decision of the European Court of Justice in the Heine Persche case. Since the

law requires that the foreign organization is comparable to a Belgian one, it should be demonstrated that the foreign organisation complies with “comparable” conditions as those foreseen in the Belgian legislation or that they would comply with the Belgian conditions if they were established in Belgium.

In order to facilitate the task of the donor, foreign public benefit foundations collecting funds in Belgium could act proactively by putting at their donors’ disposal all relevant documents showing that the conditions as outlined above are met (for instance through their website, in a printable version).

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

1. Individuals

Income tax:

Social benefits provided to individuals by charities within the framework of their charitable purposes are normally not subject to individual income tax since these benefits are not linked to a professional activity of the beneficiary.

The provision of grants, subsidies, prizes or other benefits by national or international institutions, including non-profit organisations (i.e. foundations or associations), to individuals can sometimes be connected to a professional or occasional activity of the beneficiary, for instance prizes awarded to musicians or to authors, and subsidies granted to scientists.

In such cases the grants, subsidies or prizes are subject to individual tax if they exceed €3,200 per year. Generally, they will be taxed as miscellaneous income (at a reduced rate).

However, these grants, subsidies or prizes can be totally exempted if they are paid by institutions or foundations which have been recognised by Royal Decree for this purpose.

Gift tax:

This issue is not relevant, since grants, subsidies or prizes are generally not a “donation” in the strict sense of the word. Moreover, it should be kept in mind that there is no gift tax on informal gifts of movable assets.

1. Legal entities

Income tax:

If the legal entity which receives a grant or a benefit from a foundation is subject to corporate tax, the grant or benefit will be considered as income and will be taxed. If the entity receiving the grant is a non-profit organisation which is exempt from corporate tax and subject to the tax on legal entities, there will be no income tax on this grant.

Gift tax:

As far as movable assets are concerned, it should be kept in mind that there is no gift tax on informal gifts (gifts from hand to hand). If the benefit is provided through a donation made by a non-profit organisation having one of the legal forms enumerated by the law to another organisation having one of these forms (e.g. from a foundation to another foundation or to an ASBL), the gift tax will be limited to a fixed amount of €100.

2. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?

In case of an individual receiving grants, subsidies or social benefit from a foreign source it should be checked whether there is a double tax treaty with the country in question. If there is a treaty this kind of benefit might fall under the provision "other income"

V. Gift and inheritance tax

1. Does gift and inheritance tax/transfer tax exist in your country and if yes who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?

Gifts and inheritance tax exist in Belgium and are organized respectively by the code of registration duties and by the code of inheritance tax. The tax rates are determined by the region of which the donor/testator is domiciled/had his last domicile

As far as inheritance tax is concerned, the heirs and the legatees should pay the tax, each of them for the portion of the estate he has received. It should be noted that the testator can stipulate that a legacy to certain beneficiaries is free of inheritance taxes. In that case the heirs should pay inheritance tax on these legacies.

As far as formal donations (enacted in a notarial deed) are concerned, there is no legal provision stipulating that gift taxes should be paid by the beneficiary. The concerned parties are free to determine who will pay the duties. Since payment of the registration duties by the donor is not considered as an indirect donation, it is more interesting to have the duties paid by the donor.

Informal gifts are not subject to registration duties. But the parties (donor or beneficiary) may decide afterwards to register the donation voluntarily and to pay the registration duties on it. Such possibility may be used in order to avoid inheritance tax which would be due in case the donor would die less than three years after the gift has been made (see below). The person who takes the initiative to register the deed (donor or beneficiary) should pay the duties

2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?

V. Gift and inheritance tax

The inheritance tax rates as well as the gift tax rates are determined by the regions

INHERITANCE TAX RATES

The standard rates between third parties vary between 30% and 65% for Flanders and between 30% and 80% for Brussels-Region and Wallonia, according to the value of the legacy

The reduced rates, which are determined by the region where the testator was resident, are as follows:

FLANDERS

8.5% per cent for legacies to non-profit associations (ASBL-VZW), international non-profit associations (AISBL—IVZW), private foundations and foundations for public benefit, (fondations d'utilité publique—stichtingen van openbaar nut) and to professional unions;

BRUSSEL REGION

6.6% for public benefit foundations (fondations d'utilité publique—stichtingen van openbaar nut);
12.5% per cent for legacies to non-profit associations (ASBL-VZW) and other non-profit legal entities which are recognized as qualifying organizations eligible to receive tax-deductible gifts;
25% per cent for legacies to Belgian non-profit associations (ASBL-VZW), international non-profit associations (AISBL-IVZW), private foundations, or professional unions.;

WALLONIA

7% per cent for legacies made to Belgian non-profit associations (ASBL-VZW), to international non-profit associations (AISBL-IVZW), to public benefit foundations (fondations d'utilité publique—stichtingen van openbaar nut), to private foundations, or and to professional unions;

GIFT TAX RATES

Standard rates between third parties for the donation of immovable assets vary between 30% and 80%

Standard rates between third parties for the donation of movable assets are 7% for Flanders and Brussels Region and 7,7% for Wallonia

It should be reminded that informal gifts of movable assets which are not operated through a notarial deed and not presented voluntarily to the administration of registration are not subject to registration duties.

Reduced rates

FLANDERS

The reduced rate is 5.5% for the following legal forms:

Non-profit associations (ASBL-VZW), international (scientific) non-profit associations (AISBL-IVZW), institutions for public benefit (fondations d'utilité publique—stichtingen van openbaar nut), private foundations, or professional unions.

BRUSSELS-REGION

The reduce rate is

- 7% per cent for donations made to Belgian non-profit associations (ASBL-VZW), international non-profit associations (AISBL-IVZW), professional unions, or and private foundations;

- 6.6% per cent for donations made to public to public benefit foundations.

WALLONIA

The reduced rate is 7% per cent for donations made to Belgian non-profit associations (ASBL-VZW), to international (scientific) non-profit associations (AISBL-IVZW), to institutions for the public benefit (fondations d'utilité publique—stichtingen van openbaar nut), to private foundations, or and to professional unions;

3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?

No such a threshold does not exist.

4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?

Yes, a part of the testator's assets is reserved to certain heirs. The heirs who are protected are the descendants, the ascendants and the surviving spouse.

The "reserved share" represents the part of the estate, which the testator cannot dispose of freely. The "reserved share" is calculated as follows:

If the testator has one child the "reserved share" will be $\frac{1}{2}$ of the estate.

If the testator has two children the "reserved share" will be $\frac{2}{3}$ of the estate.

If the testator has three or more children, the "reserved share" will be $\frac{3}{4}$.

If the testator does not respect the rules concerning the reserved share, the heirs will be entitled to claim that a legacy should be reintegrated into the estate or reduced in such a way that the reserved share can be fully reconstituted. Before making a will the testator should check this issue carefully, preferably with his notary.

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

The privileged regime can only be granted to legal entities which have their registered office in Belgium. Foreign-based organizations can in principle not benefit from the equal treatment.

However, further to the modification of the legislation of the three Belgian regions, which has been harmonized with the EU law, the privileged regime (i.e. the same reduced rate as for domestic transfer) has been extended to donations and legacies to foreign non-profit legal entities if the legacy or the donation has been made to a charity with its registered office in one of the European countries (EU countries for Wallonia and EEA countries for Flanders and the Brussels Region).

VI. Trends and developments

1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments, or are changes being discussed?

Belgium was the first country in Europe whose legislation on tax relief for donations or legacies to foreign organisations was challenged by the European Commission (October 2002). New developments on cross-border activities of foundations are being closely followed by the practitioners (conferences, publications, creation of a database for donors and charities on legal and tax aspects, contacts with the European Commission, etc). These discussions and contacts increased after the

so called Heine Persche case (ECJ C 318/07 in 2009), which finally incited Belgium to extend the equal treatment (tax deduction) to all the categories of eligible charities listed by the law.

Now that these important steps have been made, there might still be practical problems with the “comparability test”, more in particular for the income tax deduction. The verification as to whether a foreign organization could be compared to one of the categories of organizations listed in the Code has been left to the local inspectors. As a consequence, due to the lack of administrative instructions and to the absence of centralization, uncertainties may remain for the application of this new part of the Belgian legislation. Guidelines to overcome these difficulties could possibly be conceived in a new work session of the so called “Groupe de Contact Libéralités”, a task force which was constituted by representatives of the non-profit sector, by the Ministry of Finance and by different Ministries involved in the recognition procedure, and which has been recently reactivated.

2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws / rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)?

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 a specific anti-terrorism and anti-money laundering act, namely the law of 11 January 1993 preventing the use of the financial system for money laundering and terrorist financing (“*loi du 11 janvier 1993 relative à la prévention de l'utilisation du système financier aux fins du blanchiment de capitaux et du financement du terrorisme*”).

Beside this specific law it should be noted that the “transparency provisions” of the law of June 17, 1921 (amended in 2002) contribute to prevent that individuals use foundations or associations as a screen. These provisions foresee accounting obligations, publication requirements (amongst others for the appointment or dismissal of directors or representatives), obligation to keep a member's register (for associations) and keeping a centralized file at the clerk office of the Court of Commerce.

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

The law of January 11, 1993, which has been several times amended, foresees that notaries, lawyers, legal and tax advisers, accountants, external auditors, and bankers should notify the CETIF (*cellule de traitement des informations financières*) about any transaction where they have reasons to suspect money laundering or terrorism financing by their client. The term “client” includes commercial companies, but also other legal entities (associations, foundations) or trusts.

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

There are currently no requirements in the framework of counterterrorism measures that have been specifically introduced by the supervisory/regulatory authorities for foundations.

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

The Ministry of Justice launched in 2012 an awareness and information campaign on the possible use of non-profit legal entities as vehicle for money laundering or terrorism financing. The document of the Ministry of Justice underlines how charities and donors might actually be vulnerable to this kind of abuse and how this phenomenon could undermine the legitimate non-profit sector. It enumerates examples where non-profit organizations or donors are involved and where money laundering or terrorism financing could be suspected. This document is based on the interpretative note appended to Recommendation 8 of the FATF (Financial Action Task Force)* of the OECD. Belgium is a member of this task force.

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

No

3. Are there any other recent trends or developments affecting the legal and fiscal environment for public benefit foundations in your country?

With respect to the exemption from corporate tax, it should be noted that foreign non-profit entities which have a permanent presence in Belgium cannot be exempted on the sole basis of Art. 181 of the ITC (the so-called privileged sectors). This restriction might be in conflict with the Treaty of Rome.

4. Public fundraising

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

No.

Useful contacts

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Selected law texts online:

Law of 27 June 1921 modified by the law of 2 May 2002 on associations, international non-profit associations and foundations: <http://www.certibionet.org/doc/CB1001fr.pdf> also accessible via: http://www.ejustice.just.fgov.be/doc/rech_f.htm

About the EFC Legal and Fiscal Country profiles

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.”

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About the European Foundation Centre

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors. Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice.