



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **DENMARK – 2014**

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*The operating environment for foundations*

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Contents

I. Legal framework for foundations .....	3
II. Tax treatment of the foundation.....	9
III. Tax treatment of donors .....	15
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation) .....	16
V. Gift and inheritance tax .....	16
VI. Trends and developments.....	17
Useful contacts .....	18
Selected Bibliography .....	18
About the EFC Legal and Fiscal Country profiles .....	19
About the European Foundation Centre.....	19

## **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)?**

Foundations have been legally accepted under Danish law for centuries. In 1984 it was decided to gather all relevant rules and two Acts were introduced. The General Foundation Act /*Lov om fonde og visse foreninger Nr. 300 af 6. juni 1984* (FFL), now consolidated Act *lovbekendtgørelse nr. 698 af 11. august 1992*, covers foundations and certain associations. Foundations which engage in major commercial activities or hold controlling interest in a commercial company are regulated by the Act on Commercial Foundations/*Lov om erhvervsdrivende fonde Nr. 756 af 18. November 1991* (EFL), now consolidated Act *lovbekendtgørelse nr. 559 af 19. maj 2010*. However, there is no exact legal definition of the term foundation in the law texts. Foundations are generally understood to be independent and separately constituted legal bodies with their own governing structure and dedicated assets, set up in order to pursue a specific purpose.

A major reform of the Danish rules on Commercial foundations is under way. In December 2012 a Committee set up by the Minister for Industry published a report on a reform of the 1984 Act on Commercial Foundations. On October 29<sup>th</sup> 2013 the Minister presented a Draft Act before the Danish Parliament. The reform is expected to be adopted by Parliament before the end of 2013. The reform is scheduled to enter into force in 2014.

- 2. What purposes can foundations pursue?**

The purpose of the foundation must be written down in the statutes of the foundation. It must comply with the law and be possible to achieve but need not be charitable or of public benefit. Commercial foundations can pursue economic activities as a part of their purpose or as their sole purpose. These foundations fall under the Act on Commercial Foundations, which states that the statutes must in this case contain a regulation on the distribution of profits. The establishment of a foundation with the sole purpose of supporting the family members of the founder is not allowed according to the constitution, although a foundation can be established with the purpose of benefiting relatives of the founder up to the next generation (Art. 7 FFL and Art. 8 EFL).

- 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?**

No governmental approval is needed to set up a foundation.

A non-commercial foundation can be established through deed or a will. It receives legal personality at the moment of its establishment. Within three months of its establishment, the foundation must register with the local foundation authority and the local tax authorities, both of whom must receive the statutes of the foundation. (Before 1992 all foundations had to be registered in the national register of foundations). A starting capital of 250,000 Danish kroner (DKK) (approximately 34,000 euros) is required (Art. 8 FFL). For foundations with smaller assets, the approval of the Ministry of Justice is needed. According to Art. 6 FFL, foundations need to have statutes that cover the following points: the name of the foundation, its domicile, its purpose, the amount of assets, any special rights of the founder and third parties, rules for establishment and the number of board members (at least three members are required according to Art. 11 FFL), accountability requirements and the use of income.

Commercial foundations must register with the Danish Business Authority (*Erhvervsstyrelsen*) three months after the statutes are signed (Art. 5 EFL). They only receive full legal capacity after registration and can only register when the minimum required starting capital of 300,000 DKK

(approximately 40,000 euros) is transferred to them. Names of board members as well as directors and accountants/auditors must be included in the register.

**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? )**

No.

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

Commercial foundations obtain legal personality at the time of their registration with the national Danish Business Authority, [www.erhvervsstyrelsen.dk](http://www.erhvervsstyrelsen.dk) ).

Non-commercial foundations must register with the regional tax authorities, but they obtain legal personality at the time of their establishment.

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

For commercial foundations, the following information must be registered according § 40 of Ministerial Order Nb. 675 of June 26<sup>th</sup> 2012:

- The name of the foundation, and the secondary name (if any)
- The address and registered office of the foundation
- The purpose of the foundation, the date of the formation of the foundation, and the date of the last amendment of the statutes of the foundation
- The financial year of the foundation
- The size of the basic capital, and a statement whether this has been paid up in cash or other values
- The full name, position and residence of all board members and executive directors, and auditors

If foundations are registered, is the register publicly available?

All information in the register for commercial foundations is available to the public.

Non-commercial foundations have to submit yearly accounts to local tax authorities, which must be signed by all board members. The foundation supervision authority can also require this information. Accountability requirements are found in Chapter 7 FFL. Every foundation must have an accountant or auditor. Larger foundations (defined as having net assets of 3 million DKK – approximately 400,000 euros – or more) need a qualified independent auditor/ godkendt revisor.

**6. Is a minimum capital required?**

For non-commercial foundations a starting capital of approximately 34,000 euros is required (Art. 8 FFL). For foundations with smaller assets the approval of the Ministry of Justice is needed. The assets of foundations are normally divided into the endowment, which may not be spent, and the income, which (apart from 25% that can be used to build up the endowment according to Art. 29.2 FFL) must be used to pursue the purpose of the foundation.

For commercial foundations a starting capital of 300.000 DKK (approximately 40,000 euros) is needed. The amount can be raised later through a board decision but this has to be announced to

the Danish commerce authority. A reasonable amount of the annual revenue can be used to build up the endowment (Art. 40 EFL).

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

Both types of foundations are run by a governing board, which represents the foundation and ensures proper administration and pursuance of the foundation's purpose.

Non-commercial foundations must be governed by a board consisting of at least three individuals (Art. 11 FFL). The foundation authority may also approve a smaller board or a legal entity as a board member. The statutes must provide rules on how board members are appointed. Statutes may stipulate that outgoing board members appoint their successor. Any board member may resign at any time and has to resign if he/she is bankrupt (Art. 13 FFL). The foundation authority may remove a board member from his position if he/she has acted in breach of the statutes or has otherwise proven incapable of properly fulfilling his/her position (Art. 14 FFL). The founder may reserve the right to appoint one or several board members. The founder and his/her family cannot appoint the majority of the seats on the board (Art. 16 FFL). In general, half of the governing board and the administrators must be resident in Denmark. The foundation authority and the tax authority must be informed about the board's composition (Art. 11.2 FFL). The foundation authority must approve any decisions of the board that put the existence of the foundation at risk (Art. 21 FFL). Board members must sign the annual accounts of the foundation (six months after the end of the financial year at the latest). Every foundation must have an accountant or auditor/*revisor*.

Commercial foundations must be governed by a board consisting of at least three members (Art. 12 EFL). All names of board members must be registered with the Danish commerce authority. The founder may appoint one or more board members. However, the founder and his/her family cannot appoint the majority of the seats on the board without approval of the authority (Art. 17.1 EFL). Where a foundation is set up by a corporation, the associate running the corporation cannot appoint the majority of board members (Art 17.2 EFL). The board may appoint one or more directors, however they cannot constitute the majority of governing board members. The foundation authority may remove a board member from his position if he/she has acted in breach of the statutes (Art. 15 EFL). If a board member resigns, a successor has to be appointed; if this does not happen, the foundation authority may appoint a successor (Art.16 EFL). Reasonable remuneration of board members is possible, the amount of which can be reduced by the foundation authority (Art. 19.3 EFL). The foundation authority must approve any decisions of the board that put the existence of the foundation at risk (Art. 21.3 EFL). In commercial foundations, rules of workers participation are applicable which are similar to those applying to joint-stock companies (Art. 22 EFL). Employees may thus appoint one-third of the members of the supervisory board (if the foundation has had more than 35 employees over the past three years).

Is it mandatory to have a supervisory board?

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?

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

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?

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

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?

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

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

The rules regarding the power to represent foundations are specified in the law. For commercial foundations, the rules are modelled on the rules in the 1<sup>st</sup> Company Law Directive (Directive 2009/101/EU)

Do the director and officers have powers of representation?

**9. Liability of the foundation and its organs**

Board members can be held civilly and criminally liable.

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

The diligence standard for board members is the same as that which applies to board members in limited liability companies.

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?

If a Danish board member acts in accordance with the mentioned criteria, he would not be held liable for any losses to the foundation and / or its creditors.

What is the liability the directors and officers?

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

No.

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

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation’s statutes.	Civil liability				
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.		Possible civil liability*			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.					X

\* If a foundation sells property to the spouse of a board member, that member should not take part in the decision by the board. If he has in fact taken part in the decision, he would become civilly liable, even though he did not suspect that the price was too low.

**10. Are economic activities allowed (related/unrelated)?**

Non-commercial foundations may carry out small-scale economic activities (Art. 1.3 EFL). Foundations that conduct considerable commercial activities or have controlling interest in commercial enterprises are subject to the rules in the Act on Commercial Foundations.

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

For non-commercial foundations, the assets must be managed by the board according to rules specified by the Ministry of Justice (Art. 10 FFL). Commercial foundations can be major shareholders or partners in companies. There are no legal limitations for the placement of assets belonging to commercial foundations.

**12. 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)**

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

For non-commercial foundations, the assets must be managed by the board according to rules specified by the Ministry of Justice (Art. 10 FFL). Commercial foundations can be major shareholders or partners in companies. There are no legal limitations for the placement of assets belonging to commercial foundations.

**14. 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?

Annual accounts of commercial foundations are governed by the same rules that apply to non-listed limited companies.

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)?

Who checks (supervisory/tax authorities)?

Where is the required information publicised?

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

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

A commercial foundation is required by law to ensure external audit of its annual accounts. Audit must be undertaken by an approved auditor.

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

The Ministry of Justice is responsible for the supervision of non-commercial foundations (Art. 36 FFL). In practice, the Ministry delegates the supervision activities to a department of the Ministry called *Civilstyrelsen*.

The Ministry of Commerce supervises most commercial foundations. The supervisory authority is delegated to the Danish Business Authority (*Erhvervsstyrelsen*).

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?

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

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

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

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

**16. When and how does a foundation dissolve?**

Dissolution may occur after the approval of the competent authority at the request of the governing board or at its own initiative (Art. 48 EFL, Art. 32 FFL). The remaining assets have to be spent in accordance with the purpose of the foundation.

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

In general, under Danish civil law, foreign legal entities are recognised if they are formed in accordance with the law of another state.

**18. 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?**

There are no limitations under Danish civil law.

## **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?)**
- 2. What are reporting/proof requirements to claim tax exemptions?**
- 3. Is specific reporting required for the use of state funds?**
- 4. Is there an obligation to report on donors and beneficiaries?**
- 5. Are there specific accounting rules for foundations?**

- 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 definition in Danish civil law of the term "public benefit purpose" ("almennyttig"). The purpose of the foundation is of relevance for tax law purposes and for determining whether a foundation is considered to be a commercial foundation ("erhvervsdrivende fond", which may also be translated as "enterprise foundation").

- 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.**

There is no statutory definition of the term "public benefit purpose" in Danish tax law. However, it is a general requirement for donations to be considered as given to a public benefit purpose, that the beneficiaries are described in the statutes of the foundation by objective criteria, and that the beneficiaries are not limited to a specific group of persons, institutions or companies.

Any foundation can apply to the Danish national tax authorities to be approved as having a public benefit purpose for certain tax purposes (deductibility of donations made to foundations and other public benefit organisations). Every year a list is published with the names of all foundations approved as public benefit (see [www.skat.dk](http://www.skat.dk)). Applications to be approved for the coming calendar year must be made to the authorities no later than October 1<sup>st</sup>.

Note that this approval as public benefit does not have any effect on the ability of a foundation to deduct its donations from its taxable income under Danish tax law. A foundation which is not approved may thus be able to deduct its donations made to public benefit purposes.

Since 2008 foreign foundations have been able to apply for approval under the same conditions as Danish foundations

In Ministerial Order nb. 837 of August 6<sup>th</sup> 2008, The Ministry of Taxation has set up some guidelines for the approval of foundations whose donors may deduct their donations from their taxable income in Denmark:

- The foundation must be approved by the Ministry for Taxation
- the donations from the foundation must fall under one or more public benefit purposes.
- The foundation must be formed in accordance with one the Danish foundations Acts, **or** have a governing board with at least one member who is independent in relation to the founder
- The foundation must have its principal office and the majority of its management organs located within the EU or EEA.
- The foundation must have a public benefit purpose (public benefit could be translated as "almenvælgørende" or "almennyttig") Beneficiaries must be objectively defined as a broad group of the population, which is not geographically or otherwise limited to less than 40.000 persons.

- The activities of the foundation may be carried out in Denmark or abroad.
- The foundation must have an average of at least 100 donors from the EU /EEA for a period of three years.
- The yearly income of the foundation shall be no less than 150,000 Danish Kroner (DKK).

**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			

**9. Support of “the public at large”**

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

As mentioned above, it follows from the guidelines that beneficiaries must be objectively defined as a broad group of the population, which is not geographically or otherwise limited to less than 40,000 persons.

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

No.

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

As mentioned above, the criteria set out for determining whether a foundation is considered to have a public benefit purpose for tax law purposes are only guidelines.

## 10. 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?

A public interest foundation may remunerate its board members, but otherwise financial assistance is not allowed.

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

In order for a foundation to be considered a public interest foundation, its statutes must provide that in case of dissolution of the foundation, any remaining assets have to be transferred to another public benefit foundation or used to advance a public benefit purpose.

## 11. “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**?

Board members may be remunerated for their work. However, the remuneration must not exceed an amount which is reasonable with regard to the nature of the job and the workload involved. The foundation supervisory authority may recover any remuneration which goes beyond this limit.

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)

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?

According to a ministerial decree, the administration costs for non-commercial foundations must be approved by the foundation authorities if they exceed 12% of the yearly gross income of the foundation. For this purpose, administration costs include remuneration for board members.

## 12. 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.					
A foundation distributes a (small) part of its income to the founder or his family.	X				

\* Under Danish law, a family foundation is allowed, with the restriction that a foundation can only benefit family members which are alive at the time the foundation is set up plus one unborn generation. This is due to a provision in the Danish constitution.

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

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

**13. Distributions and Timely Disbursement**

Are foundations allowed to spend down their capital?

Foundations are not allowed to spend down their capital. Commercial foundations must maintain a “basic capital” of at least 300,000 DKK. For ordinary foundations the capital requirement is 250,000 DKK.

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

While a foundation in principle exists for an unlimited period of time, it is accepted that a foundation’s existence may be limited to a specified period of time.

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?

In principle, the board of a foundation must spend the entire income of the foundation for activities related to its purpose. The board may, however, decide to consolidate income if this is necessary to ensure that the purpose is fulfilled.

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

No.

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

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

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

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

A foundation may for tax purposes deduct from its taxable income an amount for consolidation of up to 25% of the distributions made by the foundation for public benefit purposes in addition to deductions derived from distributions. This deduction can only be made if distributions have actually

been made during the fiscal year. If during a fiscal year there have been no distributions, this deduction is lost.

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.)?

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

Activities can be conducted outside Denmark and assets can be transferred outside the country.

#### **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.**

#### **16. Income tax treatment**

Foundations are for tax purposes generally treated as joint-stock companies according to Art. 3 of the special Taxation Act for Foundations/*Fondbeskatningsloven Nr. 813 af 26. oktober 1997* (FBL), now consolidated Act (*lovbekendtgørelse*) nr. 1248 af 2. november 2010. They are taxed on the income derived from economic activities. Other income is also taxed at a rate of 25 %, but only if it exceeds 25,000 DKK (approximately 3,400 euros). Gifts and donations received by foundations are treated like other income, according to Art. 3.3 FBL. (Tax deductions for foundations are possible - see below). Gifts and donations given to a foundation in order to build up its endowment are not taxed (Art. 3.3 FBL).

Dividends received from companies in which the foundation holds at least 10 % of the shares are exempt from tax – cf. Art. 10 FBL, which refers to Art 13 of the Corporate Income Tax Law/*Selskabsskatteloven* (SEL). If a foundation holds at least 75 % of the shares of a limited liability company which for tax purposes is considered to be resident in Denmark, the income of that company is for tax purposes considered to be earned by the foundation (Art. 3.4 SEL)

Foundations can receive tax deductions in various ways. Most importantly, they can deduct the amounts they spend on donations made during the fiscal year for the charitable or public benefit purposes specified in their statutes (cf. Art. 4 FBL). According to Art. 4 FBL, a foundation may deduct from its taxable income an amount for consolidation of up to 25% of the amount spent on donations for public benefit purposes during the fiscal year. The foundation may also deduct a reserve for consolidation if the amount is donated for public benefit purposes within the next five years (Art. 4.4 and 4.5 FBL). It can deduct other grants as well if their recipients are taxed. Donations from one foundation to another are also tax-deductible.

Foundations that do not fall under the FBL can be taxed according to the Corporate Income Tax Law.

Grants and donations

Investment income (asset administration)

Economic activities related/unrelated)

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

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

**17. Capital gains tax, where separate from income tax**

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

Commercial foundations are registered for VAT in line with other commercial entities.

**19. Capital taxes on value of assets, where applicable?**

**20. Taxes on the transfer of assets?**

**21. Other taxes, where applicable (Real property tax)**

**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?

**III. Tax treatment of donors**

**1. System of tax credit or tax deduction?**

Only donations to recognised public benefit foundations are tax-deductible for the donor. The special approval of the Ministry of Taxation is needed before a Danish foundation can receive tax-deductible donations. By 1 October each year, the foundation has to ask for this approval by sending its statutes and annual accounts to a special department of the tax authority. The list of qualifying institutions is published annually. Foundations that wish to be included have to spend their income on a public benefit purpose.

**2. Tax treatment of individual donors**

Both individual and corporate donors receive limited tax benefits when donating to qualifying charitable organisations. Gifts exceeding 500 DKK (approximately 70 euros) up to 14,500 DKK (for the (approximately 1.950 euros) are deductible each year. Cash donations and in-kind donations are deductible. The limit of 14.500 DKK is for the fiscal year 2013. The limit is adjusted annually, but the adjustment has been suspended for 2013.

If the donation is given through a covenant or an annuity for a fixed period of at least 10 years (written statement between donor and beneficiary), corporations and individuals cannot deduct more than 15% of their taxable income.

### **3. Tax treatment of corporate donors**

See above.

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

Deductions are possible also for non-resident public-benefit foundations, if they register as charitable in Denmark.

### **5. Other frameworks such as percentage law systems**

None.

### **6. What are reporting/proof requirements to claim tax benefits?**

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

### **Individuals**

Gifts or grants by foundations are regarded as income for the recipient and taxed at the normal income tax rate.

### **Legal entities**

## **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)?**

**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?**

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

**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?**

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

In general, foundations are subject to inheritance tax up to 36.25%. The Ministry of Taxation annually publishes a list of foundations that have a charitable or public benefit purpose. The foundations on this list are exempt from inheritance tax; other foundations may apply for exemption from inheritance, if their purpose is considered to be of public benefit. A purpose is considered "public benefit" if an

unrestricted range and number of persons can benefit from the public benefit purpose. There is no specific amount that needs to be distributed annually.

## **VI. Trends and developments**

- 1. 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 fact that foreign foundations with a PE located in Denmark are taxed according to the rules on limited liability companies have given rise to some debate. See:

- Michael Kirkegaard Nielsen, "Stauffer-dommen – begrænset skattepligtige almennyttige institutioner" Skat Udland 2006/11, p. 399 ff
- Søren Friis Hansen; "EU-rettens betydning for udenlandske samvirker og institutioner, der er begrænsende skattepligtige til Danmark", Skattepolitisk Oversigt 2006, p. 399-411

- 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)?

Consolidated Act no. 634 of June 12<sup>th</sup> 2013 contains rules on money laundering. This act does not contain any specific provisions regarding foundations.

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

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

No.

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

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?

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

#### 4. Public fundraising

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

##### **Useful contacts**

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### **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.”

[www.efc.be](http://www.efc.be)

### **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.