

# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **ESTONIA – 2014**

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***The operating environment for foundations***

***Drafted by Mikko Lagerspetz, Centre for Civil Society Study and Research, Tallinn University, updated by Katrin Enno, Open Estonia Foundation.***

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## **1. 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 Foundations Act passed in November 1995 regulates foundations. All foundations are independent legal persons acting under civil law, irrespective of their founder, except for those foundations set up by the Parliament through separate laws (e.g. The Cultural Endowment of Estonia).

**2. What purposes can foundations pursue?**

A foundation may only pursue those purposes specified by its statutes. The purpose may also be private benefit.

**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?**

Any legal or physical person can set up a foundation. The foundation can be set up either for a certain time, until the realisation of its goals, or for an unlimited time period. The foundation is set up by a founding act that states the name and address of the foundation; the names, personal identification codes and addresses of its founders; the property that is being transferred to the foundation; and the names, personal identification codes and addresses of the board and council members. This must be accompanied by the statutes of the foundation. The founders must sign both documents and the Notary Public must certify their signatures. A foundation can also be founded on the basis of a person's will, in which case an executor will carry out the legal procedures.

Foundations may start using their assets when they have been registered by the Registry of Non-Profit Organisations and Foundations. The board must apply for registration and provide the registry with information on the foundation's purposes, the persons belonging to the board, the person entitled to liquidate the foundation if it has fulfilled its purpose or in case of bankruptcy, and the date the foundation was set up. The application must be accompanied by a copy of the founding act and the statutes, bank information on the foundation's financial assets, sample signatures of the members of the board certified by a Notary Public, and telephone and fax numbers of the foundation. All board members must sign the application, and the Notary Public must certify their signatures.

The Registry may refuse registration if the documents presented do not correspond to the requirements of the law.

**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?**

Yes. The Registry of Non-Profit Organisations and Foundations is located at the Centre for Registers and Information Systems, which is supervised by the Ministry of Justice.

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

The register holds information on:

- The code and registration number of the foundation
- Its name
- Its place of residence and address
- Its purposes
- The members of the board
- Who administers the foundation in case of bankruptcy
- The liquidator
- Specific regulations on the rights of representation of the foundation
- The date of its founding
- The dates and general content of changes to the statutes
- The period of functioning, if the foundation is set up for a limited period
- The termination of the foundation
- Merger and division
- Declaration of bankruptcy and termination of the bankruptcy process
- Its extinction from the Registry
- The holder of the documents of an extinguished foundation
- The date and executor of the registry notation
- References to other notations and other remarks

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

Yes. Books are kept according to the Law on Bookkeeping. The board presents a report of financial activities and an auditor's statement to the board for acceptance within four months of the end of every fiscal year. Every board member must sign the report. The report accepted by the board must be delivered to the Registry of Non-Profit Organisations and Foundations within six months of the end of the fiscal year.

Board members, as well as any other persons with a legitimate interest, may appeal to the court for an extraordinary audit. If the court orders the audit to take place, it will appoint auditors for the task.

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

No

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

The foundation must have a management board consisting of at least one member, and a supervisory board consisting of at least three members. The statutes of the foundation may define some persons (e.g. the founders) as specially favoured persons. The supervisory board must appoint an auditor, who may not be a member of the supervisory board or the management board, or any of the specially favoured persons.

If the management board has three members or more, they must elect a president from among themselves. The management board may represent the foundation and run its everyday activities, while the supervisory board must approve more important economic decisions. The supervisory board may at its discretion appoint a new management board or dismiss any individual member of the management board and appoint a new one. A supervisory board member cannot be a member of the management board at the same time. A specially favoured person has the right to receive information about the foundation's activities and to become acquainted with its financial documents.

If members of the management or supervisory board have violated the statutes of the foundation or the law, or if they have failed to fulfil their duties and caused damage to the foundation or to its creditors, they will be personally responsible for the damage.

a) Is it mandatory to have a supervisory board?

Yes

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 board members is three. Members of the management board and auditors or persons with an equivalent economic interest, or bankrupts may not be members of the supervisory board. The procedure for appointment and removal of members of the supervisory board is prescribed by the articles of association and not the law.

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

The supervisory board plans the activities of the foundation, organises the management and supervises the activities of the foundation.

The consent of the supervisory board is required for the management board to enter into transactions which are beyond the scope of everyday economic activities.

The supervisory board has the right to examine all documents of the foundation and to audit the accuracy of accounting, the existence of assets and the compliance of the activities of the foundation with law and the articles of association.

The supervisory board represents the foundation in disputes and upon entry into transactions with members of the management board.

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 founder may amend the articles of association of the foundation. If a foundation has several founders, all founders may amend the articles of association only jointly.

The supervisory board may amend the articles of association of the foundation only if:

- All founders are withdrawn; or
- The founders fail to agree on amendment of the articles of association, or
- This right is granted to the supervisory board by the articles of association

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

A beneficiary or other person with a legitimate interest may demand information from a foundation concerning the fulfilment of the objectives of the foundation. The beneficiary or other person with a legitimate interest may examine the annual accounts of the foundation and the activity report of the

management board, the auditor's report, accounting documents, the foundation resolution and the articles of association.

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?

A member of the supervisory board may not participate in voting if approval of entry into a transaction between the member and the foundation is being decided, or if approval of entry into a transaction between a third person and the foundation is being decided if the interests of the member of the supervisory board arising from such transaction are in conflict with the interests of the foundation.

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

No

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

According to the law, members of the management board may represent the foundation. The statutes may introduce a limitation, which requires that the members of the management board may represent the foundation only collectively.

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

No

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

Foundations are independent legal persons and are free to act within the framework of their own statutes and the law.

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

In case of misconduct by a board member, he or she has to compensate for the resulting harm. There is no difference between unpaid and paid 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?

No

c) What is the liability of executive staff?

The law does not specify this. The liability of the directors and officers is provided in their work contracts.

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			

**10. Are economic activities<sup>1</sup> allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?**

Economic activities are allowed, but the foundation may use its income only for purposes specified by its statutes.

**11. Are foundations permitted to be major shareholders?**

Yes.

**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 permitted to be partners in a general partnership nor to be a general partner in a limited partnership. No other restrictions exist.

A foundation may not give credit or provide a credit guarantee for its founders, board members, council members, or persons sharing economic interests with them.

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<sup>1</sup> For 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 administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

**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)**

Yes

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

Before registration, the founders may rescind the setting up of the foundation or change its statutes. After the foundation has been registered, the statutes may only be changed in order to adapt to changed circumstances, while the purpose of the foundation cannot be changed. The supervisory board may change the statutes if the founders are no longer alive, or if the founders are not unanimous about changing the statutes, or if the statutes explicitly grant this right to the supervisory board. If due to changed circumstances there has emerged a need to change the statutes but the founders or the supervisory board fail to do so, the Court may take the decision to change the statutes.

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

An audited annual report including details of finances and activities must be submitted to the Registry of Non-Profit Organisations and Foundations. Foundations that have public benefit status must also submit a report on their public benefit activities to the Tax and Customs Board.

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)?

Annual reports must be delivered to the Registry of Non-Profit Organisations and Foundations. Anyone stated by the Statutes to be a beneficiary, or with any other legitimate interest, has the right to be acquainted with the annual reports and accounts. If the statutes do not specify any favoured persons, everyone has that right.

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

The annual report must be approved by the supervisory board and audited by an external auditor. Reports are checked by the tax authorities. Private foundations whose annual income or assets remain below €15,000 may opt for a financial review instead of an audit by an external auditor. Such an exception does not extend to private foundations founded on the basis of a will.

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)

Annual reports are publicly available via the website of the Central Commercial Register.

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

Yes, external audit is required for all foundations.

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

The procedure for appointment and removal of auditors and their term of office is prescribed by the articles of association of the foundation.

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

The Registry of Non-Profit Organisations and Foundations is maintained by the courts. Extraordinary audit and forceful dissolution of a foundation may only be ordered by a court that can take the case to trial on the basis of an appeal from the Minister of Internal Affairs or from any person with a legitimate interest.

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?

A court.

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

Public benefit organisations submit reports on their public benefit activities to the Tax and Customs Board.

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

No

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

No

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

If a legal person fails to submit an annual report or other data required by the Registry the court may fine both the legal person and the members of its management board. If 18 months have passed since the end of the fiscal year and a legal person has not submitted an annual report, the legal person will be deleted from the register.

## **17. When and how does a foundation dissolve?**

A foundation can be dissolved by a decision of its supervisory board – or by a decision of its founders, if the statutes grant them this right – if the purpose of the foundation has been completed; if the foundation was set up for a certain time period, at the expiry of that time period; or due to other causes specified by the statutes or by the law.

A foundation may be dissolved by decision of a court, if its purposes or activities are in conflict with the law, the constitutional order or decency; if its activities do not correspond to the purposes as defined by its statutes; or if its financial situation is such that it obviously will not be able to carry out the objectives it was set up for.

Upon dissolution, an application will be presented to the Registry of Non-Profit Organisations and Foundations. The members of the board will act as liquidators, except when dissolution has been ordered by a court. After all creditors of the foundation have received their share of the foundation's assets, the remaining assets will be divided between the legal or physical persons specified by the statutes. If the decision to dissolve has been taken by founders who are physical persons, the remaining assets will be divided between them. If the statutes do not specify what will be done with the assets in case of dissolution, they will be handed over to the state; likewise, if the dissolution is due to activities of the foundation that were against the criminal law, the constitutional order, or decency.

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

It must be registered in Estonia.

## **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?**

Yes

## **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?**

In general, foundations are treated in a manner similar to business organisations. They do not pay taxes on their income but on certain distributions. The government may grant tax-exempt status to foundations and other non-profit organisations that serve a public benefit purpose; that are involved in charitable activities; that do not distribute any income to their founders, members of the board or to persons who have made donations to the Foundation; and whose administration costs do not exceed what is necessary for achieving their stated purposes. In order to be included in the list of organisations benefiting from income tax incentives, a foundation must file an application and give information about its statutes and activities. Tax-exempt status is not available for political organisations, for organisations supporting an enterprise, for professional and labour organisations, or for organisations that have several times previously failed to present their income declarations to the tax authorities, or who have not paid their tax debts.

**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?)**

To receive tax-exemptions a foundation must submit an application to the Tax and Customs Board which then makes recommendations on granting or not granting a tax-exempt status to the foundation. The list of such organisations is approved bi-annually by the government.

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

Every governmental body has its own reporting requirements. There is an attempt though to streamline the reporting requirements of governmental bodies.

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

Public benefit organisations are required to disclose their donors and beneficiaries to the Tax and Customs Board.

**5. Are there specific accounting rules for foundations?**

No

**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.**

No

**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.**

No.

**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>				

\* **Note:** There is no list of public benefits purpose in Estonia. Instead, organization is considered acting in public benefits if it acts in public interest and is charitable. Tax Board with guidance from the expert committee representing civil society organization decides on each application if the organization's activities can be considered public interest and charitable in nature.

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

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

Yes

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

The explanation provided by the Taxes and Customs Office (<http://www.emta.ee/?id=14383&highlight=tulumaksusoodustusega>) stresses that the activities must be transparent and they should benefit the entire society, i.e. “All members of the state as a community”. That can also mean supporting poorer social groups that are unable to manage their lives without such help. The Income Taxes Act explains “charitable activities” as follows: “The association provides its statutory target group a service or a commodity mainly free of charge or in another way that does not bring profit, or awards monetary support for persons belonging to the target group”. The same paragraph states that professional organisations, entrepreneurs' organisations, trade unions and political organisations are not entitled to tax exemptions. Religious organisations are entitled to tax exemptions without any separate decision.

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			

## 10. Non-Distribution Constraint

a) Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint”<sup>2</sup> which forbids any financial support of the foundation board, staff, etc.?

Yes

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

Upon liquidation or dissolution the assets remaining after satisfaction of the claims of the creditors will be transferred to an association or legal person in public law entered in the list of non-profit associations and foundations benefiting from income tax incentives. \

## 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 board members is allowed. The remuneration should “correspond to the tasks of the board member and to the financial state of the foundation”.

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)

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<sup>2</sup> For the purposes of this profile, a non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

No

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

No. The administration costs should correspond to the character of the foundation's activities and to its statutory aims.

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)

n.b.: Estonian law does not recognise the definitions of "public benefit" or "tax-exempt" foundations. Instead, there is a legal status for (non-profit associations and) foundations benefiting from income tax incentives. The organisations belonging to the list of such organisations are commonly called public benefit organisations enjoying tax benefits.

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
The founder retains a beneficial reversionary interest in the capital of a property or other asset for his own continuing use.					X
The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant.					X
A foundation distributes a (small) part of its income to the founder or his family.					X

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
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

### 13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Yes

b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

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 “pay-out 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			

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

No

**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

Income of any kind is not taxed, unless it is being distributed outside the purpose of the foundation. Grants paid by foundations will be subject to income tax, unless they have been granted tax-exempt status. Salaries paid by foundations to its workers are subject to income tax.

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

##### Grants and donations

n/a

##### Investment income (asset administration)

n/a

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation

##### Economic activities related/unrelated)

n/a

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation

- Income from running a café in the hospital/museum run by the foundation
- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

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

n/a

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

n/a

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

There are no capital taxes.

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

Value-added tax must be paid in the same way as by business organisations.

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

None

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

The transfer of assets to another foundation or non-profit organisation in the course of reorganising a foundation is free from tax.

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

Foundations are subject to the social insurance tax, real property tax, lottery tax, customs tax, excise taxes, and local taxes (e.g. advertisement 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?

No, if it is not registered in Estonia. However, according to a government decree, grants paid by any foreign foundation for research, study, arts or sports are free from taxes.

Tax exempt status of foreign association has relevance only for donors. No exemption is granted with respect to income of association which is taxed in Estonia based on the source principle (for instance income from immovable located in Estonia).

**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?**

### **III. Tax treatment of donors of public benefit foundations**

#### **1. System of tax credit<sup>3</sup> or tax deduction<sup>4</sup>?**

Donations given to a foundation that has been granted tax-exempt status may, up to a certain extent, be deducted from the income of the donor.

The basis for the tax relief is the inclusion of the foundation in the government's list of organisations benefiting from income tax incentives. The list includes only organisations registered in Estonia.

#### **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?

b) Which assets qualify for tax deductibility?

For individual donors, the total of donations deducted from the taxable income cannot exceed 5% of the donor's total income. The treatment of non-monetary donations is the same as for monetary donations, and taxation is based on their market value.

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<sup>3</sup> For 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)

<sup>4</sup> For 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)

### **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?

b) Which assets qualify for tax deductibility?

For corporate donors, the total of donations deducted from taxable income may not exceed either 3% of the sum of the payments made during the year and subject to social insurance tax, or 10% of the calculated profit of the latest fiscal year. The treatment of non-monetary donations is the same as for monetary donations, and taxation is based on their market value.

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

On 17 August 2009, the Ministry of Finance made public new draft amendments to the Income Tax Law which extend the various forms of tax relief for donations made to the domestic charities to those made to foreign charities. The changes are based on the European Commission infringement procedure (IP/08/1818, 27 November 2008) and came into effect from 1 January 2011.

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

No other frameworks exist.

### **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?)?

The recipient of a donation can submit the data of a donor to the Tax and Customs Board. The Tax and Customs Board may also require additional documents of proof.

### **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?)?

Subsection 10 of Section 11 of ITA enacts that an association established in another Contracting State (EEA) is deemed to be an association benefiting from income tax incentives if it is supported by sufficient evidence that it meets the requirements set forth in subsection (2) and no circumstances specified in clauses (4) 1), 3)–5), 7) and 8) do not exist.

It is the obligation of donor to approve that the organisation meets such requirements and there are no certain circumstances. As the regulation is rather new, there is not yet concrete practice on which

documents donors should have. In most of the cases Statutes and Annual financial report should be sufficient. According to the law, documents given to tax authorities should be translated to Estonian. If the documents are in English, the tax authorities generally do not require translation.

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

##### **1. Individuals**

A grant given by a foundation with tax-exempt status to a person who is not connected to the foundation and has not donated to the foundation him/herself is free from tax. If the foundation has not received tax-exempt status, the grant is subject to income tax.

##### **2. Legal entities**

Legal entities do not pay taxes on their income, unless it is further distributed.

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

#### **V. Gift and inheritance tax**

There is no 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?**

#### **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?**

No

**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)?**

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

Yes. The Act Against Money Laundering and Terrorism, adopted on 19 December 2007

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

No

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

No

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

No

e) 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?

No.

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

Among Estonian foundations, there are relatively few truly private foundations with large assets. According to a survey conducted in 2003, the average annual income of a foundation was 4.1 million Estonian crowns (EEK) (approx. €280,000); however, it was only 2.64 million EEK (approx. €180,000) if foundations with participation of either the state or by local governments are excluded. The income was very unequally distributed, meaning that a majority of foundations were very small. Most of the private foundations are more grantseeking than grantgiving, and operate their own programmes. In this sense they are often more reminiscent of voluntary associations. They often rely on project financing from the state or local governments. As a part of public sector management reforms, the number of foundations set up by the state or by local governments has grown rapidly. At the same time, corporate foundations have remained very few in number.

Since the beginning of the new millennium, the non-profit sector has gained more visibility in Estonia. With more than 23,000 registered non-profit organisations (among them, 689 foundations as of January 2006) altogether in a country of less than 1.4 million inhabitants, their per capita density is now probably the highest in Central and Eastern Europe. Inspired by the British Compacts between the government and the voluntary sector, non-profit umbrella organisations initiated the preparation of a document entitled the Estonian Civil Society Development Concept (EKAK). Adopted by Parliament in 2002, it seeks to clarify the practices through which the state and local governments should finance and inform non-governmental organisations, and enable their participation in decision-making. However, these practices still need to be implemented; the main impact of the document so far has been to increase cooperation within the sector and to enhance its public image.

#### 4. Public fundraising

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

##### **Useful contacts**

Network of Estonian Non-Profit Organizations (NENO)

Web page: [www.ngo.ee/1057](http://www.ngo.ee/1057)

Director: Ms. Maris Jõgeva, e-mail: [maris@ngo.ee](mailto:maris@ngo.ee)

Open Estonia Foundation (OEF)

Web page: [www.oef.org.ee/en](http://www.oef.org.ee/en)

Executive Director: Ms. Mall Hellam, e-mail: [mall@oef.org.ee](mailto:mall@oef.org.ee)

Centre for Civil Society Research and Development of the Institute of International and Social Studies, Tallinn University (KUAK)

Web page: <http://www.tlu.ee/en/institute-of-international-and-social-studies>

Ms. Erle Rikmann, e-mail: [erle.rikmann@tlu.ee](mailto:erle.rikmann@tlu.ee)

##### **Selected bibliography**

Mikko Lagerspetz and Erle Rikmann, "Roles and Visions of Foundations in Estonia", in: Helmut K. Anheier & Siobhan Daly (eds.), *The Politics of Foundations: Comparative Perspectives from Europe and Beyond*. London etc.: Routledge, 2006

Mikko Lagerspetz and Marek Skovajsa, "Non-Profit Foundations in Four Countries of Central and Eastern Europe", *Polish Sociological Review*, 2(154)2006: 187-208

Mikko Lagerspetz, Aire Trummal, Rein Ruutsoo, and Erle Rikmann, *Non-Profit Sector and the Consolidation of Democracy. Studies on the Development of Civil Society in Estonia*. Tallinn: Baltic-American Partnership Programme, 2004

##### **Selected law texts online:**

The most important legal documents regulating foundations are listed below. The Estonian texts have been published in the official magazine *Riigi Teataja*, and can be approached through the web page < <https://www.riigiteataja.ee> >.

Foundations Act (*Sihtasutuste seadus*, adopted 1995, last amended 18.12.2012)

Income Taxes Act (*Tulumaksuseadus*, adopted 1999, last amended 02.07.2013)

Taxation Act (*Maksukorralduse seadus*, adopted 2002, last amended 07.06.2013)

Regulations on Granting Tax-Exempt Status to Non-Profit Organisations and Foundations (*Tulumaksusoodustusega mittetulundusühingute ja sihtasutuste nimekirja koostamise kord*, Government Decree adopted 2000, last amended 28.12.2010)

### **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.