

EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

FINLAND – 2014

**EFC LEGAL AND FISCAL COUNTRY PROFILE
FINLAND– 2014**

The operating environment for foundations

Drafted by Ralf Sunell, Suomen Kulttuurirahasto, updated by Kai Kilpinen, The Council of Finnish Foundations

Contents

I. Legal framework for foundations	3
II. Tax treatment of the foundation.....	10
III. Tax treatment of donors of public benefit foundations	18
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation).....	20
V. Gift and inheritance tax	20
VI. Trends and developments.....	21
Useful contacts	22
Selected bibliography	23
Selected law texts online:	23
About the EFC Legal and Fiscal Country profiles	23
About the European Foundation Centre.....	23

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 are regulated by the Act on Foundations (5 April 1930/109), which was amended in 1995. There is no exact definition under the Foundation Act of what a foundation is, but usually it is known as a “dedicated property functioning as an independent legal person and used for a special purpose defined by the founder”. The Foundations Act applies only to independent private law entities.

Public law foundations are covered by special legislation.

There also exist numerous non-autonomous funds without legal personality that are administered through another legal person.

2. What purposes can foundations pursue?

Generally foundations are allowed to pursue any “useful” purpose. They can engage in any activity as long as the activities correspond to the purpose for which the foundations were established. Private purpose foundations may benefit a certain family or the employers of a certain company.

However, according to the Income Tax Act, foundations only get tax-exempt status if they operate “solely and directly for public benefit in a material, intellectual, ethical or social sense”.

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?

A foundation can be created through a deed of foundation or a written will. Also, the bylaws of the foundations have to be drafted. The formal creation of a foundation established under a will must be done by the administrator listed in the by-law unless the testator has named another person.

The establishment of a foundation is subject to the approval of the National Board of Patents and Registration. In practice, the authority grants permission for establishment of foundations proposing a “useful” purpose. Usually the permission to establish the foundation and the approval of its bylaws is accomplished in one procedure.

Once this procedure is completed, the initial board must be elected and the assets transferred to the foundation.

The foundation must be registered with the National Board of Patents and Registration within six months, otherwise the permission will expire.

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?)

Yes (see above).

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

Register of Finnish foundations in the National Board of Patents and Registrations in Finland.

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

The statutes, members of the board (supervisory board if any), representatives of the foundation, annual records and accounts.

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

Yes, but with restrictions on availability of details on economic information.

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

Yes. A minimum initial contribution of at least €25,000 is required. There is also a "relative" requirement: The endowment of the foundation has to be sufficient to allow the foundation to operate according to its purpose.

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

a) Is it mandatory to have a supervisory board?

The board is the only mandatory governance body stipulated by the Foundations Act.

According to the Act, the foundation must have a board acting as its administrative body. The board should comprise at least a chairman and two other members. The board will be in charge of governing the affairs of the foundation and ensuring that all activities are done in compliance with the law and the bylaws of the foundation.

Special bodies can be established in addition to the board but their decision-making power, rights and obligations must be exactly stipulated in the bylaws of the foundation.

A supervisory or audit committee is not stipulated in the Foundations Act.

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?

At least one member of the board shall be resident in the European Economic Area. The National Board of Registration and Patents may grant the foundation an exception of this provision. No one who lacks legal competence or is bankrupt may function as a member of the board. Minimum number of board members is three (see above), there is no maximum. The right to appoint members is stipulated in the by-laws of the foundation. If not, the board will appoint its own members. The appointing body has no right to remove foundation board members, though this is debatable since it is not directly stipulated in the Foundations Act.

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

There are no duties or rights of board members specified as such in the Foundations Act. According to other legislation the board members are obliged to stay loyal to the foundation and only act with foundation's interest in mind. They have a right to all information in the foundation relevant to decision making.

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?

There are no special restrictions on the rights of the founder; he can also become a board member. The founder has no say in the matters of the foundation after its registration unless the by-laws so stipulate (or he/she/it is a board member).

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

Beneficiaries have no special rights; they are of course entitled to the same public information as everybody else.

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?

The Foundations Act (section 11) stipulates:

A member of a body of the foundation or a functionary of the foundation shall not participate in the handling of a contract between himself and the foundation. Nor shall he participate in the handling of a contract between the foundation and a third person if he stands essentially to gain thereby and if there is a conflict of interest between him and the foundation. The above provisions on a contract shall apply also to litigation or other representation of the foundation.

And in Section 10:

The [foundation's] assets shall not be lent to any of the following persons:

(i) a partner, a director/trustee, a supervisor, the chief executive officer, or a person in a comparable position, in the foundation or a corporation within the same corporate group or a cross-held corporation, as referred to in the Accounting Act, or a person responsible for the accounts or financial management of the foundation or corporation or the supervision of the same;

(ii) a person in the employment or otherwise in the service of the foundation or a corporation or person referred to in subparagraph (i); or

(iii) the spouse, domestic partner, brother, sister, direct ascendant or direct descendant of a person referred to in subparagraph (i) or the direct ascendant or direct descendant of the spouse, or a brother-in-law or sister-in-law of the person referred to in subparagraph (i).

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

Only if stated in the by-laws.

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 law defines the principles; the organisation defines the actual persons, e.g. Chairman of the Board, Secretary-General.

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

Only if stated in the by-laws.

9. Liability of the foundation and its organs

The Foundation Act contains provisions on the liability of the members of foundation bodies and functionaries towards their foundation and towards third parties.

Liability towards the foundation arises in all cases in which the person in question has caused damage either wilfully or through negligence.

Liability towards third parties only covers damage caused by an act in breach of the Foundation Act or the bylaws of the foundation.

Liability of the auditors is governed by the Audit Act. An auditor is liable to compensate for damage that he has, in his official capacity, caused to the foundation either wilfully or through negligence. Liability towards third parties is applicable if there is a violation of the Audit Act or the Foundation Act or the bylaws of the foundation.

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

No

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?

See above.

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 - civil				

The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).	X - civil				
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.	The whole Board is civilly liable				
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.	The whole Board is civilly liable				
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.	The whole Board is civilly liable				

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

Permission is not granted for the establishment of a foundation for the purpose of carrying out economic activity.

However, if the economic activity is stipulated in its statutes/bylaws and this activity is directly related to the foundation's purpose, the foundation will be allowed to conduct a business. But the business activity must be very limited and can never form the main part of the organisation's activities. A foundation shall not carry on any business that is not referred to in its bylaws and does not directly support the purpose of the foundation.

11. Are foundations permitted to be major shareholders?

Yes

¹ 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.

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?

According to the Foundations Act, the board of trustees shall take special care to properly manage the foundation's affairs as well as ensure the secure and profitable investment of the foundation's assets.

Shareholding and major shareholding is allowed. There are no restrictions on investing in alternative investments, hedge funds or private equity. However, the tax treatment of income from these alternative investments may differ and could be a hindrance to investing in these asset classes, especially 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)

These should be specified as grant funds, not investments (see requirement for "secure and profitable investments" above.)

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

According to the Foundations Act, all changes in the by-laws have to be approved by the supervisory authority, which is the Foundation Register of the National Board of Patents and Registration.

The prerequisites for amending the foundation's purpose are stricter than those for other amendments. It is possible to amend the purpose in four cases, i.e. when the use of the foundation's assets for its statutory purpose is determined to be:

- Impossible
- Very difficult
- Totally or essentially useless because of the low value of the assets or another reason
- Against the law or good practice

The new purpose must, however, not essentially differ from the original purpose. Unless otherwise described in the bylaws, the decision to amend the purpose has to be made with a qualified majority of at least two-thirds of the votes.

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

Foundations have to maintain accounts and submit annual reports to the registration authority. They have to file annual income tax returns with the tax authorities and are required to submit to the registration authority their annual books of accounts.

Recognition of tax-exempt status requires ongoing non-profit activities and is conferred annually by the tax authorities.

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)

- To the foundation register: Annual reports and accounts.

To the tax authority: Tax return (only if tax return forms are sent to the foundation), list of individual grantees (for grants of € 1,000 or more), report on received donations and their usage (only donations that are deductible by the donor).

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)?

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

See above.

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)

Yes. Annual reports and accounts are publicly available, with the exception of detailed economic information. Reports made to the tax authority are not publicly available.

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

Yes

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

Under the Auditing Act only a chartered accountant or chartered accounting corporation may serve as auditor to a foundation.

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

In Finland all foundations are subject to supervision under the National Board of Patents and Registration. When the board of a foundation is a public authority, the foundation becomes accountable to that body. The official supervision consists mostly of the review of the annual accounts and annual activity report of the foundation, but other reviews are possible. In fact, any irregular situation may be sanctioned or corrected by a demand for rectification or an injunction, or it may result in damages and demands for punishment or dismissal of the board or even dissolution of the foundation.

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 public administrative body: The National Board of Patents and Registration

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

The public benefit status (and tax benefits that come with it) of foundations and associations is defined by the Tax Authority and has normal rights for tax inspection.

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?

See above.

17. When and how does a foundation dissolve?

The Foundation Act states that a foundation that has been established for a fixed period of time or on the condition that certain requirements be met will be dissolved when either the period has expired or the requirements no longer exist.

Dissolution also occurs when there are no longer any assets held by the foundation.

The Foundation Act also states other reasons for the dissolution of a foundation, for example if the operations of the foundation have been constantly in breach of the law or its by-laws.

Approval of the National Board of Patents and Registration is needed for dissolution.

Following its dissolution, the remaining assets of the foundation are transferred to the state, unless the by-laws contain regulations for their use. The state will then transfer the assets with a view to ensuring they are used for a purpose similar to the one the foundation had.

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

If registered as a Finnish foundation.

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, if there are no restrictions in the by-laws of an individual foundation.

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 practice, a foundation is automatically exempt from taxation once it is created for non-profit purposes. Recognition of exempt status requires ongoing maintenance of non-profit activities and is conferred by the taxation authorities after submission of each annual income tax return. There is no annual pay-out requirement, but in order to obtain and to maintain its tax-exempt status, the majority

of a foundation's distributable income (dividends, interest income, rental income etc.) should be used for non-profit purposes. Capital gains are treated as extraordinary income and are not part of the distributable income.

Under the Income Tax Act, an organisation is eligible for tax-exempt status if it operates solely and directly for the public benefit/general good in a material, mental/intellectual, ethical or social sense. The definition is considered to encompass nearly all sectors of social life.

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?)

See above.

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

See above.

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

See above (Supervision).

5. Are there specific accounting rules for foundations?

All the foundations no matter how small must be audited by an Authorised Public Accountant.

Foundations Act (sec.12):

In addition to what is provided in the provisions of the Auditing Act, the audit report shall contain a specific statement on:

- Whether the assets of the foundation have been properly invested
- Whether the fees paid to the members of the bodies of the foundation are to be deemed reasonable
- And whether the annual accounts and the annual report give a true and fair view of the finances and activities of the foundation

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>				

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?

Yes, anyone with mentioned disadvantage/under-privilege may be a beneficiary.

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 -Not defined by number				
For benefit of the inhabitants of a village with 10,000 inhabitants	X - Not defined by number				
For benefit of the employees of a company				Should be a very large company	
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”² which forbids any financial support of the foundation board, staff, etc.?

Yes

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

The statutes of a foundation must include a clause on how the remaining assets are to be used. If no such clause exists, then the assets of the foundation will go to the State, which must allocate them in turn to promoting the purpose associated with the operations of the foundation concerned.

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**?

Allowed in both civil and tax law, but it must be reasonable in terms of size and assets of the foundation.

² 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.

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)

No

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

No

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*				
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*				

*Public benefit status is defined in the Income Tax Act, not the Foundations Act which only stipulates

that foundation's purpose must be a "useful" one. That also includes private purposes.

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?)?

Tax law: No fixed percentages or time limits, but public benefit foundations should spend most of their annual income (not capital gains) within a reasonable time frame. Long term planning in expenditure is encouraged.

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 th year are there distributions for the public benefit purpose of the foundation.					

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.		If collected for a major project according to plan			

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

Activity abroad is allowed for foundations without losing their tax-exempt status, as long as the Finnish tax authorities ensure that the purpose of these activities is in the public interest.

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

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

Grants and donations

Non-profit foundations do not have to pay any income tax on grants and donations

Investment income (asset administration)

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

Investment income is usually treated as personal income and under the Income Tax Act personal income of an exempt organisation is generally not subject to taxation. There are some exceptions, like income from limited partnership structures (i.e. private equity funds) where the income is taxed under a different tax code. Tax-exempt organisations are not subject to national property tax, but they have to pay a municipal real estate tax on income derived from real property.

Economic activities related/unrelated)

Unrelated economic activities are taxed. The Income Tax Act excludes some categories of normally taxable business income for the benefit of non-profit organisations, including such income-producing activities as lotteries and bingo games, sale of leaflets and address lists, and sale of products made in hospitals and similar institutions.

If economic activity is stipulated in a foundation's by-laws and the business is directly related to the foundation's purpose, the foundation will be allowed to conduct a business. But the business activity must be very limited and can never form the main part of the organisation's activities.

- 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?

Major shareholding is not considered to be economic activity and is tax-exempt.

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

There is no capital gains tax or income tax on investments in Finland.

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

Foundations are treated like final consumers. Therefore, they must pay the value-added tax when purchasing goods and services. Certain activities are not subject to VAT at all or they are subject to a reduced VAT rate, but these provisions are not based on the nature of the entity that is selling the goods or services but on the activity.

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

There is no capital tax on the value of assets gained through investments in Finland.

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

Taxes on the transfer of assets are paid for stocks of unlisted companies, flats, land and real estate. The amount of tax is 4% of the value of the real estate or land, 1,6% for other assets.

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

Tax-exempt organisations have to pay a municipal real estate tax on income derived from real property.

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?

If registered as a Finnish foundation.

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 credit³ or tax deduction⁴?

There is a system of tax deduction in Finland. However, only monetary gifts by corporations are tax-deductible.

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?

In Finland individual donors do not receive tax deductions for gifts to non-profit organisations.

b) Which assets qualify for tax deductibility?

³ 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)

⁴ 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?

Monetary donations made by corporations of a minimum amount of €850 are eligible for a tax deduction. The maximum amount that is tax-deductible depends on the recipients, who are divided into two categories. If the recipient is a publicly financed university or a fund within such a university, the maximum deductible amount is €250,000. If the recipient is a public benefit foundation, the maximum is €50,000.

The purpose of the donation has to be the support of scientific research, arts or Finnish cultural heritage.

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

The recipient of the donation (see above) may be based in any country of the European Economic Area. The National Board of Taxation approves the recipients of the donations, Finnish or other EEA-based organisations for a maximum period of five years. The list of these organisations is published on a Tax Authority web page. At the moment (September 2013), there are no and has not been any non-Finnish organisations on the list.

5. Other frameworks such as percentage law systems

There are no other frameworks.

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?)?

Corporations must claim for tax deductions in their annual tax return. Foundations must report such donations (in practice all donations from corporate donors) to tax authorities.

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?)?

An organization must apply for getting in to the Tax Authority list (see above). The application is a free-form but in it must be included:

- extract from a (foundation)register
- foundations approved by-laws
- 2 latest annual accounts
- latest annual report
- effective budget and
- plan of action;

The application and the documents must be translated to Finnish or Swedish.

No registration in Finland is required.

The decision is made by the Tax Authority. The decision is valid for max 5 years. The application fee is 350 euros.

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

Grants awarded by foundations for university studies, scientific research and artistic work, as well as prizes awarded for scientific, artistic and other non-profit activity are tax-free to amount of €19,800 (in 2013). The amount includes all the grants and prizes received by an individual in any one year after deduction of costs necessary to acquire and maintain the income. The amount is the same as the State Artist Grant and it changes annually.

Grants and prizes awarded by the state, municipality or the Nordic Council for the purposes mentioned above are tax-free regardless of their amount.

1. Individuals

2. Legal entities

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

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)?

Under the Act on Inheritance and Gift Tax, PBO:s are not subject to inheritance or gift tax on the value of property bequeathed to them under a will or as a gift.

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?

See above

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?

Fifty percent of the estate is reserved to the children of the deceased and cannot be given to third parties.

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

Inheritance and gift tax in Finland are always paid by the recipient, so taxation will be dealt in accordance with tax laws of the recipient's resident country.

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)?

No

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

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?

The total revision of the Foundations Act is under way. The first draft was made public in the summer of 2013 and as of now (September 2013) the Ministry of Justice has just began drafting the next version after a wide round of comments from foundations and other organisations. The new law is expected to come into effect in the beginning of 2015.

A complaint (CP314/09) was made to the European Commission on the possible state aid given to public benefit organisations in form of a tax exemption. Finland submitted its answer to the Commission on 2010. In its response, the State of Finland notes that: exemption from taxes only applies to parties which meet strict charitable status criteria, and this status is not granted in perpetuity. Charitable activities are not-for-profit activities, and if the nature of the activities changes, tax-exempt status is forfeited. In respect of business activities, taxation is the same as for any other entity engaging in business activities. The definition of charitable status thus does not lead to exemption from taxes that would constitute a derogation from the general tax system and the exemption from taxes is thus not state aid as referred to in Article 107 TFEU.

The Commission was not satisfied with the answer and correspondence between them and Finnish Ministry of Finance is still going on with no result in sight.

Until this matter is solved, all changes to the taxation of public benefit organisations are put on hold. There is a Ministry of Finance report from 2009 on the problem areas of taxation of public benefit institutions with proposed corrective measures. It focuses mostly on competition issues with regard to operational foundations. But these proposals have also been put on hold.

4. Public fundraising

There is a Money Collection Act (255/2006) that regulates fundraising from the public-at-large. It contains no specific regulations on foundations. The Act mostly stipulates what percentage of funds raised can go towards meeting the expenses of the collection. Grant-making foundations only seldom raise funds through these kinds of public collections.

Useful contacts

Säätiöiden ja rahastojen neuvottelukunta ry.
(Council of Finnish Foundations)
Fredrikinkatu 61
00100 Helsinki
Finland
www.saatiopalvelu.fi
info@saatiopalvelu.fi

Selected bibliography

- Herberts, K., in: *Foundations in Europe. Society Management and Law*, Schlüter, A., Then, V. and Walkenhorst, P. (editors), London, 2001, pp. 111-120
- Kesti, J., in: *The Tax Treatment of Cross-Border Donations - Including the Tax Status of Charities and Foundations*, Bator, P. (editor), International Bureau of Fiscal Documentation, loose-leaf, Amsterdam, 1994-2001
- Sunell, R., "Stiftungsgesetz ohne Legaldefinition einer Stiftung", in: *Deutsche Stiftungen*, Bundesverband Deutscher Stiftungen e.V. (editor), 3. Ausgabe, Berlin, 2001, pp. 50-51
- Sunell, R., in: *European Foundation Fundamentals*, Brown, S. (editor), European Foundation Centre, Brussels, 1999, pp.88-90
- Varpelaide, J., in: *International Charitable Giving: Laws and Taxation*, George, C. (editor), Kluwer Law International, loose-leaf, London, 1994-1999

Selected law texts online:

All the Finnish legislation can be found (in Finnish and Swedish) in the Finlex Data Bank. English translations are also available for most of the laws mentioned here. www.finlex.fi/en/

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

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.