



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

GREECE – 2014

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The operating environment for foundations

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I. Legal framework for foundations

1. Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?

In the Greek legal order Law Nr. 4182 of 2013 and Art. 109 of the Greek Constitution regulate public benefit foundations. Any group of assets disposed by will (testament), donation to the State to serve public purposes and the public benefit is considered to form a public benefit foundation that is administered according to the rules incorporated in the deed of establishment and whereby the administration is conducted by natural or / and legal persons. (Law Nr. 4182 of 2013, articles 1 and 50)

There are several different kinds of foundations, as several sectoral laws distinguish among different kinds of foundations within their regulatory scope.

Most foundations are private law foundations, falling under the scope of the regulation of Articles 108 – 121 of the Greek Civil Code. Private foundations are described by the Greek Civil Code as organisations with their own legal personality created by a disposition of assets under a deed of establishment made either inter vivos or via a will, for the pursuit of a lasting purpose. Legal personality includes limited liability and full transactional capacity of the foundation.

Another important group of foundations is characterised by its incorporation by the state, so-called public foundations, which are subject to different public rules. Those are non-autonomous foundations, whereby an endowment is provided to a person (physical or legal) in order to fulfil a specific goal. A non-autonomous foundation has no legal personality.

2. What purposes can foundations pursue?

Foundations can pursue all kind of purposes as long as the latter are specific, lasting and lawful, i.e. not in any way contrary to the law (Art. 174 Greek Civil Code) or to good morals and public order (Art. 178 Greek Civil Code). The law distinguishes between foundations in general and public benefit foundations that serve the general interest by pursuing charitable purposes and which receive tax exemption. Public benefit foundation is considered to be, according to the Art. 1 of Law 4182/2013, all foundations pursuing national, charitable, religious, educational, cultural or any other purpose beneficial to the community. It could be alleged, that Greek State encourages mainly the establishment of public benefit private foundations.

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?

To set up a foundation two legal acts are needed: The founding act in the form of a notarized deed or will (Art. 109 Greek Civil Code), and the manifestation of the state approval of this founding act, which provides to the foundation with legal personality. According to Articles 108 and 112 of the Greek Civil Code, foundations can exclusively be established by an act of state approval. The competent ministry, after examining the scope and the formal legality of the founding act and its content and incorporated rules proceeds to the establishment by a presidential decree. The decree shall describe the assets dedicated as well as the foundation's purpose, otherwise the decree is considered null and void. Subsequently, the decree has to be published in the Governmental

Gazette. By the time of publication, the foundation shall acquire legal personality. The Ministry of Finance keeps a register of foundations.

The foundation act shall specify the purpose, the foundations' assets and the statutes, which determine the organizational structure of the foundation in accordance with the wishes of the founder. Should any important points considering the administration of the foundation be missing from the foundation act, they can be added / completed by the state authorities and published at the release of the presidential decree. The state approval may interpret, complete or modify the organisational structure of the foundation under the condition that the will of the founder is respected (Art. 110 para. 2 Greek Civil Code).

If the foundation act is not sufficiently clear as to the identity of the beneficiaries, the state approval may determine this in accordance with the will of the founder and its interpretation.

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?)

State approval is required for a foundation to be established. The Ministry of Finance and eventually any co-competent Ministry, depending on the purpose of the foundation, after scrutiny of the purpose, legality and administrative completeness proceed to the establishment of the foundation by presidential decree. The decree then has to be published in the Governmental Gazette. The Ministry of Finance holds a registry of foundations.

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

Yes, there is a requirement for the public benefit foundations to register by the Council of National Bequests. (Art 12 Law 4182/2013). The Department of Public Welfare Properties of the Ministry of Finance operates as a central Service Registry Public Welfare Properties and is responsible for .the initial entry (record) in the Register and any subsequent additional registration, change or delete existing entries relating to public benefit competence.

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

The Registry of public benefit group of assets consists in the General Inventory, the Sections and the Files. In the General Inventory foundations are registered in alphabetic order and in the File there are registrations for each foundation for: name, administrative structure, court decisions, administrative acts, members of the Board of Directors, Balance Sheets, etc.

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

Registrations are kept as a record on electronic databases by the supervisory board of the Central Registry Office and the General Secretariat. Registrations are meant to be publicly available and can be accessed remotely. (Art 13 Law 4182/2013)

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. There is no explicit legal provision concerning a minimum initial amount, but the competent state authority will not approve the formation deed if a lack of adequate assets for the fulfilment of the foundations' purpose is discerned. A foundation without assets is invalid (Council of States' judgement Nr. 4578/1996).

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

Foundations are administered by the board of directors. The foundation act needs to provide for rules for the formation and establishment of the board of directors. (Arts. 65-69 of the Greek Civil Code on the governing organs of legal persons).

The organisational structure may be interpreted, defined, completed or amended by the state approval in accordance with the foundation act or the will of the founders (Art. 110 Civil Code). However, the internal rules of a foundation may be amended even against the founder's wishes in special cases if the amendment is deemed necessary for the maintenance of the endowment or for the fulfilment of the foundations' purpose (Art. 119 of the Greek Civil Code). For such an amendment, a presidential decree is needed. Detailed regulations concerning the administration of public benefit foundations are included in Law 4182/2013.

a) Is it mandatory to have a supervisory board?

There is no provision about an internal supervisory board.

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

In Greek law there is no minimum number of board members specified for foundations. According to Art. 65 of the Greek Civil Code a legal entity is managed by one or more persons.

The statutes of a foundation determine its organisational structure and provide all necessary details concerning its administration, management and representation, as well as the election of board members and the recruitment of key personnel.

According to Art.17,part. 4,5 and 6, of Law 4182/2013, the board members of a public benefit foundation are required to declare the acceptance of their appointment by a declaration submitted to the Minister of Finance. They are also required to send their resignation to Minister of Finance in the same way.

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

The board of directors has the task to manage the foundation and are legal representatives of it. According to Art. 67 of the Greek Civil Code the board members who have the administration of the legal person must take care of its affairs and represent it judicially and extra judicially (Duty of care and duty of loyalty). Substitution is prohibited unless the statutes provide otherwise.

According to Art. 68 of the Greek Civil Code, the extent of the power of the persons who administrate the foundation is determined by the formation deed or the statutes. Certain matters of the administration can be delegated to private persons. It is not clear whether the authority of this third person extends to any related transaction.

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 will of the founder is the central element of the private law foundation described in the foundation act.

According to Art. 109 of the Greek Constitution the change of purpose of a public benefit foundation is generally prohibited.

If the purpose of the foundation has become unrealisable, the competent authority may give by a new decree another similar purpose in accordance with the probable will of the founder (Article 120 of the Greek Civil Code). When the will of the founder is fully unrealizable the property left for a charitable purpose may exceptionally be used for other similar purposes under a special law (Article 121 of the Greek Civil Code).

There is no special power of the founders to change the purpose of the foundation.

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

Beneficiaries who are named as such in the foundation act are entitled to pursue legally their rights against the foundation according to Art. 116 of the Civil Code. In the Greek legal order, beneficiaries are not deemed to be grantees.

In case those persons are not sufficiently determined by the founding deed the administration of the foundation has to determine them on the principle of reasonability.

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?

There is no legal definition of a conflict of interest under Greek legislation. However Art. 69 of the Greek Civil Code stipulates that if the persons who are indispensable for the administration of the legal person are missing, or if their interest is in conflict with those of the legal person, the President of the First Instance Court appoints provisional Administration at the request of anyone who has legitimate legal interest.

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

There are no special legal provisions about that subject. The content of the foundation act prevails.

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 board of directors represents a foundation towards third parties.

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

Not ipso jure

9. Liability of the foundation and its organs

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

Articles 61-77 of the Greek Civil Code contain general provisions about liability for all private legal persons.

Board members are personally liable for wilful or grossly negligent performance or neglect of their duties. They must act with due diligence and care and in compliance with the statutes and the purposes of the foundation at all times. (Art. 713 and 717, Greek Civil Code)

In Greek law there is no difference between paid and unpaid board 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?

Board members shall always act in good faith. This is a general duty which includes the duty not to act in self-interest but to act in the best interests of the foundation and for the fulfilment of its purpose and the original intentions of its founder.

Case law does consider business judgment rule but there is no legislative counterpart.

c) What is the liability of executive staff?

They are personally liable for acts and omissions in performing the tasks assigned to them which create liability for damages.

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- Civilly liable			
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).		X- Civilly liable			
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- Civilly liable.			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.				X- Civilly liable	

Board members may be also criminally liable if they participate in a criminal act.

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

Commercial activities of foundations are allowed as long as they are within the objectives of the foundation or belong to the everyday functioning. However, the issue of whether foundations should engage in commercial activities is a controversial one. It is possible to set up a corporate foundation which is linked to a corporation with regard to finance and administration.

11. Are foundations permitted to be major shareholders?

There is no prohibition.

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?

There are no rules in the Greek Civil Code regarding foundations' asset management.

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?

The release if a presidential decree is needed for any amendment to the statutes, according to Arts. 110 and 119 of the Civil Code. According to Art. 120 of the Civil Code, any change of the foundation's purpose is allowed only if the fulfilment of the original purpose has become impossible to achieve. The will of the founder must be respected. The state supervisory authority may give to the foundation another similar purpose in accordance with the probable will of the founder.

The purpose of public benefit foundations can only be changed through a court decision (Art. 109 of the Greek Constitution). In this case, the amendment of the purpose of a public benefit foundation is allowed not only if the fulfilment of its original purpose has become impossible, but also if the wish of the founder can be better realised through another purpose.

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

Annual budgets and statements of accounts of revenue and expenses must be submitted to the Ministry of Finance. Every two years foundations need to submit their plans with respect to the future administration of the assets.

¹For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

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)

Annual report of revenues and expenses together with a balance sheet of assets and liabilities.

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)?

Yes, all of these reports must be submitted to the Ministry of Finance.

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

Yes, by the Ministry of Finance and its departments.

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. In accordance with Law 4182/2013 the directors or administrators of public benefit foundations are required to submit an annual report of revenues and expenses together with a balance sheet of assets and liabilities to the Ministry of Finance for approval within two months of the closing of the financial year. This annual report, including the balance sheet, must be published in the webpage of the foundation and also sent for posting to the Ministry of Finance.

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

Law 3693/2008 requires external audit of all foundations by auditing firms.

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

By audit firms. No specific auditing standards for foundations but the general national auditing standards apply.

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

The Ministry of Finance, the Council of National Bequests, or another competent ministry, depending on the purpose of a foundation, exercises supervision of the foundation after its establishment. All public benefit foundations are under the supervision of the Ministry of Finance. If the governing board does not follow the statutes of the foundation, the State may dismiss members of the board and appoint new ones.

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?

The Council of National Bequests is a public administrative body that functions within the Ministry of Finance. It consists of a Judge, a Legal Council of State, the Director of the Ministry of Finance, the Director of the National Bank of Greece, and two individuals.

- a) A Vice-President of the Legal Counsel of State,
- b) a Legal Advisor or Assistant Legal Adviser of the State,
- c) the Head of the Division of Public Welfare Properties of the Ministry of Finance,
- d) an active member of the Economic Chamber of Greece with experience in investment and analyst certification by the SEC,
- e) a current member of the Technical Chamber of Greece certified real estate appraiser, specializing in civil engineering or mechanical engineer or architect.

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

Yes. The body reviews reports and makes inquiries.

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

Yes. The approval of the Ministry of Finance and the Council of National Bequests is required.

The Minister of Finance may be limited to order the audit by audit firms in foundations with annual revenues greater than fifty thousand (50,000) euros or with assets of more than two million (2,000,000) euros. (Art 59 Law 4182/2013)

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

No. It is not mandatory to have a state supervisory official on the board of a foundation.

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

Compliance measures are disciplinary penalties and sanctions provided by the regulations of the Code of Criminal Law. (Articles 71 & 72 of Law 4182/2013).

17. When and how does a foundation dissolve?

If dissolution is provided for in the statutes of the foundation, it can take place without a further decree.

A foundation has to be dissolved if its purpose has been fulfilled or has become unattainable, or if the foundation's activities have diverged from its purpose or if its purpose as well as its activities have become unlawful, immoral or contrary to public order (Art. 118 Greek Civil Code). In order to complete the process, a presidential decree has to be released.

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

The Greek civil law recognises foreign legal persons which are formed in accordance with the law of the state where they have their seat. Foreign public benefit foundations are recognised under Greek

law, but in order to get the respective tax exemptions their purposes need to correspond to the ones accepted as such by the Greek state.

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?

Greek civil law allows a foundation to conduct its activities abroad. There are no legal restrictions.

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?

The pursuit of public benefit purposes is the main requirement for receiving tax exemptions. According to Article 1 of Law 4182/2013, a public benefit purpose is any national, religious, charitable, educational, cultural or other purpose beneficial to the community. The pursuit of a public benefit foundation can be a subject of research of the competent tax authority. The foundation need to have been established on the grounds of the Greek law and have its seat in Greece.

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?)

The authorities may ask for documents and proofs according to their discretion. We can assume that among others, invoices, private agreements, etc may be asked.

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

Yes, according to Article 82 of Law 4055 of 2012, a special report about the respective activities has to be submitted to the General Accounting Department of the Greek State.

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

Yes, donations have to be reported to the tax authorities along with the contact details of the donors. The latter shall obtain a Greek tax number and pay the donation tax, otherwise the foundation is liable for that tax. The Tax authority is entitled to research for where the money of the donor derive from.

5. Are there specific accounting rules for foundations?

No, there are no specific accounting rules for foundations.

6. Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.

According to Article 1 of Law 4182/2013, a public purpose is any national, religious, charitable, educational, cultural or other purpose beneficial to the community.

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, there isn't.

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”?

No, but the section of the public that is benefited must be chosen on the basis of an objective criterion.

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

A tax exempt foundation can support a small number of disadvantaged/underprivileged individuals. The purposes and the activities of such a foundation must be clear and specific.

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 - This is an unclear purpose. The benefit must be a specific one	
For benefit of the members of a family				X - Confining benefits to family members is clearly a private rather than a public criterion.	
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.?

Capital contributed by founders or donors should support public benefit purposes and not the personal benefit of these persons but there is no restriction in providing remuneration to the board members and officers.

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

The founder has to specify in the statutes what is to be done with the residual assets. If it is not specified, then in the case of the foundation's dissolution these assets must be transferred to the public treasury.

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**?

There is no restriction with respect to remuneration.

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)

There are no specific rules on this matter.

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

No, there is no rule about a maximum amount which can be spent on office/administration costs, either in civil or in tax law.

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)

²For 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.

- 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>freeholdreversion</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>freeholdreversion</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, if they can accomplish their purposes within that limited period of time.

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. There are no statutory restrictions on the accumulation of income. To accumulate capital as long as that is not the foundation's primary purpose may be accepted under Greek civil law.

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

No. There are no explicit rules on distribution in Greek law.

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

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

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

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

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

Activities can be conducted abroad without losing tax exemption.

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.

There are no such provisions

16. Income tax treatment

For Greek non-profit legal persons, public or private, only the net income earned in Greece or abroad through rental properties as well as securities is subject to tax. Any other income, including other revenues, acquired through the pursuit or fulfilment of the foundation's purposes or missions is not subject to tax.

For foreign non-profit legal entities, public or private, the net income from any source earned in Greece is subject to tax. Any other income of these entities acquired through the pursuit or fulfilment of their missions is not subject to tax.

The income of Greek foundations or other public benefit Greek legal persons gained from renting buildings and land is taxed at a rate of twenty percent (26%) (Law 4172/2013 for income from the 1 January 2014). Income earned out of securities, capital interests, shares, etc is subject to 10% income.

The provisions of the preceding paragraph also have application for income earned in Greece by foreign entities and agencies of foreign religions and faiths.

Grants and donations, investment income, and economic activities such as income deriving from grant expenditures cannot be qualified as taxable income under Greek law (Response no. 373/2003 of the State Legal Council).

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

Grants and donations

Investment income (asset administration)

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

Economic activities related/unrelated)

- 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)
-

The applying rule is that income earned from activities falling within the pursuing of the purpose is tax exempt apart from the income from sources described in par. 16.

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

It will be taxed with 10%.

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

It is taxed with 10% and eventually will be deemed as economic activity.

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

Yes, 10%.

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

There is a special procedure for foundations to gain exemption from VAT.

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

Yes, there is a new property tax introduced by Law 4223/2013.

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

The general taxes on transfer of assets apply except in cases of donations to the State, which are tax free.

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

Up to the financial year 2010 and for each subsequent year tax is imposed on real property which is in Greece and belongs to a natural or legal person. (Art. 27 para. 1 of Law 3842/2010).

The value of the real estate of a Greek or foreign non - profit legal person, private or public, operating for proven charitable, religious or educational purposes is taxed at a rate of three per thousand (3‰) (Art. 35 para. 2 of Law 3842/2010).

The value of the owner occupied buildings of non-profit legal persons is taxed at a rate of one per thousand (1‰). (Art. 35 para. 3 b) of Law 3842/2010).

The recent law number 4223/2013 abolished all tax privileges of public benefit foundations.

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?

The basis for reciprocity is a relief provided by national law, based on bilateral agreements for reciprocal treatment, and is examined on a case-by-case basis. In order to benefit from this relief, the beneficiary foreign non-profit legal persons must provide to the competent Greek tax authority official documents issued by the competent authorities in their country of origin giving evidence (i) that they pursue public benefit purposes and (ii) that the tax laws of their country of origin also provide for tax exemption in favour of foreign (Greek) non-profit legal persons.

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?

Yes, there is 10% withholding tax applying on all capital gain and gains from securities and shares. There is a procedure available for reclaim from the tax authority.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Tax deduction.

2. Tax treatment of individual donors

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

There is a 10% deduction of the income tax for donations to legal persons included in a list published by the Minister of Economics, according to article 19 of law 4172/2013.

b) Which assets qualify for tax deductibility?

From the taxpayer's gross income, up to 10% of the following may be deducted:

- The sums paid by the individual in donations to the state and to public benefit foundations.
- In cases where the value of donations and sponsorship in line with the criteria outlined above exceeds €300 per year, these must be deposited in a special account of the legal person opened for this purpose at the Deposits and Loans Fund or a bank lawfully operating in Greece.

The cash receipt voucher must indicate the donor and the recipient, the amount of donation or sponsorship, the date, and the signature of donor or sponsor.

³For 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)

⁴For 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)

The value of gifts and donations is deductible only if their aggregate sum exceeds €100.

The deduction will apply only if the total amount of donations and sponsorships does not exceed 10% of the donor's total income taxed under the general provisions.

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?

Corporate donors may deduct from their gross income:

- The amounts paid as donations to the State, to agencies of local government, to Universities, public or municipal hospitals and hospitals that are private legal persons or are subsidised by the state budget and to the Archaeological Resources Fund
- The value of food donated by enterprises which produce or sell such goods to the charitable foundation called "Food Bank-Foundation for the Prevention of Hunger"
- The value of movable monuments, as defined by the current legislation, which are transferred as a donation to the State or to Museums recognised by the Minister of Culture. The amount deducted in this case cannot exceed 15% of total net income or profits derived from the balance sheet of each financial year.
- The value of medical equipment and ambulance cars, transferred as donations to the State
- Amounts, which do not exceed 10% of the total net income or profits derived from balance sheets and which are donated to charitable institutions, non-profit legal persons which provide educational services and award scholarships, to Churches, to the Monasteries of Mount Athos, to the Orthodox Church of Constantinople, to the Patriarchates of Alexandria and Jerusalem, to the Holy Monastery of Sinai, to the Orthodox Church of Albania, to domestic legal entities of public or private law which are lawfully formed in Greece and operate for proven charitable purposes, to the research and technology organisations established and governed by the provisions of the Law 1514/1985 and the Law 3653/2008, and to research centres which are private domestic non-profit legal entities and have been legally established in Greece.
- Amounts, which do not exceed ten percent of total net income or profits derived from balance sheets and which are donated to domestic non-profit legal persons of private law legally established in Greece and pursuing cultural purposes. Cultural purposes are particularly the cultivation, promotion and dissemination of literature, music, dance, theatre, film, painting, sculpture and arts generally, and the creation, expansion and maintenance of recognised private museums, such as those for art, natural history, ethnology and folklore.

Donations and sponsorships which exceed €290 per year must be deposited in the Deposits and Loans Fund or in an account of the legal person kept in a bank, which legally operates in Greece. In particular, donations to sports clubs are taken into consideration only if they are deposited in an account of the Deposits and Loans Fund or in a bank, which legally operates in Greece.

The total amount of donations that are deductible may not exceed the amount of net profits generated by the removal of these amounts from the gross revenues of the relevant accounting period.

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

The provisions related to donations to domestic non-profit legal persons apply also to donations to public benefit foundations established in Member States of the European Union as well as European Free Trade Association/European Economic Area countries. The donations may be deposited into a bank of the country where the recipient is domiciled.

The donor will also benefit from tax deduction for donations to the following non-resident organisations: The Ecumenical Patriarchate of Constantinople, the Patriarchate of Alexandria and Jerusalem, the Holy Monastery of Sinai, the Orthodox Church of Albania.

5. Other frameworks such as percentage law systems

None

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?)?

Donations and sponsorships amounting to more than €300 must be deposited in a special account of the legal person which should be opened for this purpose in Deposits and Loans Fund or in a bank lawfully operating in Greece. The cash receipt voucher issued by the bank must indicate the particulars of donor and recipient, the amount of the donation or sponsorship in figures and in words, the date of deposit, and the signature of the donor or the sponsor. Further, the donor shall be in possession of a Greek tax number.

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?)?

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

1. Individuals

Neither donation tax nor income tax is applicable to the beneficiary (Response of the State Legal Council 787/1997).

2. Legal entities

There is no provisions.-

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

There are no provisions.

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)?

The receiving organization.

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?

Gifts and inheritances are subject to separate taxation at a rate of 0.5% if the recipients are: Non-profit entities who exist or are formed legally in Greece, as well as foreign non-profit legal persons on the basis of reciprocity and Art. 96 of Law 2039/1939, if they are operating for a proven national or religious purposes or a wider circle of charitable, educational or artistic purposes within the meaning of Article 1 of Law 2039/1939. (Art. 25 para.3 of Law 2961/2001 and Art. 25 para. 9 of Law 3842/2010)

Cash donations to non-profit legal persons shall be subject to tax after the removal of a tax-exempt amount of thousand €1,000 per year (Art. 43 B a) of Law 2961/2001).

Also subject to separate taxation under the provisions of para. 5 Art. 29 of Law 2961/2001 are:

- Public entities, the prefectures, municipalities, communities, churches, the monasteries, the Temple of the Holy Sepulchre Audience, the Holy Monastery of Mount Sinai, the Ecumenical Patriarchate of Constantinople, the Patriarchate Jerusalem, the Patriarchate of Alexandria, the Church of Cyprus, the Orthodox Church of Albania.
- Non-profit entities, which exist or are founded legally in Greece, and foreign non-profit legal persons on the basis of reciprocity and Art. 96 of Law 2039/1939, if they are operating for demonstrably

national or religious purposes or a wider circle of charitable or educational or artistic purposes within the scope of Article 1 of Law 2039/1939 (para 3 of Art. 25 of Law 2961/2001 and para. 9 of Art. 25 of Law 3842/2010)

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. There have been no articles published on this issue in Greek law journals during the last two years.

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. Law 2928/2001.

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?

n/a

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

n/a

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?

n/a

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

4. Public fundraising

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

n/a

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Selected bibliography

Tatsos, N., 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
Pelleni- Papageorgiou, "Το ίδρυμα ιδιωτικού δικαίου" Athens, 2007
Apostolos S. Georgiadis "Γενικές Αρχές Αστικού Δικαίου" Athens-Komotini 2007
Greek Civil Code

Selected law texts online:

Law 3842/2010:

<http://www.taxheaven.gr/laws/law/index/law/189>

Law 4182/2013:

<http://nomoi.info/%CE%A6%CE%95%CE%9A-%CE%91-185-2013-%CF%83%CE%B5%CE%BB-1.html>

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.