



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

HUNGARY – 2014

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

The operating environment for foundations

***Drafted by Klára Molnár, Hungarian Donors Forum. Tax information supplied by
Zsolt Aradszky, Aradszky & Képes Law Firm***

Contents

| | |
|---|----|
| I. Legal framework for foundations | 3 |
| II. Tax treatment of the foundation..... | 11 |
| III. Tax treatment of donors of public benefit foundations | 23 |
| IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation) | 25 |
| V. Gift and inheritance tax | 25 |
| VI. Trends and developments..... | 26 |
| Useful contacts | 27 |
| Selected bibliography | 27 |
| Selected law texts online: | 27 |
| About the EFC Legal and Fiscal Country profiles | 28 |
| About the European Foundation Centre..... | 28 |

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

The foundation is a legal entity formed for the continuous serving of a long-term purpose that is defined by the founder in the foundation's charter (in effect from 15.03.2014.)

2. What purposes can foundations pursue?

A foundation can be set up for the continuous serving of a long-term purpose, (in effect from 15.03.2014.)

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?

The application for registration of the foundation can be submitted by the founder.

The foundation is registered by the court. In order to be registered the founder submits the application for registrations and attaches the following documents:

- a) the charter of the organisation
- b) the copy of the registered seat certificate
- c) the statement of the members of the foundations management approving the membership, their legal duties and conflict of interest based on the authorisation granted by law
- d) Certificate of the allocated sufficient assets of the foundation
- e) If the organisation has a supreme body, the statement of the members of the surpmem body approving the membership and the definitions of their legal duties based on the authorisation granted by law
- f) the statement of the person that is assigned the founder rights that he/she approves his/her assignment.

The applications should be provided in one copy and on an official application form – if such form is defined by law.

(in effect from 15.03.2014.)

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. The court registers the foundation and maintains the data its registry.

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

Yes. The court registers the foundation and maintains the data in its registry.

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

The national court registry keeps the following data:

- Registration number
- Number of registration decision of the Registration Court, date of legally binding decision of Court of Registration in connection with the organisation's registration
- Name of organisation
- Registered seat
- Name of the representative of the organisation
- Type of organisation
- Purpose of organisation and category of organisation according to purpose
- Data on transposal, termination, suspension
- Report of the organisation
- Warrant of liquidation proceedings, winding up, bankruptcy, proceedings
- Data on the liquidation proceedings, winding up, bankruptcy, proceedings of the organisation

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

The active and deleted data are publicly available and can be accessed in the national court registry via the internet, without identification

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

The foundation's endowment shall be at least 100,000 - 250,000 Hungarian forints (HUF) (approximately €400 -1,000). No minimum amount is prescribed by law. For this reason, the endowment must be sufficient for the activity of the foundation described in the charter of the foundation. It is up to the court to accept or reject the amount of the endowment indicated in the foundation's deed. If the court rejects the indicated amount, the founders of the foundation are obliged to increase the endowment.

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

a) Is it mandatory to have a supervisory board?

No, only if a foundation is a BPO:

If the annual revenues of a PBO exceed five million HUF, a supervisory body shall be formed, separately from the executive body, even if such obligation does not exist by virtue of some other legal regulation.

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

The board consists of three private persons. The board members can be assigned or elected for indefinite time. The member of the board can be recalled before the expiry of his mandate in case of directly endangering realisation the purpose of the foundation by the exerciser of the founder rights.

(In effect from 15.03.2014)

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

The board is the executive body of the foundation. The members of the board are the executive officers of the foundation.

(In effect from 15.03.2014)

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 modification of purpose in the foundation's charter is void, unless the foundation has fulfilled its purpose or the fulfillment of the purpose has become impossible and the foundation has sufficient assets in order to achieve the new purpose.

(In effect from 15.03.2014)

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

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.

The beneficiary of the foundation or his/her close relative cannot be member of the board. The founder and his/her close relatives cannot have majority in the board. The rules regulating conflict of interest and exclusion should be applied to the members of the supreme body.

(In effect from 15.03.2014)

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

Yes, the staff can participate in decision making. The board decide how and to what extent.

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

The board shall be the official representative of the foundation.

The charter defines the detailed rules on the foundation's representation in case of need.

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

The founder may install a clause in the charter to entitle the managing body (organisation) to authorise an employee of the foundation to represent the foundation, specifying the manner and extent to which the right of representation can be exercised.

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?

The foundation shall be liable for any damages caused to a third person by the board or a member thereof in the course of fulfilling its/his responsibilities. A member who causes damage to the foundation shall be liable for the damage caused in that capacity in accordance with the general rules of civil law.

There is no difference between voluntary (unpaid) and paid 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?

There is no "business judgment rule" in Hungarian legislation.

c) What is the liability of executive staff?

The foundation shall be liable for any damages caused to a third person by the director or the officers thereof in the course of fulfilling its/his responsibilities. A director or the officers who cause damage to the foundation shall be liable for the damage caused in that capacity in accordance with the general rules of civil law.

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

No

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

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation's statutes. | | X | | | |
| The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled). | | X | | | |
| The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt. | | | | | X |
| The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low. | X | | | | |
| The foundation sells immovable property to a third person. The board member was unaware that the price was too low. | X | | | | |

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

Yes, economic activities are allowed (related and unrelated too), but:

- A foundation may not be formed for the principal purpose of performing economic activities
- The foundation is entitled to conduct economic activities only in direct connection with the execution of the foundation's purpose.

(In effect from 15.03.2014)

The economic activities of the foundation cannot endanger the activities of the foundation's purpose. The income from economic activities cannot reach 60% of the total income of the foundation.

11. Are foundations permitted to be major shareholders?

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?

No

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 amendment of purpose in the foundation's charter is void, unless the foundation has fulfilled its purpose or the fulfillment of the purpose has become impossible and the foundation has sufficient assets in order to achieve the new purpose.

The amendments of the charter that aim at the decrease of the foundation's assets, or – after a merge with the foundation-change the person of the beneficiary appointed in case of termination of the foundation without a successor are void.

(In effect from 15.03.2014)

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

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

- annual financial report
- public benefit/activity report,
- donation report
- 1% report

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)?

The public benefit report is part of the financial report, which - independently from the public benefit status- should be submitted to the court in digital format by the 31st of May of the year following the fiscal year to which the report refers.

The report on the use of the offered 1% should be sent to the tax authority by the 31st of May following the second year after the transfer of the amount.

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

The report is approved by the entitled body of the foundation.

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

The foundation is required to submit its financial report and public benefit report at the National Court Office.

If a civic organisation has its own website, then the obligatory disclosure includes the publication of the financial report and the public benefit report on the organisation's website as well.

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

There is an obligation to use external audit if the enterprise income of the foundation has been on average more than 100 Million HUF (approx. €365,000) in the 2 business years prior to the current business year.

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

The audit should be undertaken by person or organisation who is member of the Hungarian Auditor Chamber.

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

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 public prosecutor's office has judicial supervisory competence over foundations.

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

The legal supervision is controlled by an active public prosecutor, in order to check that the foundation's

a) internal rules, regulations and their amendments are in accordance with the law and the foundation charter

b) its operation, decisions and the decisions of the supreme body are in accordance with the law, the foundation charter or other internal regulations.

According to his/her rights of legal supervision the public prosecutor shall be entitled to file for court action if the legitimacy of a foundation's activities cannot be otherwise ensured.

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?

Yes

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

17. When and how does a foundation dissolve?

The foundation is terminated when:

- a) the foundation has fulfilled its purpose and the founder has not defined a new purpose;
- b) the fulfilment of the foundation's purpose has become impossible, and there is no possibility for the modification of the purpose or merging with another foundation; or
- c) the foundation has conducted no activities in pursuit of its purpose for 3 years.

If any of the (above) cases for termination occurs, the board informs the person or body assigned with the founder's rights in order to take the necessary provisions and informs the supervising board and the public prosecutor about the occurrence of cause of the termination.

If the person or body assigned with the founder's rights does not take any substantive action based on the cause of termination within 30 days, the board is bound to notify the court about the reason for the termination.

(In effect from 15.03.2014)

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

Foreign foundations can conduct activities in Hungary, but there are no special rules applicable to them.

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?

Foundations can conduct activities abroad without limitations.

II. Tax treatment of the foundation

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

Foundations can be classified as public benefit organisation or a prominently public benefit organisation (hereinafter referred to as: PBO and PPBO) and tax benefits vary according to the status.

Corporate Income Tax (Act No 81 of 1996).

The foundation not classified as a PBO or PPBO is not obliged to pay corporate income tax provided that its income deriving from entrepreneurial activity does not exceed a maximum of 10 million HUF (approx. €36,500) and 10% of its total annual income (see point a) of subsection 1 of Article 20)

In case the foundation is classified as a PBO the benefited (exempt) entrepreneurial income of the organisation is 10% ratio of its total annual income up to a maximum of 20 million HUF (approx. €73,000). If the foundation is classified as a PPBO, the benefited (exempt) value is 15% of the total annual income of the organisation (see subsection 7 of Article 9).

The following activities are not declared as entrepreneurial activities of the foundation (see Chapter A) of Annex 6 of the Act):

- Public benefit activity (in case of a PBO, PPBO) and purpose related activity (in case of a single foundation not classified as PBO or PPBO), including donations granted for supporting these activities
- Counter value gained against the sale of intangible and tangible assets and reserves serving exclusively public benefit activities (in case of a PBO, PPBO) or purpose related activities (in case of a single foundation not classified as PBO or PPBO)
- The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation.

VAT (Act No 127 of 2007)

Public welfare activities listed by the VAT Act are VAT exempt if pursued by public welfare service provider organisations. The public welfare activities referred to by the VAT Act are as follows (only exempt if they are provided by public welfare service provider organisations): Social care service, children and youth care service, infants' nursery service, general and higher education service, services connected to sports and training provided to individuals, sale of peasant art products. Single foundations and foundations classified as PBOs or PPBOs are declared public welfare service provider organisations in connection with their statutory activities by virtue of the VAT Act (see Article 85 of the VAT Act).

The sale of the product is VAT exempt in case this specific product was used exclusively for the provision of public welfare activities formerly (see Article 86 of the VAT Act)

Duties (court, administrative and property acquisition duties, Act No 93 of 1990):

The foundation is entitled for taxpayer exemption only if it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection with which the taxpayer exempt status is claimed.

In case of a court or administrative procedure, the foundation is obliged to make the corresponding statement at the time of the initiation of the process. In case of an acquisition of a duty obliged property, the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority *ex officio*.

In case the aforementioned statement is passed preceding 1 of June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (for points a-c. see Article 5 of the Act).

Donations granted for foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty (see point a) of subsection 1 of Article 17 of the Act).

The court registration procedure of foundations is exempt from the procedure duties (see point e) of subsection 1 of Article 57 of the Act).

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?)

Duties:

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process, in case of an acquisition of a duty obliged property the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority *ex officio*.

Local Tax:

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act, foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

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

If a foundation is a PBO the annual public benefit report outlines the utilisation of budgetary subsidies.

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

No. If a foundation is a PBO:

The PBO shall prepare a public benefit annual report, which contains the accounting report too.

5. Are there specific accounting rules for foundations?

Government Decree No 224 of 2000

The government decree mentioned above includes specific regulations regarding the bookkeeping and accounting requirements applicable for normal foundations and those which possess public benefit or prominently public benefit status. The summary of the most relevant regulations is as follows: The government decree includes the specific provisions applicable for various organisations considered by the Act on Accounting as “other type of organisations” including to foundations. A foundation with public benefit status is classified as a “public benefit other type of organisation).

The format of the report of the organisation is determined by the actual activity, the cumulated annual income and the method of bookkeeping.

In case of:

- Single bookkeeping method: The report can be a simplified report (simplified balance sheet and appropriation of profit) or simplified public benefit report (simplified balance sheet and appropriation of profit, with regard to the public benefit status, and informative data)
- Dual bookkeeping method: A simplified annual report (balance sheet and profit and loss statement) or simplified public benefit annual report ((balance sheet and profit and loss statement, and informative data) can be produced
- According to its own selection, made according to the regulations of the Act on Accounting, the organisation can produce an annual report or simplified annual report. If the organisation performs entrepreneurial activity alongside its purpose related activities, it is obliged to indicate the revenues deriving from and expenditures on the entrepreneurial and purpose related activities separately from the earnings before taxes value of the entrepreneurial activity.

An organisation which applies the single bookkeeping method, which pursues only purpose related activity or whose income deriving from its total (entrepreneurial and purpose related) activity does not exceed the annual limit of 50 million HUF (approx. €182,500) in two consecutive calendar years is obliged to produce simplified report. Similar regulations apply to PBOs applying single bookkeeping method regarding the adoption of public benefit simplified report.

An organisation applying a dual bookkeeping method is obliged to produce a simplified annual report, if its income deriving from its total (entrepreneurial and purpose related) activity exceeds the annual limit of 50 million HUF (approx. €182,500) in each of two consecutive calendar years. Similar regulations apply to PBOs applying a dual bookkeeping method regarding the adoption of public benefit simplified annual report.

Organisations preparing simplified reports or public benefit are obliged to apply the single bookkeeping method (these organisation have the option to switch the bookkeeping method to the dual way from 1 of January of each business year, but those organisations whose total annual income has exceeded 50 million HUF (approx. €182,500)in at least two consecutive years are obliged by law to change to the dual system). Application of the dual bookkeeping method is mandatory for organisations preparing simplified annual reports or public benefit simplified annual reports. Organisations preparing a simplified annual report or public benefit simplified annual report are obliged to apply the dual method.

The decree includes provisions regarding:

- The requirements for the separation of incomes deriving from and expenditures on the purpose related and entrepreneurial activities
- Procedural rules applicable during the change of the bookkeeping method
- The items of the balance sheet
- The content of the appropriation of profit and the profit and loss statement
- Audit requirements
- Disclosure requirements of the reports

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.

Public benefit activity means the following designated activities as set forth in the organisation's charter for the benefit of society and for the common interests of individuals:

- Health preservation, disease prevention, therapeutic and medical rehabilitation activities
- Social activities, family counseling, care for the elderly
- Scientific activities, research
- School instruction and education, personal ability development, dissemination of knowledge
- Cultural activities
- Preservation of cultural heritage
- Preservation of historical monuments
- Nature preservation, animal protection
- Environmental protection
- 1 Children and juvenile protection, children and juvenile advocate services
- Promotion of equal opportunity within society for underprivileged groups
- Protection of human and civil rights
- Activities in connection with ethnic minorities living in Hungary and with Hungarian nationals living outside of Hungary
- Sports, not including sports activities involving professionals and those performed under contract within the framework of a civil law relationship
- Protection of public order and traffic safety, voluntary firefighting, rescue, and disaster preparedness and response activities
- Consumer protection
- Rehabilitative employment
- Promotion of employment and training for underprivileged groups in the labor market, including placement by the hiring-out of workers, and associated services
- Promotion of the country's Euro-Atlantic integration
- Services provided to and available solely for non-profit organizations
- Activities associated with flood and water damage control
- Activities associated with the construction, maintenance and operation of roads, bridges and tunnels
- Crime prevention and protection of victims
- The supply of electronic public services as basic services

7. Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.

The same (see above).

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

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

* **Note:** The Civil Code does not contain any specific list but jurisprudence has developed the principle that nearly all, not specifically private interest activity may be considered as public interest.

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, because the legal status of the tax-exempt public benefit foundation depends on the purpose of the foundation, not on the number of persons supported.

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

Examples: Do the following purposes promote the public at large?

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| For benefit of the inhabitants of a city with 1,000,000 inhabitants | X | | | | |
| For benefit of the inhabitants of a village with 10,000 inhabitants | X | | | | |
| For benefit of the employees of a company | X | | | | |
| For benefit of the members of a family | X | | | | |
| For benefit of the students of a university | X | | | | |
| Award for the best student of a university | X | | | | |

10. Non-Distribution Constraint

a) Does a **tax-exempt** foundation generally have to follow a “non-distribution constraint”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?

Unless otherwise stipulated in the charter, the assets of a terminated foundation shall be allocated by the Court of Registration for the support of another foundation with a similar purpose.

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.

11. “Altruistic” Element

a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Remuneration is allowed and there are no limits. The sum of the remuneration depends on the decision of the board of trustees.

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)

Only if it does not bring a financial advantage to the donor/founder.

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 |

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

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, his spouse and descendants. | | | | | X |
| The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for its own continuing use. | | | | | X |
| The gift is of only the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favor of the founder (or another member of her/his family) as tenant. | | | | | X |
| A foundation distributes a (small) part of its income to the founder or his family. | | | | | X |

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Yes

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

Yes

c) Does the **civil law** and/or the **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If so, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

No

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

No

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

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--------------|---------|-------------|----|
| A foundation accumulates its income for 5 years, only in the 6 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?

No. The mere fact of pursuing activity abroad does not endanger the tax-exempt status of the organisation.

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

Public benefit activity (in case of a PBO, PPBO) and the purpose related activity (in case of a single foundation not classified as PBO or PPBO), including the donations granted for supporting these activities are not declared as entrepreneurial activities of the foundation

Investment income (asset administration)

- Interest from fixed rate bonds

It is not taxed. The civil organisations can have investment activities. The Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations specifies the definition of investment activity. If the organisation makes investments it has to follow the investment regulation in order to earn any income from this activity.

- Equities

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

It is not taxed at all if it serves the basic and public-benefit purpose as defined in the establishing document.

The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation are not declared as entrepreneurial activities of the foundation.

Economic activities related/unrelated)

- Income from running a hospital/museum/opera

It is not taxed at all so long as it serves the basic and public-benefit purpose as defined in the establishing document.

- 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)?

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

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

The interests and proceeds gained from banks, security issuers and the state (in case of securities issued by the State) in consideration of the investment of the available financial means invested to bank deposits or securities in the ratio identical to the ratio of the revenue of the organisation deriving from the public benefit activity or purpose related activity represents in the total revenue of the organisation are not declared as entrepreneurial activities of the foundation.

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

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

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

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

Duties (court, administrative and property acquisition duties, Act No 93 of 1990)

The foundation is entitled for taxpayer exemption only in the case it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection which the taxpayer exempt status is claimed.

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process, in case of an acquisition of a duty obliged property the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority ex officio.

In case the aforementioned statement is passed before 1 June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (see Article 5 of the Act).

Donations made to foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty paying obligations (see point a) of subsection 1 of Article 17 of the Act).

The court registration procedure of foundations is exempt from the procedure duties (see point e) of subsection 1 of Article 57 of the Act).

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

In Hungary, local governments are entitled to levy business tax and real property tax as local taxes pursuant to the provisions of Act No 100 of 1990 on local taxes.

By virtue of subsection 2 of Article 3 of the aforementioned Act foundations are exempt from local taxes in the year when they are not obliged to pay corporate income tax (see the conditions regarding the tax exempt status in corporate income tax above). The subject must issue a written declaration regarding the fulfilment of the requirements of the exempt status.

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 same tax benefits as provided for Hungarian entities shall be provided to foreign subjects or different (more favourable) treatment shall be granted to foreign entities in case a national treaty, factual reciprocity or if binding ruling of the European Union prescribes so.

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?

Tax deduction for corporates.

2. Tax treatment of individual donors

Donations made by private individuals no longer give rise to a tax advantage. There is no deduction (from the tax base) and no tax credit (as against the tax due).

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

b) Which assets qualify for tax deductibility?

3. Tax treatment of corporate donors

Donations to “public benefit” charities:

- One-off donations made by corporations are no longer deductible
- Continuing donations (min. 4 years), both in cash and in kind, made by corporations give rise to a deduction of 20 % (i.e. where a donation of 1,000 HUF (approx. €3.65) is made, 200 HUF (approx. €0.73) may be deducted from the tax base)

Donations to “priority public benefit” charities:

- One-off donations, both in cash and in kind, made by corporations to “prominently public benefit” charities give rise to a 50 % deduction on part of the donor (i.e. where a donation of 1,000 HUF (approx. €3.65) is made, 500 HUF (approx. €1.83) may be deducted from the tax base).
- Continuing donations (min. 4 years), both in cash and in kind, made by corporations to “prominently public benefit” charities give rise to an additional deduction of 20 %. (i.e. to a deduction of 50 % + 20 % = 70 % in total; where a donation of 1,000 HUF (approx. €3.65) is made, 700 HUF (approx. €2.56) may be deducted from the tax base).

A combined maximum ceiling is the pre-tax base.

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?

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)

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

General rules are applicable without any benefits, namely:

In case of gift duty, the ratio of the duty is:

- In case the gift is not a homing real estate:

- i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the rate of duty is 21%
- ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the rate of duty is 30%
- iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the rate of duty is 40%

- In case the gift is a homing real estate:

- i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift, the rate of duty is 10%
- ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the rate of duty is 21%
- iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the rate of duty is 30%

In case of inheritance duty, the ratio of the duty is:

- In case the inheritance is not a homing real estate

- i. up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the inheritance duty rate is 21%
- ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the inheritance duty rate is 30%
- iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the inheritance duty rate is 40%

- In case the inheritance is a homing real estate

- i. Up to a limit of 18 million HUF (approx. €66,000) of the market value of the gift the inheritance duty rate is 8%
- ii. Regarding the part of the value exceeding 18 million HUF (approx. €66,000) up to a limit of 35 million HUF (approx. €128,450) the inheritance duty rate is 12%
- iii. Regarding the part of the value exceeding 35 million HUF (approx. €128,450) the inheritance duty rate is 21%

Please see information above regarding international reciprocity and tax benefits for foreign foundations.

Donations by individual and corporate donors to non-resident public benefit foundations do not qualify for tax relief.

5. Other frameworks such as percentage law systems

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?)?

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?)?

Based on the Act CXVII of 1995 on Personal Income Tax, deductibility/tax incentives for individual donors giving to a foreign organisation is not applicable in Hungary as of January 1st, 2011.

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

In the case of donations and scholarships received, there is no obligation to pay tax.

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

In Hungarian law this levy is called “duty” instead of tax. The following information regarding tax exempt status applies here:

The foundation is entitled to taxpayer exemption only if it was not obliged to fulfil corporate tax paying obligation pursuant to its revenues gained deriving from entrepreneurial activity performed in the calendar year preceding the year of the initiation of the court or administrative procedure or the event of the property acquisition in connection which the taxpayer exempt status is claimed.

In case of a court or administrative procedure the foundation is obliged to make the corresponding statement at the time of the initiation of the process. In case of an acquisition of a duty obliged property, the fulfilment of the requirements for granting taxpayer exempt status shall be verified by the taxation authority ex officio.

In case the aforementioned statement is passed before 1 June of the ongoing calendar year, the foundation is obliged to represent that presumably it will not be obliged to pay corporate income tax on the basis of the entrepreneurial revenue gained in the respective year. In case the foundation

shall be obliged to pay corporate income tax regardless the content of the statement it is entitled to report this to the taxation authority and settle the duties unpaid without any adverse consequences (penalties) not later than 1 July of the ongoing year (see Article 5 of the Act).

Donations made to foundations fulfilling scientific, artistic, educational and public welfare purposes are exempt from gift duty (see point a) of subsection 1 of Article 17 of the Act).

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

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

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

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

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

VI. Trends and developments

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

Not as far as we are aware.

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)?

There is an Anti-Terrorism Act in force in Hungary, which came into force on 14 December 2007.

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

No

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

No

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

No

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

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?

No

Useful contacts

Nilda Bullain, European Center for Not-for-profit Law, nilda@ecn1.org.hu, www.ecn1.org

Klára Molnar, klara.molnar@donorsforum.hu, www.donorsforum.hu

www.usig.org

www.nonprofit.hu

Aradszky & Képes Law Firm
H-1015 Budapest, Batthyány u. 54. IV/ 8.
Phone: (+36 1) 428 0727
Fax: (+36 1) 3326 327
<http://www.aradszkyeskepes.hu>

Selected bibliography

Pending

Selected law texts online:

Pending

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.