



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## UKRAINE – 2014

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

***The operating environment for foundations***

***Drafted by Oleksandr Vinnikov, European Law Advancement Network***

Contents

I. Legal framework for foundations .....	3
II. Tax treatment of the foundation.....	15
III. Tax treatment of donors of public benefit foundations .....	24
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation) .....	26
V. Gift and inheritance tax .....	27
VI. Trends and developments.....	28
Useful contacts .....	29
Selected law texts online: .....	30
About the EFC Legal and Fiscal Country profiles .....	30
About the European Foundation Centre.....	30

## **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)?**

There is no basic legal definition of a foundation in Ukrainian civil law. There are several types of foundations, including commercial investment foundations, self-governed social insurance and non-government pension funds, and public law foundations (e.g. Foundation for social protection of people having disabilities).

In Ukraine two main categories of autonomous foundations for not-for-profit purposes currently exist: public benefit foundations and private foundations.

The legal differentiation between public benefit foundations (*blagodiyny fond*) and membership-based public benefit organisations is provided for in the Charitable Activities and Charities Act (CACA, N 5073 of 4 July 2012). Article 13 of the CACA allows have one or more founders as well as other participants, who govern the foundation. Founders are not obliged to bring assets on their own, although they can contribute to the foundation capital themselves and/or with other donors.

Private foundations (*pryvatna ustanova*) are regulated by Articles 80-112 of the Civil Code that came into force on 1 January 2004. Private foundations are legal entities that have received assets dedicated irrevocably to the pursuit of purposes specified by the founder(s), who shall not be members of the private foundation's governing bodies (Articles 83, 101, Civil Code). Private foundations for specific charitable purposes can be registered as charitable organizations (*blagodiyna ustanova*) under Article 13 of CACA.

The Autonomous Republic of Crimea has the option to have a separate regional law on public benefit activities (Article 137 of Ukrainian Constitution), but no such law has yet been passed.

Tax exempt autonomous pension foundations are covered by a special Non-Government Retirement Benefits Act, N 1057 of 9 July 2003.

All foundations, except for non-autonomous endowments, have full legal capacity. All types of autonomous foundations can have an endowment, but they are not required by law to do so.

Non-autonomous endowments without legal personality are also permitted, in cash or securities, under Article 170.7.5 of the Tax Code that came into effect on 1 January 2011.

Ukrainian law does not make any specification concerning grant-making or operating foundations. Private foundations, however, must have the term "private foundation" in their name, and the name should refer to the organisation's primary purposes/activities (Article 90 of Civil Code).

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

Public benefit foundations can pursue support of beneficiaries' legal interests in some or all the recognized areas of charitable activities or advancement and sustainability of these recognized areas for some or all of the public benefit purposes.

Article 3 of the CACA specified the recognized areas of charitable activities exhaustively:

1) education; 2) health care; 3) ecology, environment protection and animals protection; 4) prevention of natural and technological disasters, assistance to victims of disasters, military conflicts and accidents, as well as to refugees and persons in aggravated conditions; 5) custody, legal representation and legal aid; 6) social welfare, social services and poverty relief; 7) culture and arts, cultural heritage protection; 8) science and researches; 9) sports and amateur sports; 10) human rights and fundamental freedoms; 11) territorial communities development; 12) development of Ukraine's international cooperation; 13) advancement of economic growth, competitiveness and economic development in Ukraine or its regions; 14) support for implementation of international, national, regional, and local programs to improve general social and economic conditions in Ukraine.

Private foundations can pursue any legal purpose(s) that their founders specify. They can pursue public benefit purposes as well as private purposes, except the purpose of for-profit business activities (Article 86, Civil Code).

**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?**

One or more founders, individuals and/or legal entities, can establish any type of foundation. Autonomous foundations with legal personality are established when their registration is completed (Article 87, Civil Code).

National and/or local government agencies as well as publically owned companies cannot be founders of the public benefit foundations (Article 12, CACA).

Currently the deed of a public benefit or a private foundation can be *inter vivos* or *causa mortis*. Foundations can be established by a notary deed or via a will (Article 13 CACA, Article 87 of Civil Code). This deed can be revoked by the founder(s) before a foundation is registered as a legal entity.

The statutes of a public benefit foundation should contain its name, address, territorial and legal status; purposes, objectives and major fields of public benefit or benevolent activities; rules for governing bodies, forming up, and decision making; sources of assets and their disposal; procedures for amending the statutes; and provisions for the dissolution of the foundation (Article 14, CACA). Also, the statutes may contain the rights and liabilities of other participants, if any.

The deed shall contain the private foundation's name, purposes, the assets dedicated by the founder(s) after the registration of the foundation, and its governance structure. If a will lacks any such regulations, the public registrar can specify them (Article 88, Civil Code).

The foundation's founder(s) shall also submit two notarised original copies of the statutes, the registration card, and a receipt for the registration fee (Article 24, LEIBRA).

A public registrar shall issue a registration certificate within three working days and file this foundation into the General Register of Legal Entities (Article 25, LEIBRA).

Registration fee currently is 170 UAH (or €16) for a private foundation and 51 UAH (or €5) for a public benefit foundation (Article 10, LEIBRA).

Non-autonomous endowments are managed by a bank or other financial institution under a private contract with the founder. This host institution shall transfer investment income, in full or in part, to the beneficiaries specified as such by the founder for a period of at least one year.

The founder of a non-autonomous endowment can be a legal entity or an individual. No special registration procedures are applicable (Article 170.7.5 of the Tax Code).

**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? )**

Currently no state approval is required for public benefit or private foundations. Registration by a public registrar at the foundation domicile is required. The foundation's statutes shall be notarized.

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

Yes, all foundations, except for non-autonomous endowments, shall be registered in the General Register of Legal Entities and Individual Businesses under the Legal Entities and Individual Businesses Registration Act (LEIBRA, No. 755 of 22 May 2003).

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

The General Register keeps information on the foundation's name and purpose(s), data on the founder(s) and members of the governance bodies including contact information data on the types of activities of a foundation, the data on individuals who have powers of representation (e.g. right to make contracts on behalf of the foundation) and the limitations of these powers, if any, as well as information on specific sanctions against the legal entity, including bankruptcy, and on its winding up ( Article 17 of LEIBRA).

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

Yes, the brief information on public benefit and private foundations is available in Ukrainian and English for free via the official site compatible with the European Business Register (<http://irc.gov.ua/ua/Poshuk-v-YeDR.html>). Procedures for getting more detailed references from the General Register for fee upon the written requests of individuals or companies are provided in Articles 20-22 of LEIBRA.

**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 minimum capital is required for a public benefit foundation under the CACA. Moreover, the founder(s) of a public benefit foundation are not legally required to dedicate any their own assets to this foundation before or after its registration.

Also, no minimum capital is required for non-autonomous endowments.

The statutes of a private foundation shall specify any assets that its founder(s) or the executors of their will are obliged to provide for achievement of the foundation's purpose after its registration (Article 102, Civil Code). However, there are no minimum capital requirements for private foundations set out in the law or reflected in the practices of public registrars.

There are no legal requirements on maintaining the foundation's assets or spending ratios.

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

Public benefit foundations:

According to Article 19 of the CACA, public benefit foundations shall have at least two governance bodies. The founder or the founders' general meeting (if the foundation has more than one founder) are the highest governance body.

The founder(s) also appoint the supervisory board (*naglyadova rada*) and the executive board (*pravlinnya*). Besides, the founder(s) can be members of the supervisory board or the executive board.

Private foundations:

The founder(s) of a private foundation shall not participate in its governance (Article 83, Civil Code). The private foundation shall have an executive board and a supervisory board (Article 101, Civil Code). The first members of both bodies shall be appointed by the founder(s).

Other governance bodies can be stipulated in a private foundation's statutes.

The executive board's decisions shall be approved by a simple majority, unless the law or the statutes provide otherwise (Articles 98, 99, and 101, Civil Code).

Legal prohibition from voting in the decisions of the governance bodies in cases of any disputes and/or transactions between a legal entity and its founder(s) or representatives (Article 98, Civil Code; Article 23, CACA), can be applicable to the foundation's executive board members.

### a) Is it mandatory to have a supervisory board?

Yes. If the founders' number is less than 10 persons, the founders' general meeting may act as the supervisory board of a public benefit foundation (Article 19, CACA). Members of the supervisory board cannot be members of the executive board (Article 22, CACA).

### 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?

There are no legal limitations concerning the number and categories of the members of a foundation's board, their residence or citizenship, or their relationship to the founder(s).

Article 21 of the CACA allows a one-member board. However, public benefit or private foundations with one founder shall have the board as the committee. The board's powers are specified in the civil law and in the statutes. The maximum number of the board members can be specified in the statutes only.

There are no specific legal requirements on appointing and removing the board members, as these issues are determined by the statutes of a foundation. Article 99 of Civil Code stipulates that board members can be removed at any moment, unless the statutes provide for specific grounds and/or procedures preventing this.

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

There are no explicit regulations in the national legislation; the statutes shall specify the rights and the duties of the board members.

### 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?

According to Article 19 of the CACA, the public benefit foundation's founder or the founders general meeting (if the foundation has more than one founder) vest the powers to amend the statutes, appoint

and dismiss the members of the supervisory board and executive board, and make the decisions on winding up the foundation. The statutes may specify the other powers of the founder(s).

The only legal requirement is that amending the statutes and the foundation's dissolution need ¾ of the founders' votes under Article 98 of Civil Code.

Founders of a private foundation have no rights in governance (eventually, except replacing members of the board in the foundations *inter vivos*). Decisions on amendments of the purpose and/or governance structure of a private foundation shall be made by civil courts in compliance with the founders' intentions (Article 103 of Civil Code).

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

Beneficiaries can sue for any losses caused by the non-disclosure of relevant information by any donor, including foundations (Article 721 of the Civil Code), as well as for transfer of donations with suspensive conditions or torts, if contractual conditions are fulfilled (Article 723 of the Civil Code).

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?

Article 23 of CACA provides for a legal definition of a conflict of interest affecting public benefit foundations. A member of the board cannot vote in cases of any transactions and/or disputes between himself or affiliated persons and the public benefit foundation, as well as for relieving his or affiliated persons' liabilities for the foundation. Members of the board cannot be beneficiaries of the foundation's charitable programs or endowment. The statutes of a public benefit foundation may specify other grounds and rules against conflict of interest.

As for private foundations, Article 99 of the Civil Code argues that a member of the board cannot vote only in cases of transactions and/or disputes between himself and the legal entity in question.

The tax law has special provisions for taxation of self-dealing that involves members of the board and their relatives (Articles 14.1.159 and 39 of the Tax Code).

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

There is no explicit regulation in civil law, although the statutes of the foundation make provisions concerning such procedures.

**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 director or president of the executive board represents a foundation. They can delegate these powers to other persons, if specified in the statutes. These individuals shall have a Ukrainian tax payer ID number, notwithstanding their residence or citizenship. Additional regulations can be set forth in the statutes of a foundation.

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

Generally, the director has powers of representation, though they can be restricted by the statutes (e.g. sales of immovable property require the approval of the supervisory board).

Other officers having powers of representation can be mentioned in the statutes and/or in the registration card of the foundation, which are available in the General Register.

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

All autonomous foundations are liable with all their assets for any damage caused by actions of their governance bodies towards third parties. A foundation may then seek recourse from these

governance bodies/members of the board, also for damage caused to the foundation itself (Article 92, Civil Code, Article 24 of CACA).

The members of the foundation's board can be held liable under civil or criminal law.

The founder(s) are not liable for the foundation's liabilities after its registration, unless otherwise is provided within the statutes (Article 96, Civil Code).

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

The members of the governance bodies shall act on behalf of a foundation with prudence, diligence and within their statutory powers. If they violate these requirements, they are jointly liable for a foundation's losses (Article 92, Civil Code).

Anybody or person acting on behalf of a foundation on the basis of the statutes shall act in prudent and diligent manner within their statutory competence. *Ultra vires* is not applicable to disputes with third parties, unless the third party was evidently aware or cannot help but be aware of the body/person acting on behalf of the foundation having exceeded the statutory limits of that body or person's powers (Article 92, Civil Code).

There is no legal differentiation between voluntary and paid the board members' liability.

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 Ukrainian law concerning foundations.

c) What is the liability of executive staff?

Directors and officers of foundations can be held liable under civil or criminal law (e.g. for gross negligence, using insider information or intentionally concealing insolvency of the organisation).

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

Yes (Articles 19-22 of CACA, Article 98 of Civil Code).

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

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

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

Public benefit and private foundations are allowed to run related economic activities as long as they fall within the purposes and objectives of the foundation (Article 86, Civil Code; Article 16, CACA), while their primary activities are not-for-profit.

The Tax Code explicitly allows both related and unrelated economic activities for all types of foundations and other tax exempt entities (Articles 133.1.4, 152.6, and 157.11 of Tax Code).

Income from unrelated economic activities is taxable, and tax exempt income shall not be invested into unrelated economic activities (Article 157.14 of Tax Code).

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

Yes. Shareholding and major shareholding are allowed, though the acquiring of 10%, 25% or more of the shares of one company can be subject to Anti-Trust Committee approval.

---

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

**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?**

Civil law imposes no clear limitations on foundations' asset management or types of investment. In general, the founder(s) and the employees cannot get economic advantages or benefits on the basis of their affiliation (Article 11, CACA).

Foundations of all types can own securities, land, real estate and any other tangible and intangible assets, unless this ownership is explicitly proscribed by law (Article 16, CACA; Articles 91 and 176 of Civil Code).

A qualified majority of 3/4 of votes in the statutory body is required for decisions on selling or other disposal of 50% or more of the assets of a foundation, unless otherwise is provided for by the law (Article 98, Civil Code).

Any foundation can own a business company or be a personally liable partner in a company, if its statutes stipulate these activities explicitly.

There are no legal restrictions on alternative investments, if there is no opposing regulation in the statutes of a foundation.

**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)**

Ukrainian civil law does not contain any explicit restrictions, as long as these activities are not financial services, which are subject to licensing. In our opinion, Article 5 of CACA implies such allocations in the catalogue of public benefit or benevolent activities.

Article 14.1.257 of the Tax Code allows recoverable grants or free interest loans as a type of financial support, i.e. charitable activities.

Low interest loans (within the prime rate of the National Bank) as itself are allowed by Article 1048 of Civil Code, but not with tax law, which may interpret these allocations as unrelated economic activities, unless they are explicitly mentioned in the foundation's statutes (Article 157.14 of Tax Code). However, financial sanctions for overdue may include interest under Articles 625, 1050 of Civil code, and that interest is tax exempt for non-profits.

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

There are no model statutes for either public benefit foundations or private foundations.

Public benefit foundations:

The statutes of a public benefit foundation, its purpose or name can be amended by the decision of its founder(s) at will as long as the amendments do not violate the law.

Public registrars have no discretionary powers regarding the registration of amendments to a public foundation's statutes.

Private foundations:

Amendments to the statutes of a private foundation shall be approved by the board with a qualified majority of 3/4 of the board's votes (Articles 98, 99, and 102 of Civil Code).

Article 103 of Civil Code stipulates special procedures for amending private foundations' purposes and/or governance.

If there are to be any changes to the foundation's purposes, the court shall consider the founder(s) intentions and make sure that the benefits from the foundation's assets are to be granted to the beneficiaries designated by the founder(s).

If it is necessary for pursuing the amended purposes, the court is also authorised to amend the governance structure of the private foundation.

If the implementation of a foundation's purposes has become impossible or dangerous to the public order, a public registrar can apply for legal recourse to amend the private foundation's purposes after consideration by the foundation's board. In all cases, the board shall submit its considerations in writing to the court.

All these amendments come into effect only after their registration by public registrars in compliance with Article 29 of LEIBRA.

In particular, a copy of the court decision on the emendation(s) to the purpose of a private foundation must be registered.

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

Public benefit foundations shall report to any donors on disposal of their donations upon their requests or without such requests, if the donations have been assigned for specific purposes or uses (Articles 7 and 17, CACA).

There are no special legal requirements on reporting for private foundations reporting.

Like other tax exempt entities, all foundations shall submit quarterly reports on their revenues and expenditures to the local tax authorities (Article 157.14 of Tax Code).

All foundations are subject to the Accounting and Financial Reporting Act, N 996 of 16 July 1999. In particular, a foundation shall submit copies of its annual financial report and balance sheet to the public registrar until June 1 next financial year.

The data from annual financial reports and balance sheets are filed in the General Register of Legal Entities that is available to members of the public upon request. This register contains an extensive range of data, including the names the founder(s) and representatives of legal entities as well as their tax payer ID numbers, and details of any limitations of the representatives' powers (Article 17, LEIBRA).

Legally, public benefit or private foundations are not subject to annual independent financial audit by a certified auditor or an auditing company under the Accounting and Financial Reporting Act, N 996 of 16 July 1999. However, foundations themselves, their founders, donors or other stakeholders can order independent audits at any time.

##### 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)

All foundations shall produce annual financial reports, balance sheets and tax reports

Public benefit foundations shall publicize their reports on uses of any public funds or funds collected through public fundraising activities (Article 7, CACA). There are currently no requirements to submit special public benefit reports.

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)?

Tax exempt entities, including foundations, are required to submit their annual financial reports as well as other tax returns to tax authorities and State Pension Fund.

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

The tax authorities and State Pension Fund are authorised to check the financial reports of foundations.

Internal control is vested in supervisory boards of public benefit and private foundations (Article 22, CACA; Article 103 of Civil Code).

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

Yes, annual reports and accounts of public benefit foundations shall be publicly available (Articles 14 and 17 of CACA). General structure and amounts of the public foundation's income and expenditures, as well as terms of its assets uses shall not be confidential information. There are no special requirements on the means of such availability (e.g. these reports can be published on the foundation's website).

In addition, all foundations shall submit copies of their annual reports and balance sheets to their public registrars by 1 June of the following year (Article 14 of Accounting and Financial Reporting Act No. 996 of 16 July 1999). This information is publicly available through references from General Register of Legal Entities.

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

Foundations are not subject to regular external audit by certified independent auditors or an auditing company under Article 8 of Auditing Act No. 3125 of 22 April 1993. However, external audit can be delivered upon the request of the foundation or its creditors.

Tax authorities shall carry out an external financial audit of foundations once in three years, but often the periods between their audits are longer.

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

Only auditors or audit companies certified with the Audit Chamber of Ukraine under the Auditing Act can undertake external financial audit in accordance with the standards of the Audit Chamber on the basis of the International Federation of Accountants' standards (Article 6 of Auditing Act).

Even if foreign auditors deliver such audit, their opinions shall be confirmed with a certified Ukrainian auditor (Article 7 of Auditing Act).

From FY 2013, Ukrainian legal entities, except banks and government agencies, shall use international standards IFRS under Ministry of finance regulations.

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

There is no government agency now having supervision authority for foundations now. However, Articles 26 and 27 of the CACA do not specify any specific supervision authorities or sanctions, except for fiscal ones (including removal from the Tax Exempt Entities Register) or dissolution by court decision.

Public registrars and courts can supervise public benefit and private foundations when it comes to amending the statutes, purposes, or name of an organisation.

No special rules on supervision are provided for non-autonomous endowments.

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?

Public registrars act as the public administrative bodies in a combination with courts.

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

Public registrars do not review reports, but can make inquiries in cases of non submitting reports or registration cards, when the law requires, or absence at the domicile. Tax authorities and other fiscal agencies have supervision powers as provided with the Tax code or special laws (e.g., on social insurance or humanitarian assistance).

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

No

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

No

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

Generally, the supervisory authority issues an official warning in order to ensure the required compliance within one month or a specified longer period. If an organisation does not comply as required, the common sanctions are annulment of registration and changes in the governance. Tax authorities can take the decision to annul an organisation's registration in the Tax Exempt Entities Register.

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

Under article 110 of Civil Code, any foundation can be dissolved:

- By the founder(s) decision or by the statutory governing body, including on any of the grounds specified in the statutes (e.g., achieving the foundation's purpose, or termination of the period for which the foundation was set up)
- By court decision, if the registration of the foundation is incompatible with the law, or in other cases explicitly stipulated in law.

Public benefit foundations:

A public benefit foundation can be dissolved by the founder(s) or the executive board at any moment, unless otherwise provided for in the statutes. The remaining assets shall be distributed to other public benefit foundation(s), or if no such foundations exist, transferred to the government.

Additionally, a public benefit foundation can be dissolved under Article 27 of the CACA by a court decision, if the public registrar or creditor sues for: 1) misuses of the foundation assets or violations of charitable activities regulations (e.g., in public fundraising) for 12 months or longer; 2) inability to reorganize or dissolve the foundation in cases prescribed by the law or the foundation's statutes.

Private foundations:

The dissolution of private foundations is regulated with Articles 33 – 41 of LEIBRA. The founder(s) or the board shall submit their notarised decision on the foundation's dissolution, including data on the liquidation committee members, and a receipt for the publication of this decision in the special official bulletin. The liquidation committee balance sheet shall be approved by the board.

In particular, a private foundation can be dissolved by the court decision, if:

- The foundation runs activities prohibited by law or by the foundation's statutes
- The foundation fails to submit financial report to the tax authorities for one year or more
- A public registrar has filed an official note in the general Register of Legal Entities that the foundation is absent at its domicile

Public benefit or private foundations can be declared bankrupt under general regulations (Insolvency Recovery and Bankruptcy Act, N 4212 of 22 December 2011).

Like any legal entity in Ukraine, foundations are legally dissolved after the filing of the termination note into the General Register by the public registrar (Article 111, Civil Code).

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

Foreign foundations can run public benefit or benevolent activities in Ukraine as long as they are in compliance with Ukrainian law. They have limited legal capacity in Ukraine, if they pursue their statutory purpose in Ukraine without registration.

Foreign foundations can register their branches or representative offices in Ukraine under Article 26 of the Law on Non-Government Associations of 22 March 2012.

These branches or representative offices shall be registered with State Registration Service of Ministry of Justice within 20 working days. Registration fee is 340 UAH (or €30). These branches may operate without legal personality on behalf of their principals; they have the status of tax non-residents in Ukraine and can open special bank accounts for non-residents (N-Type accounts).

Ukrainian law does not imply any restrictions on non-residents (non-nationals) for the purposes of founding, governing, membership in governance bodies and so on. However, the directors of the branches shall get Ukrainian tax ID number notwithstanding their residence.

#### **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?**

Civil law allows foundations to conduct lawful activities abroad without explicit limitations.

As for public benefit activities, cooperation with Ukrainian communities abroad is mentioned as the top priority (Article 3, CACA).

Any foundation registered in Ukraine is subject to the general legal requirement that residents need the National Bank's approvals to open bank accounts abroad.

## **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?**

These general requirements are set forth in Article 157 of Tax Code:

- Registration as a legal entity under Ukrainian laws
- Tax resident status
- Not-for-profit statutory purpose
- Non-distribution constraint
- Statutory transfer of the assets to other tax exempt entities in case of dissolution
- Exhaustive list of (related) economic activities in the statutes
- Prohibition of using tax exempt income for unrelated business activities.

However, Tax Code does not specify the procedures to receive tax exempt status, which are currently regulated by Ministry of Finance Order N 37 of 24 January 2013.

This procedure shall not be repeated every year or periodically. However, tax authorities may amend the tax exempt status and/or exclude the foundation from the Register of Tax Exempt Entities on the basis of amendments to the foundation's statutes, violation of tax laws or other laws concerning the foundation (e.g., exceeding the limit of administrative expenses by a public benefit foundation).

### **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?)**

Ministry of Finance Order N 37 of 24 January 2013 provides for submitting only an attached application form N 1-PH and copies of the foundation's statutes. No financial or other reports by the foundation are not required to claim tax exempt status.

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

Yes. The State Treasury and Audit Department of the Ministry of Finance require special reports for the use of any state funds under the Budget Code.

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

Yes, to tax and financial authorities. Other reporting may include personal data on donors and beneficiaries, if they or their successors/representatives agree in writing (Article 17 of CACA).

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

There are no specific accounting rules beyond the general accounting standards approved by the Ministry of Finance.

**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.**

Charitable purpose is voluntary giving services and/or assets to beneficiaries in the areas recognized by the law without profit seeking. This voluntary giving shall not cause any compensation to benefactor on the behalf and/or at the expense of beneficiaries (Article 1 of CACA). Eligible beneficiaries are individuals, communities or non-profits, unless the public benefit foundation's statutes provides for other types of legal entities, except for political parties.

Public benefit foundations can pursue some or all public benefit or benevolent purposes as exhaustively specified in Article 3 of the CACA. See question in section 1 on the specific purposes foundations can pursue.

**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. The tax law refers to the definition of charitable purpose in civil law (e.g., in Article 157.1 and 197.1.15 on VAT exempts).

**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	

<b>Assistance to, or protection of vulnerable and disadvantaged persons</b>	X			
<b>Amateur sports</b>	X			
<b>Infrastructure support for public benefit purpose organisations</b>	X			
<b><i>Other – please list other purposes accepted in tax law for tax privileges in your country</i></b>	<b>Territorial communities development; local economic development</b>			

Please note the special law on consumer protection N 1025 of 12 May 1991 regulates the rights of consumer protection organizations, which can participate in local and other programs for economic or social empowerment.

### 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. There is no legal requirement to benefit “public at large”, unless the foundation’s statutes provides for otherwise in lines with Article 3 of CACA.

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					
For benefit of the inhabitants of a village with 10,000 inhabitants					
For benefit of the employees of a company					
For benefit of the members of a family					
For benefit of the students of a university					
Award for the best student of a university					

## 10. Non-Distribution Constraint

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

Yes. Foundations may not distribute their assets or income to its founder(s) or officers, or used for the benefits of certain founder(s) or officers, except in the form of salaries or social activities (Article 157.10 of the Tax Code).

Any financial support or payments to the members of all tax exempt entities' governing bodies and their relatives, including grants and donations, are taxable income of these individuals, even if tax exempt for other tax payers (Article 165.1.4 of the Tax Code).

Article 23 of CACA prohibits loans and/or loans collateral by the public benefit foundation to its governance bodies' members or their relatives and affiliated persons.

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

In case of a foundation's dissolution, its remaining assets shall be distributed to one or more tax exempt foundations, of public benefit or private purpose accordingly, or transferred to the government (Article 157.13 of the Tax Code, Article 18 of CACA). Only charitable organizations may be successors of a public benefit foundation.

## 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**?

Yes, remuneration of board members is allowed in civil law and tax law currently.

There are no clear legal limits concerning board members of private foundations currently. However, administrative expenses of public benefit foundations, including this remuneration, shall not be more than 20% of their annual income (Article 16 of CACA). Besides, tax authorities may use transfer pricing rules under Article 39 of the Tax Code for estimation of this remuneration in so called controlled transactions.

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 explicit regulations related to this in the Tax Code for the taxation of income. However, any compensation in return for the donations in kind exempt from VAT is illegal and is subject to confiscation (Article 197.1.15 of the Tax Code). It is still unclear whether these sanctions are applicable to the donations in kind of less value than the VAT exempt amount (currently 300,000 UAH or €27,000 per year).

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

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

The following would be considered as administrations 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

As mentioned above, public benefit foundations can spend up to 20% of their annual income for their office/administration costs under Article 16 of CACA.

Private foundations are not subject to direct legal limitations on administrative costs.

There is no specific definition of administrative costs in civil law. However, Article 138.10.2 of the Tax Code sets forth the catalogue of administrative costs (e.g. costs of governance bodies' meetings, travel costs and payrolls of administrative staff, rent on administrative buildings, heating, electricity and facilities costs, telephone and other communications, audit, court disputes and some other types of costs).

Generally, publicity and promotion costs, as well as costs related to fundraising and operational programs, would not be considered as administrative costs.

Endowments administration costs are considered as administrative costs, unless otherwise is explicitly provided for with the law or a contract with the donor (Article 16, CACA).

## 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, there are no legal restrictions and/or spending ratios and timelines for the foundation's capital spending.

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?

No. Article 110 of the Civil Code argues that private foundations can be dissolved in compliance with their statutes after the period for which they were set up has expired. No minimum length of time for the foundation's existing is set forth.

There are no explicit regulations in the CACA concerning public benefit foundations, so they also can be set up for a limited period or for indefinite time.

Non-autonomous endowments shall exist for 12 months, at least (Article 170.7.5 of the Tax Code).

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?)?

Yes, it is required for private foundations by tax law. Private foundations shall pay retained income tax at the standard rate (Article 157.11 of the Tax Code), if they fail to spend 75% of their income before 1 April of the next fiscal year<sup>2</sup>.

There are no legal requirements as for types of income or expenditures in question.

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"?

<sup>2</sup> For instance, if a private foundation with an income of €100,000 in 2012 spends €60,000 for its statutory activities before 1 April 2013, the retained income is €15,000 (€75,000 minus €60,000) which is taxable at a current rate of 19%.

No, there are no legal requirements on spending rate or a payout rule.

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

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

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

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

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

No

#### 15. Are there any civil and/or tax law rules regulating cross-border grants by a foundation? If yes, please provide a description of the requirements the foundation must fulfil in such cases.

There are no special rules for cross-border grants in civil law. Thus, Article 6 of CACA does not provide for any peculiarities for donations or grants to foreign entities.

However, Article 160 of the Tax Code requires withhold 15% income tax from any grants or donations to non-residents, unless the tax treaties provide for otherwise.

#### 16. Income tax treatment

Public benefit foundations registered under the CACA are tax exempt according to article 157.3 of Tax Code, if they are filed into the Tax Exempt Entities Register by the tax authorities, who still have extensive discretionary powers.

Donations, including humanitarian assistance, as well as public subsidies and income from the related economic activities are tax exempt for public benefit foundations.

Please note that Article 157.5 of the Tax Code does not exempt private foundations' income from public fundraising, although Article 7 of the CACA provides for regulations on public fundraising for all types of benefactors, including individual ones.

Investment income, including interest, dividends, royalties and insurance premiums (Article 14.1.268, Tax Code), are tax exempt for public benefit and private foundations, whether their source is resident or foreign.

However, all foundations are subject to general corporate income tax<sup>3</sup> on their non-related economic activities, including rent or lease income (except for financial leasing under Article 14.1.206 of the Tax Code).

<sup>3</sup> Under par. 10, Chapter 4, Final and Provisional Regulations of the Tax Code, the standard flat rate of corporate income tax is 19% in 2013 and 16% in 2014

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

### Grants and donations

All grants and donations are tax exempt for public benefit foundations. Private foundations are tax exempt as for grants and donations from their founder(s), affiliated persons and from abroad.

### Investment income (asset administration)

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

Securities interest and equities are tax exempt. Income from leasing of other property (e.g., equipment or real estate) would be generally taxable, except for interest income in financial leasing.

### 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)

Income from statutory activities via facilities like schools, museums, theatres and so on would be recognized as related economic activities.

All income from producing books and selling books produced in Ukraine is tax exempt until 2015 (par. 18, Subchapter 4, Chapter XX of the Tax Code).

Article 157.15 of the Tax Code includes income from the items and/or services promoting the foundation's purposes or ideas into related economic activities within their market price (see Article 39 of the Tax Code on transfer pricing). Thus, selling T-shirts shall be related to the pursuance of the public benefit purpose.

Royalties and licence fees are recognized as the tax exempt investment income.

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

Generally, this income can be considered as taxable income under Article 157.14 of the Tax Code.

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

According to Article 167 of Commercial Code, no major shareholding is considered as an economic activity. The dividends from shareholding are tax exempt for all foundations filed into the Register of Tax Exempt Entities under Articles 153 and 157 of the Tax Code.

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

There is no separate tax on capital gains. Moreover, capital gains tax paid abroad does not count for tax purposes in Ukraine (Article 161.6 of the Tax Code).

**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 no VAT refund scheme and/or reduced VAT rates for public benefit foundations.

The standard VAT rate is 17% (Article 193.1 of the Tax Code). A legal entity's income up to a current threshold of 300,000 UAH (or €26,000 currently) per year under Article 181.1 of Tax Code is VAT exempt.

Qualified charitable or humanitarian assistance, as well as securities for endowments are VAT exempt (Article 197.1.15, Tax Code).

Foundations cannot recover VAT paid on goods and services purchased, unless they are registered as VAT payers.

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

No

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

No

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

Public benefit foundations are exempt from land tax (Article 282.1.5 of Tax Code). Private benefit foundations shall pay land tax, according to the qualification of land and regional or local official assessments.

Under article 265 of the Tax Code, other real property used for individuals' placement, except for hostels, is taxable from 2014.

All foundations must pay the initial registration fee for their own transport vehicles in Ukraine (Article 234 of the Tax Code).

**22. Can a foreign foundation get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions – if they have to fulfil exactly the same requirements as local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:**

- Statutes (translation required?)
- Last annual financial report (translation required?)
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
- Other

No, Article 157.12 of the Tax Code argues that only legal entities registered under Ukrainian law can be filed into the Tax Exempt Entities Register. A foreign foundation is considered to be a non-resident for taxation purposes, and only income from Ukrainian sources is subject to corporate income tax.

**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. The tax treaties of Ukraine do not make specific reference to foundations, so they are subject to applicable withholding taxes on foreign investment income, if they have any. However, these withhold taxes are deductible from taxes to be paid in Ukraine under the conditions specified in Article 161 of Tax Code or in the tax treaties.

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

**1. System of tax credit<sup>4</sup> or tax deduction<sup>5</sup>?**

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?**

According to article 166.3.2 of the Tax Code, individual donors can deduct donations to public benefit or private foundations up to 4 % of the person's taxable income in the previous year. The qualifying foundations must be registered in Ukraine and filed in the Tax Exempt Entities Register at the time of receiving the donation.

There are no legal requirements on minimum amount of donation(s) or absolute maximum amount to be deductible.

However, the tax credit for individual donors shall not be more than their income received as their wages (Article 166.4.2 of Tax Code); this regulation makes deductions from investment income or business activities inapplicable for individual donors in Ukraine.

**b) Which assets qualify for tax deductibility?**

Any tangible donations in cash, in-kind, or as securities are deductible under Article 166.4.2 of the Tax Code. Rights of usage and specific performances (e.g., volunteering) are not deductible yet. Tax deductions for donations cannot be carried forward (Article 166.4.3 of the Tax Code), even for donations of land or real estate.

**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?**

In general, the tax relief is the same as for individual donors (i.e., up to 4% of the corporation's taxable income in the previous year) under article 138.10.6 of the Tax Code.

---

<sup>4</sup> For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

<sup>5</sup> For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

There are no legal requirements on minimum amount of donation(s) or absolute maximum amount to be deductible.

Qualifying donations to museums, national and recreational parks for purposes of culture and heritage protection are deductible up to 10% of a corporation's taxable income in previous year. Additionally, qualifying donations for the production of cinema films and audiovisual works are deductible up to 10% of a corporation's taxable income in previous year. Contributions to private pension foundations are deductible as business expenses up to 25% of payrolls under article 142.2 of the Tax Code (however, only 15% of payrolls will be deductible until the law on social insurance is amended in lines with article 11, Chapter 4, Final and Provisional Regulations of Tax Code).

**b) Which assets qualify for tax deductibility?**

Corporate donors can deduct their donations provided as cash, securities, in-kind, intangible assets, services and performances (Article 138.10.6 of the Tax Code).

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

No. These donations are not deductible, including donations to representative offices of foreign public benefit foundations in Ukraine that have the legal status of tax non-residents. Income tax shall be withheld from the donations to non-resident foundations at a rate of 15% (Article 160 of the Tax Code), unless international tax treaties provides for otherwise.

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

There is no percentage law system in Ukraine currently. From 1 January 2012, the Tax Code set forth the simplified taxation system for individual and corporate businesses having annual income up to 20 mln. UAH (Articles 291-300 of the Tax Code). These donors shall pay turnover tax from 3% to 7% (including output VAT) quarterly, and may donate any amount of their income. However, they cannot deduct any expenditures, including donations to foundations or other tax exempt entities.

**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?)?

Individual donors should submit an annual tax return and copies of financial documents by 1 April of the following year. They shall keep the original versions of any documents proving their tax benefits claims (e.g. receipts, banking wires) for three years, at least (Article 166.2 of the Tax Code). The tax authorities should provide free advice and tax return forms (Article 166.6 of the Tax Code).

Corporate donors can confirm their tax benefits in accordance with Article 138.2 of the Tax Code and their accounts. They also shall keep the original financial documents for at least three years.

**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?)?

No tax incentives for foreign based foundations are applicable currently.

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

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

No taxes for qualifying grants or benefits for the purposes of health care, social services, education, research, and amateur sports (Article 170.7.4 of the Tax Code).

Benefits in-kind or in cash up to 140% of the minimum amount of income needed for living as set annually within the national budget act (as of 1 January each fiscal year) are not taxable (Article 170.7.3 of the Tax Code).

Additionally, no taxes are levied on in-kind benefits up to the value of six times the minimum wage each year (Article 165.1.39 of the Tax Code).

If individuals have documents providing evidence of their expenditures for health care or medical services, public benefit foundations can reimburse these expenditures withholding no income tax (Article 165.1.9 of the Tax Code).

Income tax will be levied (15-17%), if a grant or other benefit exceeds the above mentioned limitations, be this from a public benefit or private foundation (Article 167.1 of the Tax Code).

Interest and dividends (e.g. from endowments) are taxable at 5% (Article 167.2 of the Tax Code). Interest from bank deposits and some other securities are exempt until 2015.

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

No taxes, if beneficiaries are tax exempt organisations. Otherwise, grants and other benefits to business companies, though allowed under Civil Code, are taxable with corporate income tax (i.e. 19% in 2013, and 16% in 2014).

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

Funds from abroad shall be recognized as humanitarian assistance by Ministry for social policy under the Humanitarian assistance Act No 1192 of 22 October 1999. The foreign donor and the beneficiary should agree the purpose and amount of funding in writing.

Humanitarian assistance funds and the accrued interest, if any, shall be allocated to special bank accounts and used for the purpose(s) agreed upon with a foreign donor. The National Bank and Cabinet of Ministers may set forth additional regulations on uses of humanitarian assistance funds

(Article 7 of the HAA). Then, this money is exempt taxation of exchange income (Article 153.1.6 of the Tax Code).

Donations over 150,000 UAH (or €13,500) from a single person within one month are subject to financial monitoring (Article 15 of the Law against terrorism support and money laundering No 249 of 28 November 2002).

Except for humanitarian and international technical assistance funds, 50% of all donations shall be converted into Ukrainian currency by banks. taxation of exchange income is applicable, if the actual currency exchange rate is more than official currency exchange rates by the National Bank.

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

No separate taxes; income from gift and inheritance is included into individual income tax in according to Article 174 of the Tax Code. However, foundations and other legal entities can be heirs under Article 1222 of Civil Code.

#### **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)?**

Recipients or heirs are liable for paying income tax from gift and inheritance (Article 174.3 of the Tax Code). To our opinion, this regulation is applicable to the gifts or inheritance from Ukrainian individual donors to foreign foundations or other non-residents.

#### **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?**

The tax rates are 5% for residents of Ukraine and 15% for non-residents without any preferences for legal status, public benefit purposes and so on (Article 174.2 of the Tax Code).

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

No. Donations and legacies can be recognized as non-taxable for recipients who are close relatives of the donor, orphans and/or having disabilities. The only type of legacies tax exempt for other heirs, including foundations, is the deposits and other savings instruments in the USSR Savings Bank (Article 174.2.1 of the Tax Code).

#### **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?**

Yes. According to Article 1241 of Civil Code, children younger than 18 years and disabled parents and/or spouse have 50% of their legal part protected from third parties claims. This part can be decreased by the court decision only.

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

As mentioned above, 15% tax for non-resident public benefit foundations shall be paid with the non-resident before the notary issues a certificate of inheritance (Article 174.6 of the Tax Code).

## **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?**

Ukraine has not ratified the EC Treaty; thus, there are no known publications or discussions concerning the Stauffer decisions and/or infringement procedures of the European Commission.

**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. Counterterrorism Act No. 638 of 20 March 2003 and Money Laundering and Illicit Financing Prevention Act No. 249 of 28 November 2002.

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

Currently, all foundations must also disclose information on their founder(s) with legal personality in order to prevent involvement of the persons filed in the counterterrorism list (Article 24, LEIBRA).

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

Ministry of Finance specified the criteria for money laundering risks estimation (Order No 325 of 5 March 2012).

The counterterrorism lists are available at the official site of Financial Monitoring Department [www.sdfm.gov.ua](http://www.sdfm.gov.ua).

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

As yet, not directly.

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?

As far as we are aware, there has neither been any consultation nor are there plans for one. The annual plans for consultations shall be publicized at the official websites of Ukrainian government authorities.

During the public hearings on the draft law No 3100 of 16 August 2013 amending the law on charities Ministry of justice referred to the risks of money laundering via charitable donations as the legal ground for eventual notarization of all donations more than 850 UAH (or €80).

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

During the public hearings on the draft law No 3100 of 16 August 2013 amending the law on charities Ministry of justice referred to the risks of money laundering via charitable donations as the legal ground for eventual notarization of all donations more than 850 UAH (or €80).

Taxation:

Amendments to the Tax Code on the economic activities taxation and/or additional tax incentives for domestic donors have been submitted by a number of the parliament members.

Foundations by will:

The government submitted draft law N 3100 that proposed to repeal setting up foundations by will. This approach is strongly criticized with benefactors, although some amendments to Civil Code are necessary to make the registration procedure viable.

### **4. Public fundraising**

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

Article 7 of CACA provides for extensive public fundraising regulations affecting all benefactors, including public benefit foundations.

All lotteries in Ukraine can be organised with the Ministry of finance only according to the law No 5204 of 6 September 2012. Thus, foundations can run lotteries, only if Ministry of finance recognizes them as the state lotteries providers. Besides, the Entertainment Events Act No. 1115 of 10 July 2003 regulates fundraising at concerts, exhibitions, festivals, lectures, and similar activities. Any foundation can organise such events for fundraising purposes after notification of local government and if 80% or more of collections shall be spent for public benefit or benevolent activities.

#### **Useful contacts**

##### **Ukrainian Forum of Benefactors**

18 Ilyinska Street, Kyiv 04070, Ukraine

Tel. +38 044 425 92 94

Fax +38 044 425 92 95

[info@ufb.org.ua](mailto:info@ufb.org.ua)

<http://www.ufb.org.ua>

##### **Institute of Professional Fundraising**

Tel. +38 044 231 26 77

Fax + 38 044 234 03 17

[institute@fundraiser.org.ua](mailto:institute@fundraiser.org.ua)

<http://www.fundraiser.org.ua>

##### **Foundation for Development of Ukraine**

117 Postyshev Street, Donetsk 83001, Ukraine

Tel. + 38 062 343 45 95

Fax + 38 062 343 45 99

<http://www.fdu.org.ua>

**Selected law texts online:**

All mentioned above law and draft law texts can be downloaded in Ukrainian (a few in English) at Ukrainian Parliament's official site: <http://www.rada.gov.ua>

**About the EFC Legal and Fiscal Country profiles**

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: "Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe."

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

**About the European Foundation Centre**

The European Foundation Centre, founded in 1989, is an international membership association representing public-benefit foundations and corporate funders active in philanthropy in Europe, and beyond. The EFC develops and pursues activities in line with its four key objectives: creating an enabling legal and fiscal environment; documenting the foundation landscape; building the capacity of foundation professionals; and promoting collaboration, both among foundations and between foundations and other actors. Emphasising transparency and best practice, all members sign up to and uphold the EFC Principles of Good Practice