

EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

CROATIA – 2014

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The operating environment for foundations

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I. Legal framework for foundations

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

Pursuant to the 1995 Law on Foundations and Funds, a foundation is defined as an asset designated for the perpetual accomplishment of public-benefit or charitable goals which is recognised as a legal entity. A fund is defined as an asset designated for the accomplishment of public-benefit or charitable goals for a specific period of time, as set out in the organisation's by-laws, which is recognised as a legal entity. There is no specific legal framework for public law foundations and funds, however, they can be established by virtue of law. Because the rules pertinent to the legal and tax status of foundations apply accordingly to funds, for ease of reference, the term foundation will be used throughout the text to cover both institutional forms.

There are currently 207 foundations and funds pursuing a broad range of public-benefit and charitable goals.

2. What purposes can foundations pursue?

As noted, the Law permits the establishment of foundations which pursue public-benefit or charitable goals only. Activities deemed as being for public-benefit include those which support cultural, educational, scientific, spiritual, moral, sport, health, ecological and other goals deemed for public-benefit, as well as other activities which contribute to the well-being of the society. Activities that support the needy are deemed to be charitable. A foundation is deemed to engage in public-benefit or charitable activities not only if it supports public at large, but also if it supports a specific segment of population belonging to certain profession, ethnicity, language, culture, religion or similar, or if they support the population living in certain areas.

3. What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?

A foundation may be established by a natural or legal person, regardless of their nationality or place of business.

A foundation shall be deemed established by virtue of the founding act. Depending on the number of founders (one or more) a founding act may be in the form of a unilateral decision or will (in case of the establishment *mortis causa*), or in the form of an act or an agreement, but in any event it must be in notarial form. A founding act must contain the name of the founder, the place of residence or the seat thereof, the name and the seat of the foundation, the goals for which a foundation is established, a declaration of the founder to herewith designate a certain asset for its operations, necessary information about the designated asset and the appraisal thereof by certified appraiser, including the appraisal of passive income the asset could generate. The founding act may contain other information which must otherwise be stipulated in the by-laws of the organisation.

An authorised representative of a foundation shall file with the Ministry of Public Administration (Ministry) a request for entering the foundation into the Registry of Foundations on a prescribed application form.

Along with the application form, the following documents need to be submitted: the founding act, the decision on the appointment of a person authorised to represent the foundation (administrator, president, director, etc.), the decision on the appointment of members of the management board, certified consent of persons appointed to serve on the management board, the by-laws of the foundation, and as relevant an excerpt from, the register in which any founder that is a legal person is registered. The Ministry will decide on the application for registration and enter the foundation into the Registry within 30 days from the day of filing the application.

The foundation shall acquire legal personality on the day of entering into the Registry, however, it may engage in activities only after the Ministry approves its by-laws.

After the entry of the foundation into the Registry of Foundations, the authorised representative of a foundation shall file a request for entering the endowment into the Registry of Non-Profit Organisations, which is run by the Ministry of Finance.

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?)

As noted, the foundation acquires legal personality on the day of entry into the Registry of Foundations, however, it may not engage in any activities before the Ministry approves its by-laws.

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

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

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

The Registry of Foundations is public and contains the following information: the full and abbreviated name of the foundation, if there is an abbreviated name; the registration number; the date of entry into the Registry; the seat of the foundation; its goals; the name of an authorised representative; and their personal identification number.

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

There is no specific minimum founding capital/asset required by the Law, however, a foundation may not be established if its assets are deemed by the Ministry as not sufficient for the fulfilment of its goals.

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

a) Is it mandatory to have a supervisory board?

There is no statutory requirement for a foundation to have a supervisory body.

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 Law does not provide the minimum or for that matter the maximum number of board members. A person authorised to represent a foundation shall propose members of the first board to the Ministry when submitting the by-laws of the organisation, heeding the will of founders in this regard. The Law provides that members of the board must have full legal capacity and a proven track record with respect to their expertise, previous work and conduct which makes them apt for serving on the board. In addition, they may not be persons who are intended to benefit from the endowment's activities, may not serve on the staff of the Ministry, and may not be members of the Council for Foundations (a state advisory body on foundation matters envisaged by the Law, which was never established). Other than that, the founding act and the by-laws are the controlling instruments on issues of resignation and removal of members of the board.

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

The Law provides that members of the board must act bona fide. They are entitled to remuneration or salary commensurate to the services provided to the foundation in their official capacity, if so provided by the by-laws of the foundation.

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?

Once the foundation is entered into the Registry of the Foundations and its by-laws are approved, the founders as such do not have a say in the governance of the foundation, including on the issue of changing the purpose of the organisation.

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

There are no statutory provisions in this regard, which means that the by-laws of the foundation are the controlling instrument in this respect.

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?

As noted, members of the foundation board may not serve on the staff of the Ministry of Public Administration and may not be members of the Council for Foundations. Other than that, the by-laws of the foundation are the controlling instrument on those issues.

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

Under the Law the director (manager, head) represents the foundation, manages its assets and runs day-to-day operations of the organisation. The by-laws may contain further provisions in this respect.

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

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

Under the Law the director has the general power of representation. The by-laws may envisage that other persons also represent the foundation.

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?

As noted, there is a statutory obligation of the board members to act bona fide, irrespective of whether they are paid or not.

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?

Yes, the business judgment rule is embedded in the statutory bona fide requirement for members of the board.

c) What is the liability of executive staff?

Persons having executive power with the foundation can be paid or work on the bona fide rules depending on how this regulated in the by-laws.

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

This might be possible, however, the founder may not lower the prescribed bona fide standard of diligence in the Law.

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)?

Under the Law a foundation may engage directly in economic activities, including the unrelated ones. There is no any particular statutory limit with respect to the scope of those activities.

11. Are foundations permitted to be major shareholders?

Yes. There are no statutory restrictions in this respect.

12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?

There are no any particular statutory limits in this respect, but rather the by-laws is the governing instrument for those issues.

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.

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?

Under the Law any amendment to the by-laws of a foundation must be approved by the Ministry. The purpose of the foundation may only be changed if it is deemed necessary in order for the foundation to continue pursuing public-benefit or charitable goals, and with the consent of the Council for Foundations. As noted, the Council was never established so the implication of this rule in practice seems unclear.

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

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

- annual financial report?
- annual activity report?
- public benefit/activity report?
- tax report/tax return?
- other reports (e.g. on 1% schemes)?

b) Must all/any of the reports produced by the foundation be submitted to the supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

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

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)

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

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding

international and national auditing agencies and standards?

The Law stipulates that the foundation must submit the annual financial report to the Ministry of Public Administration, the Ministry of Finance (Financial Agency - FINA) and the National Audit Office, respectively. The by-law of the foundation is the controlling instrument for other reporting requirements.

The external audit is not obligatory however, the Ministry of Public Administration, the Ministry of Finance and the National Audit Office are in charge of the oversight of the foundation's activities. The Ministry of Public Administration conducts oversight to verify whether the foundation maintains the value of its assets, whether its purpose is being fulfilled and whether it is managed in accordance with Law. The Ministry of Finance and the National Audit Office conduct inspections/supervision of the financial management of the foundation.

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?

See the response above.

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

See the response above.

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

As noted, under the Law the board's decision to amend the purpose of the foundation is justified only if deemed necessary in order for the foundation to continue pursuing public-benefit or charitable goals, and with the consent of the Council for Foundations.

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?

There are various statutory provisions which envisage monetary fines in case of non-compliance or failure to remedy the non-compliance within a given notice period.

17. When and how does a foundation dissolve?

The foundation ceases to exist if it loses its asset, if the asset ceases to be sufficient for the perpetual fulfilment of its purpose and there are no conditions for its transformation into a fund, but rather the purpose of the foundation can be achieved by its termination and transferring its assets to another foundation serving the same or similar purpose, or if the purpose of the foundation ceases to be public benefit/charitable or of another non-pecuniary nature, or its achievement has become impossible.

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

Foreign foundations may establish a branch office in Croatia according to the principle of reciprocity. This principle does not apply to a number of countries that are members of the WTO, however. Since the Law predates Croatia's membership of the EU, it should not apply to EU members as well.

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 may 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 are exempted from taxes on gifts and donations they receive by virtue of law, insofar as they use them to pursue their public-benefit or charitable goals.

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?)

As noted, a foundation is exempted from taxes on gifts and donations by virtue of law. They have to submit to the tax authority the annual financial report which details income from gifts/donations they have received. They also need to keep on file evidence of the gifts and donations received (e.g. the agreement on donation) and how they have been spent, for the purpose of financial oversight carried by the Ministry of Finance and National Audit Office.

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

As a norm, a foundation which has used state funds, in addition to the annual financial report, must submit and make public a detailed report on activities carried with the state funds.

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

The statutory requirement with respect to the mandatory content of the annual financial report does not include disclosure of specific information on donors and beneficiaries. However, for the purpose of financial oversight, the foundation must keep record of donors and beneficiaries.

5. Are there specific accounting rules for foundations?

There are specific accounting rules for not-for-profit organisations, foundations included.

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.

See the response above on the activities deemed for public-benefit or charitable purposes.

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.

Under the personal and corporate income tax law in-country donations ("gifts") to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to 2% of tax payer gross annual income in the preceding year. The tax exempt percentage may be higher, pursuant to a decision of the competent ministry on financing particular programs and actions.

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

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights	X			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	X			
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation		X		
Assistance to refugees or immigrants	X			

Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			
Protection of animals	X			
Science, research and innovation	X			
Education and training	X			
European and international understanding		X		
Health, well-being and medical care	X			
Consumer protection	X			
Assistance to, or protection of vulnerable and disadvantaged persons	X			
Amateur sports	X			
Infrastructure support for public benefit purpose organisations	X			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

9. Support of “the public at large”

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

As noted, a foundation may be established (and enjoy the corresponding tax benefits) to support a specific segment of population, rather than public at large.

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			
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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 in principle, however there is no statutory definition of a non-distribution constraint. As a general rule, payment (salaries) to staff falls out of the remit of a non-distribution constraint; the same pertains to financial support, per diems, annual monetary awards or gifts to employees for specific occasions (e.g. retirement) irrespective of whether they have exceeded the tax exempted monetary threshold. A tax authority may on its own initiative, or at the request of interested parties, examine if particular payments to the organisation’s employees or members of the board effectively amount to serving private interests, rather than the interest of the organisation.

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

As a basic rule, the remaining asset of the dissolved foundation shall be transferred to the natural or legal person designated in the founding act or the by-laws of the organisation, pending their prior consent for such a transfer. In the absence of such consent, the remaining assets shall be transferred to another foundation pursuing the same or similar goals, or if that proves impossible, to public-benefit or charitable purposes which correspond to the will of the founder of the dissolved 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?

As already noted, members of the board are entitled to appropriate remuneration and salaries for services rendered to the foundation in their official capacity if so provided by the by-laws. There are no specific statutory limits with respect to salary and remuneration of the members of the board, but rather the principle of proportionality seems to apply in this case. General tax rules apply to remuneration and salaries of members of the board.

b) Does tax law allow a donor/funder to receive some type of benefit in return for a

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.

donation? (e.g. postcards, free tickets for a concert)

The statutory definition of a gift does not allow any consideration for a gift received, and therefore such consideration may result in a gift not being recognised as tax deductible.

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

The Law does not impose any particular cap in this regard.

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
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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?

There is a statutory requirement for the foundation to preserve the value of its founding asset. Other than that, the foundation may spend down its income and other property as it sees fit, in accordance with law.

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?

As noted, a foundation may be established for indefinite or limited period of time. The Law does not provide a minimum length of time for an organisation to be established, rather, the by-laws is the controlling instrument in this respect.

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)??

The Law does not provide for a specific timeframe in which income must be utilised - nor does it set out a specific threshold with respect to the foundation's overhead expenses.

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?

Insofar as such activities are envisaged by the by-laws, they do not seem to put the endowment tax exempt status at risk.

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 specific statutory rules in this respect.

16. Income tax treatment

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

Grants and donations

Investment income (asset administration)

Interest from fixed rate bonds

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

Economic activities related/unrelated)

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

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?

Grants and donations are exempted from taxes, and so is passive (investment) income. Income from economic activities (related and unrelated alike) is subject to taxes only if the tax authorities determine that granting the tax-exempt status to such an income would amount to unfair competition on the market. In such cases, the general corporate tax rate applies. There are no specific tax rules with respect to major shareholding, however, it is likely to be considered passive income, rather than income generated from economic activities.

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

No.

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

No. The foundation is entitled to generally applicable tax rebate only if it is registered in the VAT system.

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

No.

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

Yes.

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

Foundations are not subject to taxes on real estate transfers.

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?

Tax benefits are provided only for foundations which have their seat in Croatia.

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?

The withholding tax is not levied on income generated from local investment by a domestic or foreign endowment/foundation.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Tax deduction.

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)

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?

Under the Personal Income Tax Law in-country donations ("gifts") by individuals to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to 2% of their gross annual income in the preceding year. The tax exempt percentage may be higher, pursuant to a decision of the line ministry on financing particular programs and actions. There is no a minimum ceiling on contribution in order for it to qualify as tax exempt.

b) Which assets qualify for tax deductibility?

In-kind and cash donations.

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?

Under the Corporate Income Tax Law in-country donations ("gifts") by corporations to cultural, scientific, educational, medical, humanitarian, sport, religious, ecological and other purposes deemed for public benefit are exempted up to 2% of their gross annual income in the preceding year. The tax exempt percentage may be higher, pursuant to a decision of the competent ministry on financing particular programs and actions. There is no a minimum ceiling on contribution in order for it to qualify as tax exempted.

b) Which assets qualify for tax deductibility?

Donations in kind and money.

4. Tax treatment of donations to non-resident public-benefit foundations – do

As noted, tax incentives are only provided for in-country contributions.

5. Other frameworks such as percentage law systems.

No.

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?)?

A donor has to submit a decision on the donation (if it is a legal person), the agreement on donation, proof of payment to the bank account of the beneficiary foundation, if a donation is in money. If a donation is in-kind, a donor has to submit the receipt for the transfer of goods, the dispatch order and other relevant supporting documents.

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?)?

As noted, donations to foreign-based foundation are not tax exempted.

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

Individuals and legal entities – not taxed but see below for gift-and inheritance tax

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

There is not any difference in this respect.

V. Gift and inheritance tax

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

Legal and private persons that inherit, receive as a gift or otherwise acquire property without compensation are subject to inheritances and gift taxes. Humanitarian associations and Red Cross are exempted from those taxes.

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?

A general tax rate of 5% applies.

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

No.

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, the Inheritance Act stipulates the rights of protected heirs. The reserved estate ranges between 1/2 and 1/3 of the overall asset in question.

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

For inheritance and gifts which are located in Croatia they are also subject to taxes.

VI. Trends and developments

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

No thus far.

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)?

No.

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

There is a new Law on Financial Rules and Accounting for Not-for-Profit Organisations in the loop.

4. Public fundraising

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

Yes, the Act on Humanitarian Assistance.

Selected bibliography

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

Selected law texts online:

1. The Act on Foundations and Funds

<http://www.zakon.hr/z/164/Zakon-o-zakladama-i-fundacijama>

2. Decree on Non-profit Accounting

<http://www.poslovni-savjetnik.com/node/16619>

3. Act on Humanitarian Assistance

<http://www.zakon.hr/z/418/Zakon-o-humanitarnoj-pomo%C4%87i>

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.