



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **KOSOVO – 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)?**

The scope of foundations in the Republic of Kosovo is regulated by the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations. In details, this law sets out the establishment, registration, internal management, activity, dissolution and removal from register of legal persons organized as foundations in Kosovo. According to Article 5, a foundation is an organization without membership established to manage properties and assets. A foundation may be established by one or more persons, at least one of whom has a residence or seat in Kosovo. Foundations established in Kosovo must accomplish the purpose based on the law, either for public benefit or private interest.

There are no defined different legal types of foundations.

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

Foundations established in Kosovo must accomplish the purpose based on the law, either for public benefit or private interest. Based on Article 6, foundations established in Kosovo have only those powers, and be entitled to engage only in those activities and purposes, consistent with its founding instrument and statute and which are permitted by Law.

### **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?**

In compliance with Article 9, paragraph 1, every person, notwithstanding the nationality, race, color, gender, language, religion, political or other opinions, national or social origin, association with any community, property, economic and social situation, sexual orientation, birth, disability or any other personal statute shall be eligible to register a foundation under the terms and conditions of the law in force

Based on Article 9 a foundation is required to apply for registration at the Department of Registration and Liaison with NGOs, under the Ministry of Public Administration. The foundation applicant shall attach to registration application the following documents:

- I. an application form;
- II. founding instrument;
- III. the statutes;
- IV. photocopies of ID or passports of the founders;
- V. The list of member list, completed with data;
- VI. Official symbol – logo;
- VII. An elected person as authorized person;
- VIII. Address of the organization in Kosovo: name, address and contact – other information of the authorized representative;
- IX. Request for the registration of foundation and a written statement by an authorized representative of the foundation, showing goals of the foundation and a general description of the activities that the foundation plans to implement in Kosovo.

Moreover, according to Article 9, paragraph 4 of relevant law, it is required that the foundation shall designate in writing an Authorized Representative. All applications for registration must be signed

by the Foundation's Authorized Representative. The establishment act is signed by three establishers.

The founding instrument of the foundation based on Article 6, paragraph 1, it shall contain the following records:

- I. The official name, official acronym and the official logo of the organization;
- II. Its organizational form (association, foundation);
- III. The organization's address;
- IV. The names and addresses of the founders;
- V. The name, address and other contact information of the authorized representative;
- VI. The timeline for which the organization is established, if there is such;

Additionally, a foundation may also be established by a will, bequest, if it includes the information set forth above according to Article 6, paragraph 2 of the law.

Whereas, in accordance with Article 6, paragraph 3 of the law, the statutes of the foundation, shall contain the following information:

- I. The name of the organization, seat and logo;
- II. The purposes of the organization;
- III. The name of the highest governing body;
- IV. The procedures for electing and dismissing members of the Board;
- V. The competences and responsibilities of officers, if any;
- VI. The way of decision-making;
- VII. Rules and procedures for:
  - a) Amending the founding instrument and statute;
  - b) Merging, splitting up, or dissolving the organization, and
  - c) Distribution of any assets remaining after such dissolution.

Despite the aforementioned required information the statutes of a foundation may contain any additional rule, provision, or procedure that is not inconsistent with the requirements foreseen in the law in force. Also, according to Article 6, paragraph 5 of the law, it is defined that rules and procedures of internal governance included in the statute of foundation shall comply with democratic principles.

It is notable that a foreign and/or international NGO (association or foundation) is considered as a legal person established outside of Kosovo under legislation that substantially meets the requirements of establishment of foundations in Kosovo according to Article 7 of the law. Thus, referring to Article 8 of the law, legal persons, including NGOs, may found foundations to advance their lawful purpose, whether for public or private benefit.

Based on Article 9, paragraph 5 of the relevant law, a foreign or international foundation registers by filing the following documentation:

- I. An application form;
- II. Proof that it is a legal person in another country;
- III. The organization's address in Kosovo; and
- IV. A written statement from a representative of the NGOs headquarters with the authority to provide such statement stating:
  - a) The purpose of the foundation;
  - b) A general description of the activities that the foundation is planning to carry out in Kosovo; and
  - c) The name, address and other contact information of the Authorized Representative.

Furthermore, according to the application process, based on Article 9, paragraph 6 of the law, applications for the registration of NGOs shall be submitted to and accepted by the competent body. As such, according to Article 9, paragraph 7, documents submitted by a foundation in

support of its application for registration shall be in corresponding languages in compliance with Constitution of Republic of Kosovo.

In accordance with Article 5 of Constitution of the Republic of Kosovo, the official languages in the Republic of Kosovo are Albanian and Serbian. Also, Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law. Whereas, based on Article 9, paragraph 8 of the relevant law, documents submitted by a foreign or international foundation as proof that it is a legal person in another country, shall be submitted in their original language, together with translation of documentation in official languages in the Republic of Kosovo. Translation should be from the licensed authorized interpreter.

After the application process by the foundation a Registration Decision and Registration Number shall be assigned by the Department of Registration and Liaison with NGOs, under the Ministry of Public Administration. According to Article 9, paragraph 9 of the law, the competent body shall issue to the foundation a registration certificate or a written decision denying registration within sixty (60) days from the day of receipt of the registration application, unless the competent body requests in writing during that same time of the period further information or clarification.

Therefore, based on Article 9, paragraph 10 of the law, if the competent body requests in writing further information or clarification in connection with an application to register, the sixty (60) day period within which the competent body must issue a registration certificate or a written decision denying registration shall cease to run as of the date of the written request. Upon receipt of the further information or clarification requested, the competent body shall issue a registration certificate or a written decision denying registration within:

- I. the number of days remaining in the original sixty (60) day time period for issuing a decision;
- II. fourteen (14) days from the receipt of additional information or clarification, whichever term is longer.

If registration of the foundation is refused, the competent body must explain the grounds for refusal and the right to appeal. Regulation No. 02/2012 on the Establishment and Operation of the Commission for Reviewing Appeals of NGOs (association or foundation), defines the rules and procedures for the second instance body in the Ministry of Public Administration (MPA), which is an independent body. According to Article 5, paragraph 2 of the Regulation in question, the Commission shall review the appeal and decide within thirty (30) days from the day of receiving the appeal done by the foundation.

There are several justified reasons that competent body may deny an application for registration of the foundation based on Article 10 of the relevant law of foundations, if :

- I. The registration documents do not comply with the requirements of this Law;
- II. If the statute of the foundation would violate the provisions of the applicable Law;
- III. The organization seeking registration has the same name or acronym so similar to a previously registered or already established foundation that confusion is likely to result.
- IV. If the statute and the program of the NGO promotes inequality based on race, religious, color, gender, language, religion, political or other opinions, national or social origin, association with any community, property, economic and social situation, sexual orientation, birth, disability or any other personal statute.

**4. Is State approval required? (approval by a State Supervisory Authority with/without discretion? Registration with a state authority or court? Notarisation by a Notary public? )**

Yes, approval via a registration process; the registration is administered by the Department of Registration and Liaison with NGOs, under the Ministry of Public Administration. The competent body shall issue to the foundation a registration certificate. However, internal procedures of the Commission's decision are not described concisely in the law or in other materials available online. The Commission has a certain amount of discretion but must give reasons for its decision.

The Department of Registration and Liaison with NGOs (association or foundation), administers policies relating to registration and cooperation with foundations and is structured in two divisions:

**1;** Division for Registration of NGO performs the following activities:

- Accepts respective requirements for registration of NGO,
- Analysis documents presented for registration of NGO, and
- Proceeds the requirements for obtaining status for public beneficiaries.

**2;** The Division for Reporting and Monitoring:

- accepts and analysis annual reports with financial presentation of NGO,
- it cooperates with other institutions,
- it takes decisions in compliance with the law,
- registers NGO, it provides public beneficiary status, takes decision for suspension of PBS, revoking and deregistration of NGO.

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

Yes, the Department of Registration and Liaison with NGOs, within the Ministry of Public Administration, based on Article 12, paragraph 1 of the relevant law, shall register and maintain a register of foundations.

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

According to Article 12, paragraph 2 of the law, The Department of Registration and Liaison with NGOs shall maintain several data and information on register of foundations. More precisely, the register shall contain the name, address, organizational form and purposes, founders of each foundation, name and other contact information of its authorized representative, and shall also indicate if the foundation has public benefit status.

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

Based on Article 12, paragraph 6 of the law, the register of foundations shall be available to the public, in accordance with principles and requirements set out on the Law No.03/L-172 on Protection of Personal Data.

**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, according to the law in force, there is not set a minimum requirement on capital of the foundation to be operational in the country.

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

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

In terms of internal governance of the foundation, according to Article 13, paragraph 2 of the relevant law, the highest governing body of a foundation shall be the Board of Directors.

### ***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?***

Based on Article 13, paragraph 2 of the law, the Board of Directors of the foundation shall consist of at least three (3) members: President, Secretary and Treasurer. Concerning the rules of appointment of board members, the content of the Foundation's Statute template/model is given by the Department of Registration and Liaison with NGOs, which is obligatory to be incorporated in the statutes of the foundation. Based on its content, the first composition of the board is elected by the founders of the foundation. Moreover, the template stipulates several rights, duties and responsibilities for the Board of Directors, as follows:

- Each director shall serve for a term of (one) year and shall perform the duties until the election of a new Director;
- The term (contract) labor may cease: in case of death ,resignation or removal;
- Members of the Board of Directors may be elected for consecutive terms;
- Members of the Board of Directors may be removed before the end of the term by a vote of the Regular Annual Meeting and the Extraordinary Meeting of the Board of Directors;
- In case of death, resignation or removal of a member of the Board of Directors, the Board of Directors shall elect a successor to serve the remainder;
- Decisions by the Board of Directors shall be by majority of member who are present in the meeting;
- Each Board member has one vote on the Board of Directors;
- Each member of the Board of Directors shall abstain from voting on decisions or for any other matter for which he or she has a personal or economic interest.

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

In accordance with Article 13, paragraph 3 and 4 of the law in question, the Board of Directors of the foundation shall have full responsibility for the policies and financial affairs of the organisation and shall meet at least once a year, at which time it shall review and approve the assets, liabilities, income, expenditures, and programs of the organization for the past year as well as the anticipated plans for assets, liabilities, income, expenditures and programs for the upcoming year. While, the Board of Directors shall not delegate:

- the abovementioned duties;
- the election of officers in leading positions of the foundation, amendments to the Founding Instrument or Statute; and
- decisions to merge, split up, or dissolve 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?***

According to the Foundation's Statutes template/model given by the Department of Registration and Liaison with NGOs, which is obligatory to be incorporated in the statutes of the foundation for the application/registration procedure, it is defined that the first composition of the Board of Directors is elected by the founders.

Otherwise, there are no other defined responsibilities other than those actions that lead to the creation of the foundation, appointment of the Authorized Representative of the foundation. After the foundation is registered and exist as legal person, and after the appointment of the Board of Directors of the foundation, it seems that the founders shall have no further authority or role in the foundation's management or governance.

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

There are no special provisions laid out on the law on the rights of beneficiaries.

***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 14 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations stipulates that, no member of a governing body shall be allowed to participate in the consideration or decision of any matter in which he or she has a direct or indirect personal or economic interest. A member of a governing body shall be deemed to have an economic interest if he/she or any family member has a direct or indirect economic interest. For clarification, according to Article 2, paragraph 1.7 of the law in question, family members includes a spouse, children, parents, grandparents, grandsons, granddaughters, siblings, their children and spouses and immediate in-law family members (parents in law, brothers and sisters in law and their children).

Any transaction between the foundation and an affiliated organization, or between the foundation and its members, officers, members of the Board, or employees shall be prohibited unless the governing body determines after reasonable investigation that the transaction is in the best interests of and fair and reasonable to, the foundation and that the foundation could not have obtained a more advantageous arrangement with reasonable effort under the existing circumstances. Officers and board members of an NGO (association or foundation) have a duty to exercise loyalty to the foundation, to protect the confidentiality of non-public foundation-related information and interest of the foundation, and to carry out their responsibilities to the foundation with faith and diligence.

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

In accordance with the legislation in force, there are non-obligatory provisions which lays out defined duties and responsibilities of staff of the foundation at the decision making level. Based on practices and the rights of Board of Members as the higher governance body, the staff of the foundation (director and/or officers) participates in decision making activities up to the level needed for implementation of duties and responsibilities that they are appointed for, in terms of implementation of policies and objectives of the foundation. These provisions are defined also in the Statutes of the foundation.

According to Article 6 of the Model Statutes of the Foundation, states that, if it is necessary, the Board of Directors shall appoint or hire Officials whom takes the responsibility on performing daily tasks of the foundation.

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

Based on Article 2, paragraph 1.6 of the law of foundations, a foundation is represented towards third parties in the first place by the Authorized Person, who is of legal age and has ability to act, authorized to represent the foundation and to receive official notices and inquiries. According to the Foundation's Statutes template/model Article 2, paragraph 3 the Authorized Person appointed by the Board of Directors shall represent the organization within Kosovo, and shall also receive all official documents on behalf of the organisation. The Authorized Person shall be responsible for informing the relevant administrative authorities of any change in the organisation.

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

Despite the fact that Authorized Person of the foundation has the power of representation, the Foundation's Statutes template/model defines that the Board of Directors may represent the foundation and to act on behalf of 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?**

According to Article 14, paragraph 3 of the relevant law, officers and board members of the foundation have a duty to exercise loyalty to the foundation, to protect the confidentiality of non-public foundation-related information and interest of the foundation, and to carry out their responsibilities to the foundation with faith and diligence while, the differentiation between voluntary (unpaid) and paid board members it is not defined concisely.

**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 general standard of diligence of board members are defined by Article 14, paragraph 3 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the definition of "business judgment rule" is designated on Article 186 (Duty of Care and Business Judgment Rule), under the Chapter 6 – Board of Directors and Officers of the Law No. 02/L-123 on Business Organisations, as follows: Every Director and Officer has a duty to:

- (i) perform in those capacities in good faith; and
- (ii) to perform and comply with the duties and obligations specified in Section 184 (Disclosure of Personal and Financial Interests and Duty of Loyalty), and Section 187 (Duty Not to Compete); and

- (iii) to ensure that his company-related decisions are made in the reasonable belief that he/she is acting in the company's best interests, with due care and attention to his/her responsibilities, and with adequate consideration to the matters to be decided and on the basis of information reasonably available to him/her.

Moreover, a person who makes a business judgment in good faith shall not be personally liable to the company or its shareholders for damages arising from the consequences of that judgment.

**c) What is the liability of executive staff?**

In compliance with Article 11, paragraph 5 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, officers, directors and employees of registered foundation shall not be personally liable for the debts or obligations of the foundation, but they shall be personally liable for willful or grossly negligent performance or neglect of duty.

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

Due to the reason that, the founders are eligible to establish a foundation, drafting the statutes of the foundation where appropriate with more detailed rules on duties and responsibilities of the board members, it shows clearly that the founder can modify the standard of diligence for board members to some extent but within the limits of the model template for statutes and the law

According to the Foundation's Statutes template the Board of Directors must always act in accordance with the organization's purposes. Article 6, paragraph 4 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations defines that, the statutes of foundation may contain any additional rule, provision, or procedure that is not inconsistent with the requirements foreseen in the law in force regarding the diligence for board members. In addition, in Article 6, paragraph 5 determines that rules and procedures of internal governance included in the statute of foundation shall comply with democratic principles. Finally, any additional provisions set in the statutes of the foundation must be approved by the competent body.

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

The foundation may engage in economic activities for the purpose of supporting its nonprofit activities, in compliance with Article 4 of relevant law, and provided that income realized through economic activities is used solely to accomplish the purposes specified in the foundation's statutes. While, the foundation may not engage in fundraising or campaigning to support political parties or candidates for political office, nor may they propose, register or in any way endorse candidates for public office.

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

Based on applicable legislation in force, there are no restrictions on the ability of foundations to be major shareholders.

**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?**

In accordance with Article 16 of the Law No. 03/222 on Tax Administration and Procedures, the responsible representative (Authorized Person of the foundation) has to fulfil tax obligations for the foundation they represent or manage and within this context some rules on asset management and rules on asset transfers must be taken into account.

In addition, regarding the tax treatment of assets, there are special allowance for new assets regulated by Article 17 of the Law No. 03/L-162 on Corporate Income Tax and Administrative Instruction No. 14/2010 on Implementation of Law No. 03/L-162 on Corporate Income Tax, see more below.

**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).**

Based on Article 16, paragraph 1 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the income of the foundation may include donations of cash, securities, contributions in goods, bequests; membership, gifts, grants, real or personal property and income generated from any lawful activities undertaken by the foundation with its property and resources. There are not set out concise provisions on abilities and possibilities of foundations to

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<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.

allocate grant funds towards furthering their public benefit purpose/programmes which can also generate income, such as: recoverable grants, low interest loans, equities, etc.

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

According to Article 6, paragraph 1, 3 and 5 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, in cases where the foundation has made amendments of the statute or foundations purposes, based on Article 9, paragraph 11 of the law in question, the foundation shall apply to competent body in order to inform within thirty (30) days of any change to the statutes and/or founding instrument of the foundation. Amendments to the registration shall be subject to procedures, standards, and time limits equivalent to those applicable to initial registration. Amendments accepted by the competent body shall be recorded, registered, and publicly available in accordance with the Law No.03/L-172 on Protection of Personal Data.

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

Based on Article 18 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the foundation that has been granted with public beneficiary status must file each year an annual report to the Competent Body with respect to its operations and activities within Kosovo. Reports must be filed by the end of March each year for the reporting year ending 31 December of the previous year. In details, the annual report shall be signed by the Authorized Representative of the foundation. The Authorized Representative is responsible that all statements in the report are true and correct.

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

- annual financial report
- annual activity report
- public benefit/activity report,

According to Article 18 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the annual report shall necessarily consist of the following three sections:

- 1) Management and Administration Section;
- 2) Report on Activities and Achievements; and
- 3) Financial Statement.

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

Yes, the whole content of the annual report of foundations must be submitted to the supervisory authority of foundations, precisely the Division of Reporting and Monitoring within the Department of Registration and Liaison with NGOs, under the Ministry of Public Administration.

In compliance with Article 18, paragraph 10 of the the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the annual report which consists out of three abovementioned section (Management and Administration Section; Report on Activities and Achievements; and Financial Statement) shall include, also:

- 1) a statement including all activities as well as payment of salaries of the foundation employees, including job descriptions of the persons involved and contractual relations between the foundation and the other party in performing that task, or
- 2) a certification that the foundation has not developed the foreseen activity under point (a), during the reporting period.

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

Submitted annual reports of foundations are checked and reviewed by the supervisory authority, more precisely the Division of Reporting and Monitoring of NGOs (association or foundation) within the Department of Registration and Liaison with NGOs, under the Ministry of Public Administration. Naturally, the competent body can cooperate or consult with the Tax Authority of Kosovo (TAK) for any particular inquiries, non-compliance or suspicious findings on the reports, upon request.

Moreover, in accordance with Article 2, paragraph 2 of the Law No.03/L-122 on Tax Administration and Procedures, the TAK shall be responsible for applying the provisions of this law, the Law on Personal Income Tax, the Law on Corporate Income Tax, the Law on Value-Added Tax and any other legislation applicable in Kosovo that requires it to administer. The TAK may request access to books, records, computers and similar record storage devices from the Director General at all times with prior notice. Notwithstanding the previous sentence, the Director General, or any officer authorized by the Director General may make visits, not including audits, to confirm compliance with tax laws in force, to obtain information pertinent to subsequent audit activity, and to collect past due tax debts as considered necessary without prior notice to the taxpayer.

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

The reports and/or accounts filed by foundations (Management and Administration Section; Report on Activities and Achievements; and Financial Statement), based on Article 18, paragraph 11 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, shall be available to the public. However, the foundation may identify information it considers confidential in its report and request that the competent body delete such information before making the report available to the public. Information that may be considered confidential includes personal or financial information of employees of the organization.

Additionally, the foundation must file a request for non publishing information at the time that it files the report in question, and must state specific reasons for confidential treatment of the information. The foundation shall in addition provide confidential information separately from the rest of its Annual Report and must clearly state that the report is subject to a request for non publishing. Then, the Competent Body shall respond in writing stating its decision to grant or deny the request to non publishing within fifteen (15) days of the request. As a result, ), according to Article 18, paragraph 12 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, unauthorized and illegal publication, by competent body containing respective data shall be punished according to legal provision in force.

***e) What are the legal requirements concerning external audit? Is external audit required by***

### ***law for all foundations?***

Based on Article 18, paragraph 9 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the Financial Statements prepared and submitted by domestic foundations with annual income or expenditure in excess of one hundred thousand (100.000) € and by foreign and international foundations with annual income or expenditure in connection with their operations and activities within the Republic of Kosovo in excess of one hundred thousand (100.000) € shall include a financial statement of fiscal year as in the Republic of Kosovo, including the audit report for the previous year, signed by a licensed auditor in the Republic of Kosovo, in order that the material aspects and financial position of the organization for that reporting period is presented fairly.

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

Initially, based on Article 18 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, it is defined explicitly that required audits of annual reports of foundations should be submitted to the competent body, only by a licensed auditor in the Republic of Kosovo.

Most audits of foundations are taken by licensed auditors or audit firms in the Republic of Kosovo, except of those cases that are treated as an exception.

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

### ***a) Does the supervisory authority comprise of a public administrative body, a public independent body, a combination of a governmental body and a court, or a public body and an independent body?***

The Division for Reporting and Monitoring, within the Department of of Registration and Liaison with NGOs (association or foundation), under the Ministry of Public Administration is the competent body for supervision of foundations.

The supervisory authority on accounting, financial reporting and audit, according to Article 13, paragraph 1 of the Law No.04/L –014 on Accounting, Financial Reporting and Audit, comprise of a public and independent professional body - the Kosovo Council for Financial Reporting. The KCFR consists of seven members. The Chairman and other members of KCFR, upon proposal of the institution shall be appointed by the Government and represent the following institutions:

- a) one (1) member from the Central Bank of the Republic of Kosovo;
- b) one (1) member from Universities providing higher education in accounting and auditing;
- c) one (1) member from the Ministry of Finance;
- d) one (1) member from the professional associations licensed by the KCFR;
- e) three (3) members from the business community that are familiar with finances and business administration;

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

The Division for Reporting and Monitoring, within the Department of Registration and Liaison with NGOs (association or foundation), under the Ministry of Public Administration, as the competent body for supervision of foundations possesses several rights and competences:

According to Article 19, paragraph 1 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, the Competent Body may suspend a public beneficiary status of the foundation that fails to file a complete annual report or that files an incomplete report, will be given written notice of the failure by the competent body. The written notice shall instruct the foundation to file the missing or incomplete reports within thirty (30) days of the date of the notice, and inform the foundation that failure to do so shall result in the suspension of the public benefit status of the foundation and all benefits thereof.

Furthermore, from the perspective of auditing, the relevant supervision authority (KCFR), may based on Article 23 of the Law No.04/L –014 on Accounting, Financial Reporting and Audit, undertake punitive measures against irregularities deriving from several circumstances in the field of auditing. In a case it is found that this Law has been violated, the commission on investigations and discipline may warn the person, business organization, namely the professional association that is responsible for violating the law and to take concrete measures to ensure law enforcement.

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

It is not specified in decisive manner that there should be approval from the supervisory authority for certain decision of the Board of Directors. However, during the procedure of foundation's registration, duties and responsibilities of the Board of Directors should be prescribed in details in the Statutes of the foundation and the content of the statutes are approved by the competent body during the registration phase of the foundation.

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

No, it is not defined in decisive manner by the legislation in force that the Board of Directors shall have a state supervisory official on the board.

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

Enforcement measures made by supervisory body are mostly implemented through the monitoring and reporting process, according to the Law No. 04/L –057 on Freedom of Association of Non-Governmental Organisations. Concerning registration process, based on article 9 of the law in question, the supervisory authority possesses the right to request in writing further information or clarification in connection with an application to register the foundation. While, according to Article 19 of relevant law, in cases when the foundation fails to provide the competent body with complete annual report, or incomplete report, the competent body may take punitive actions, such as: suspending the public beneficiary status of the foundation.

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

In accordance with Article 20 of the Law No.04/L –057 on Freedom of Association of Non-Governmental Organisations, the foundation may be dissolved in several manners, such as:

- a) voluntary decision to terminate the organization is made by the highest governing body in accordance with the foundation's statute;
- b) the foundation becomes insolvent as defined by applicable law;
- c) the stated time limit expires, if such time limit is defined in the founding instrument. If the foundation failure to submit the statement of the foundation (the name, address, organizational form and purposes, establishers of each foundation, name and other contact information of its authorized representative and shall also indicate if the foundation has public benefit status). for two (2) years in a row obligates the competent body to undertake procedures for removing from register the foundation. The competent body is obliged that sixty (60) days before the expiry of three (3) years term to deliver this statement and notify in written the foundation on the consequences of failure to meet this obligation;
- a) or based on the valid court decision.

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

According to Article 7 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organizations, a foreign or international foundation is recognized as a legal person if several requirements are met, as follows:

- 1) The foundation shall not distribute any net earnings or profits as such to any person.
- 2) The assets, earnings and profits of the foundation shall be used to support the non-profit purposes assigned for the organization.
- 3) The assets, earnings and profits of foundation shall not be used to provide benefits, directly or indirectly, to any founder, director, officer, member, employee, or donor of the foundation, except the payment or reasonable compensation to such persons for work performed for the organization.

Regarding the legal status of the foundation, in accordance with Article 11 of relevant law, upon registration, a foreign or international foundation is authorized to operate as a legal person in Kosovo.

#### **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?**

According to the legislation in force, this issue is not defined with regard to activities of foundations abroad. Some restrictions are laid down in the Law No.04/L –057 on Freedom of Association in Non-Governmental Organizations. According to Article 16, paragraph 4 foundations are forbidden to finance organizations whose activity does not coincide with legal order in the Republic of Kosovo and the international applicable law.

## **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?**

A national, foreign or international foundation may receive tax exemptions according to the status of public beneficiary which is regulated by the Law No.04/L –057 on Freedom of Association in Non-Governmental Organizations. Foundations registered under the applicable law may apply for public beneficiary status upon initial registration by the foundation or thereafter. Afterwards, the Competent Body shall grant public beneficiary status if the registration documents of the foundation demonstrate that the purposes and activities of the foundation satisfy the requirements laid down in the Article 17, paragraph 1 and 2 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organizations.

The registered foundation may apply for public beneficiary status if the foundation is organized and operates to undertake one or more of the following as its principal activities: humanitarian assistance and relief, support for disabled persons, charity activities, education, health, culture, youth, sport, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, or any other activity that serves the public beneficiary.

However, in accordance with Article 17, paragraph 2 of relevant law, education and health foundation's activities shall constitute public beneficiary activities only if significant benefits are provided free of charge or less than fair market value to disadvantaged individuals or groups. While, foundation's activity for economic development shall constitute a public beneficiary activity only if it is undertaken primarily for the benefit of disadvantaged individuals or groups.

In terms of clarifying the meaning of tax treatment of the foundation by relevant law, it is explicitly defined in Article 17, paragraph 4 of the law, that foundations with public beneficiary status shall be entitled to tax and fiscal benefits, except those which are essentially charges for municipal public services.

Finally, based on Article 18, paragraph 13 of the law in question, the competent body, after successfully completing the reporting obligation of the foundation with public benefits status, it shall provide the foundation with a new certificate for public beneficiary status for one (1) year.

### **2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)**

The foundation that has been granted public beneficiary status, based on Article 18 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organisations, must file each year an annual report to the Competent Body with respect to its operations and activities within Kosovo. As such, reports must be filed by the end of March each year for the reporting year ending 31 December of the previous year. Concerning the administrative procedure, the annual report shall be signed by the Authorized Representative of the foundation. The Authorized Representative is responsible that all statements in the report are true and correct. The annual report consists out of three sectors:

- a) Management and Administration Section;
- b) Report on Activities and Achievements, and
- c) Financial Statement.

According to the Law No.03/L-162 on Corporate Income Tax, Article 10, paragraph 3, the taxpayer (the foundation) who claims an allowable deduction must file an annual tax declaration in accordance with this law and submit a receipt in respect of such deduction to the Tax Administration.

In details, based on Article 34 of tax declarations, paragraph 1 of the Law No.03/L-162 on Corporate Income Tax, a taxpayer that claims an allowable deduction pursuant to Article 10 of this law, it is required to submit to the Tax Administration an annual tax declaration on or before 31 March of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Law.

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

In the context of financial and activity reporting obligations for foundations with public beneficiary status in relation to the supervisory body, in accordance with Article 18 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organisations, the foundations are obliged to submit to competent body (The Ministry of Public Administration/The Department of or Registration and liaison with NGO/ Division for Reporting and Monitoring) the annual report, which shall consist necessarily three sections:

- a) The Management and Administration Section shall include:
  - 1) name, acronym, (name in initials), address, telephone number, fax number and e-mail address of the foundation;
  - 2) name of the chief executive officer (e.g. the manager or Executive Director),
  - 3) names of the members of the governing body, and names and titles of all officers in leading positions.
  
- b) The Report on Activities and Achievements shall include:
  - 1) a statement of the mission and public benefit purpose of the foundation;
  - 2) identification of major programs, and the activities designed to implement those programs. The statement should be sufficient to demonstrate how the organization fulfills its public benefit purposes through its activities;
  - 3) a statement of key program achievements;
  - 4) if the foundation undertakes other activities in addition to activities that serve the public benefit as defined in relevant law, a statement describing those activities;
  - 5) a statement that the foundation undertook no fundraising or campaigning to support political parties or appointed or elected candidates for public office, or registration or endorsement of appointed or elected candidates for public office, during the reporting period;
  - 6) the foundation that engages in public benefit activities in the fields of education or health, a statement of the following should be filed:
    - 6.1. the type of disadvantaged individuals or groups served;
    - 6.2. the types of benefits to these disadvantaged individuals or groups that the organization provides, and
    - 6.3. a certification that those benefits are provided free of charge or at less than fair market value;
  - 7) for the foundation that engages in public benefit activities in the field of economic development, a statement of the type of disadvantaged individuals or groups served.

- c) The Financial Statements shall be prepared using forms provided by the competent body, and shall include, at a minimum:
- 1) a balance sheet, showing the assets and liabilities of the organization; and
  - 2) a financial statement on the source of income, where incomes and expenses of the foundation are presented separately for the management, administration and programming section.

Furthermore, based on Article 18, paragraph 9 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organisations, the Financial Statements prepared and submitted by domestic foundation with annual income or expenditure in excess of one hundred thousand (100.000) € and by foreign and international foundations with annual income or expenditure in connection with their operations and activities within the Republic of Kosovo in excess of one hundred thousand (100.000) € shall include a financial statement of fiscal year as in the Republic of Kosovo, including the audit report for the previous year, signed by a licensed auditor in the Republic of Kosovo, in order that the material aspects and financial position of the organization for that reporting period is presented fairly. Finally, the Financial Statements shall be prepared by the end of March for the one year period ending December 31st of the previous year.

Meanwhile, according to Article 18, paragraph 10 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organisations, except of three necessary abovementioned sections, the annual report of foundation shall also include:

- f) statement including all activities as well as payment of salaries of the foundation employees, including job descriptions of the persons involved and contractual relations between the foundation and the other party in performing that task, or
- g) a certification that the foundation has not developed the foreseen activity under subparagraph (a).

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

Yes, according to Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations, based on Article 18, paragraph 6, within the annual report of the foundation, it is required that the Financial Statements shall be prepared using forms provided by the competent body, and shall include, at a minimum:

- 1) a balance sheet, showing the assets and liabilities of the organization; and
- 2) a financial statement on the source of income, where incomes and expenses of the foundation are presented separately for the management, administration and programming section.

In addition, based on Article 18, paragraph 9 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organisations, the Financial Statements prepared and submitted by domestic foundation with annual income or expenditure in excess of one hundred thousand (100.000) € and by foreign and international foundations with annual income or expenditure in connection with their operations and activities within the Republic of Kosovo in excess of one hundred thousand (100.000) € shall include a financial statement of fiscal year as in the Republic of Kosovo, including the audit report for the previous year, signed by a licensed auditor in the Republic of Kosovo, in order that the material aspects and financial position of the organization for that reporting period is presented fairly.

In accordance with Administrative Instruction No.14/2010 on implementation of the Law no. 03/L-162 on Corporate Income Tax, in section 8 (Allowed Deduction), paragraph 2 it is emphasized that taxpayers who claim a deduction in respect of charitable contributions made during the tax period shall furnish, at the time of filing the annual tax declaration and respective financial statements, receipts signed and stamped by the beneficiaries of the charitable contributions, certifying the purpose of those donations, the amounts of those donations and the times when the donations were made. A charitable contribution deduction can only be claimed by those taxpayers who pay

tax on a real income basis and thus who are already required to submit an annual tax declaration. Presumptive taxpayers cannot claim for this deduction.

Finally, there are several information and data required to report on donors and beneficiaries according to Administrative Instruction No.14/2010 on implementation of the Law no. 03/L-162 on Corporate Income Tax, in section 8 (Allowed Deduction), paragraph 3, it is defined that the receipt referred in the previous paragraphs, shall contain the following information:

- a) name of the donor;
- b) tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number;
- c) address of the donor;
- d) donor contact person's name and telephone number;
- e) name of the recipient;
- f) tax identification number (fiscal number) of the recipient;
- g) address of the recipient;
- h) recipient contact person's name and telephone number;
- i) amount of charitable contribution donated;
- j) date of donation;
- k) a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.

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

Regarding the accounting rules of foundations, there are not specific rules of accounting. Obviously, the sector of foundations is obliged to implement rules imposed by the Tax Administration in Kosovo and its related legislation. Precisely, the Tax Administration in Kosovo exerts its functions in the field of accounting rules based on Kosovo Accounting Standards.

#### **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.**

Primarily, it is a statutory definition in the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations, Article 17, paragraph 4, which defines that the foundation with public beneficiary status and general areas of activities of the foundation may be, as follows: humanitarian assistance and relief support for disabled persons, charity activities, education, health, culture, youth, sport, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, or any other activities (based on specific descriptions of the foundation).

#### **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.**

There is not a statutory definition in the tax law of the country in the context of what a public benefit purpose is. However, in the context of tax treatment of foundations by the Law No.03/L-162 on Corporate Income Tax which regulates this field, according to Article 10, (Allowable Deductions) incorporates contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under the present Law up to a maximum of five percent (5%) of taxable income computed before the charitable contributions are deducted.

An allowable contribution included in the areas mentioned above, must be made to:

1. An organization registered under legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo (Law no.04/L –057 on Freedom of Association in Non-Governmental Organisations) that has received and maintained public benefit status;

2. Any other non-commercial organizations that directly perform activities in the public interest and not for profit, such as:

- a) Medical institutions;
- b) Educational institutions;
- c) Organizations to protect the environment;
- d) Religious institutions;
- e) Institutions that care for disabled or elderly persons;
- f) Orphanages; and
- g) Institutions that promote science, culture, sports or arts.

**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
(1) Science and research	X			
(2) Religion	X			
(3) Furtherance of health (in particular the prevention of and the fight against contagious illnesses) and public health care	X			
(4) Support of youths and older people	X			
(5) Arts and culture	X			
(6) Preservation of historical sites and monuments		X		
(7) Education	X			
(8) Environmental protection	X			
(9) Public welfare including support to organisations providing e.g. social services, social care etc.		X		
(10) Support to victims (of crime, war, persecution because of political, racial or religious reasons, and discrimination), refugees and disabled people	X			
(11) Emergency rescue		X		
(12) Public safety and accident prevention (including fire and work safety and disaster response)		X		
(13) International understanding and tolerance		X		
(14) Animal protection		X		
(15) Development aid and development co-operation	X			
(16) Consumer protection		X		
(17) Offender rehabilitation		X		
(18) Gender equality		X		

(19) Protection of marriage and family		X		
(20) Crime prevention		X		
(21) Amateur sports (including chess)	X			
(22) Local history and local geography		X		
(23) Traditional customs (including Carnival)		X		
(24) The national democratic political system		X		
(25) Civic commitment for public benefit purposes and public benefit organisations.	X			
(26) Protection of and support for disadvantaged individuals (in particular support of people in need because of their physical, intellectual or mental condition).	X			
(27) Relief of poverty		X		
(28) Protection/promotion of Human Rights	X			
(28) Other – Charitable activities	X			
(29) Other –Humanitarian assistance and relief	X			
(30) Other –Orphanages	X			

## 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, according to the legislation in force for taxes (The Law No. 03/L-222 on Tax Administration and Procedures, Law. No. 03/L-132 on Corporate Income Tax), it consists that there is not explicitly defined that the activities of a tax – exempt foundation generally have to benefit “the public at large”. Thus, relevant laws define only those activities of public interest, but not those activities with the public at large. More precisely, relevant laws do not define the number on inhabitants on the basis of which the assessment can rely on it, and as such to determine such activities that can be considered with ‘public at large’ effect.

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

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

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants			X		
For benefit of the inhabitants of a village with 10,000 inhabitants			X		

For benefit of the employees of a company			X		
For benefit of the members of a family			X		
For benefit of the students of a university			X		
Award for the best student of a university			X		

## 10. Non-Distribution Constraint

### ***a) Does a tax-exempt foundation generally have to follow a “non-distribution constraint”<sup>2</sup> which forbids any financial support of the foundation board, staff, etc.?***

In compliance with Article 4 (Non-distribution of Earnings), paragraph 2 defines that the assets, earnings and profits of NGO (association or foundation) shall not be used to provide benefits, directly or indirectly, to any founder, director, officer, member, employee, or donor of the foundation, except the payment or reasonable compensation to such persons for work performed for the organization. Meanwhile, in accordance to Article 10, paragraph 3 of the Law No. 03/L-132 on Corporate Income Tax, it is emphasized that an allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donors.

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

In case of dissolution or removal from the register of the tax exempt foundation, based on Article 21, paragraph 3 and 4 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations, the competent body possesses the right that all assets remaining after discharge of the foundation’s liabilities shall be distributed to another foundation with the same or similar purposes. This foundation shall be identified in the foundation’s statutes or with a proposal of the foundations highest governing body. The Ministry shall establish the Committee for Distribution of remained Assets of terminated or removed from register foundations, with representatives of foundations, too. Moreover, in all other cases, any assets remaining after the discharge of liabilities shall be distributed in accordance with the statutes or a decision by the highest governing body and in all cases in compliance with Article 4 of the law in question.

## 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?***

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<sup>2</sup> 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.

It seems that the compensation of the board of directors is based on the business organisations' legislation. In accordance with Article 168 of the Law No. 02/L-123 on Business Organisations, a company may pay compensation to directors and reimburse directors for their reasonable expenses in serving the company as its directors. A decision to provide such compensation or reimbursement and approval of the amount and main conditions thereof may only be made by the shareholders or by an external committee to which shareholders delegate such power. This shall be done for each renewal or change of the directors' terms. If it has delegated such decision, then the decision shall be disclosed to the shareholders at the next-following shareholder meeting.

**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)**

This issue is not addressed by the tax law in force.

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

Based on civil and tax law in force, there does not exist defined maximum amount that can be spent on office/administration costs.

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

Despite the fact that administrative costs are not defined or limited by the legislation in force, depending on the capacities, activities and other relevant circumstances of the foundations, all of the following activities can rely under the administrative costs, such as:

- 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	X				

is required to maintain the founder, his spouse and descendants.					
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?**

As such, there does not exist any limitation that foundations are/are not allowed to spend down their capital, but there do exist several limitations and manners of managing capital gains and losses of the foundation.

**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?**

Not really but based on Article 21, paragraph 1 of the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations, the competent body of foundations supervision may remove the foundation from register if the foundation for three (3) years fails to file the annual statement.

**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)?**

Referring to the legislation in force which address this issue, there does not exist special provisions on limiting spends of foundation's incomes.

**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"?**

The legislation in force does not require a foundation to spend a percentage of its overall assets in the form of "pay out rule", with concise provisions.

**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?**

In the context of addressing legal framework of foundations activities realized abroad of Kosovo, the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations does not elaborates activities of foundations abroad, in particular.

Despite of this, regarding the Financial and Activity Reporting Obligations for foundations with Public Beneficiary Status, based on Article 18, paragraph 1, it is emphasized in concise manner that a foundation that has been granted public beneficiary status must file each year an annual report to the Competent Body with respect to its operations and activities within Kosovo. As such, it

results that activities abroad are not treated by the law in question, and to some extent it might be at risk the tax-exempt status for those activities of foundations realized abroad of Kosovo.

**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.**

The Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations does not contain any provision on regulating cross-border grants by a foundation.

**16. Income tax treatment**

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

***Grants and donations***

Yes, grants and donations are tax exempt according to Law No. 03/L-162 on Corporate Income Tax. Article 7, paragraph 1 of the law in question defines that without prejudice to Article 33 of this law, the income of organizations registered under Legislation on the Registration and Operation of non-governmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes as tax exempt. In details, these issues are defined by provisions of the Administrative Instruction No. 10/2010 on Implementation of the Law No. 03/L-162 on Corporate Income Tax.

***Investment income (asset administration)***

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

Gross income that arises in Kosovo, which includes income from the use of immovable property located in Kosovo. In details, under the Article 3, paragraph 1, point 3 of the Law No. 03/L-162 on Corporate Income Tax, foundations shall be taxpayers under the law in question. While, based on Article 7, paragraph 1, of the Law. 03/L-162 on Corporate Income Tax, the income of organizations registered under Legislation on the Registration and Operation of non-governmental organizations (foundations) shall be exempted if they have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes.

Income is generally tax exempt but unrelated commercial income of foundations is taxed.

***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)**

Based on legislation in force, more precisely in Article 16, paragraph 2 of the Law No. 04/L-57 on Freedom of Association of Non-Governmental Organisations, is defined that foundation may engage in economic activities for the purpose of supporting its nonprofit activities, and provided that income realized through economic activities is used solely to accomplish the purposes specified in the foundations statute.

In Article 33, paragraph 1 of the relevant law, it stipulates that a non-governmental organization (foundations) that conducts commercial or other activity that is not exclusively related to its public benefit purpose shall be taxed at the rate of ten percent (10%) on income derived from such unrelated business activity (reduced by any deductions that are directly related to the carrying on of such business and which are allowed by this Law). Moreover, the Tax Administration shall have the authority to audit any NGO to determine its compliance with the income rules that govern NGO's. In cases that NGO profits are deemed to exceed a reasonable level of profits for an organization that is established as a non-profit organization, the tax administration shall have the authority to treat such excessive profits.

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

Pursuant to paragraph 3 of Article 33 of The Law, based on section 21, paragraph 3 of the Administrative Instruction No.14/2010 on Implementation of Law 03/L-162 on Corporate Income Tax, in details are defined the following situations could be treated as giving rise to 'excessive profits' and hence lead to taxation

- a) in the case of foundations which rent out property, where profits derived from foundation activities related to its public purpose are made by charging rent at rates which are in excess of those that would ordinarily be payable taking into account the standard and location of the property and the term and other conditions of the rental agreement;
- b) in the case of foundations which have money to lend, such as micro-finance institutions, where profits derived from foundation activities related to its public purpose are made by charging interest at rates which are in excess of that that would ordinarily be paid taking into account the risk, term and other conditions of the loan.
- c) In each case, the 'excessive profit' that would be subject to corporate income tax is the amount of the excess profit made above that that would be ordinarily made (rather than the full amount of the profit).

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

It is not specifically defined that major shareholding are considered as an economic activity.

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

Capital gains are subject to the Law No.03/L-162 on Corporate Income Tax. Precisely, in Article 21 is defined the capital gain means income that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities. The amount of capital gain is the

positive difference between the sales price of the capital asset and the cost of the capital asset. In details, the cost of the capital asset is the amount that the taxpayer paid for the acquisition of the asset, including expenses incurred in acquiring the asset that have not been previously expensed, increased by the cost of improvements, and reduced by depreciation and other expenditures allowable under this Law. Moreover, capital gains shall be recognized as business income.

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

In Kosovo no value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exists.

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

No

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

According to Article 42, paragraph 1, of the Law No.03/L-222 on Corporate Income Tax, the TAK shall have the authority to transfer an assessment of tax to another entity following a transfer of assets (movable or immovable) in the following circumstances:

- 1) the taxpayer has transferred assets to another entity either in anticipation of incurring a tax debt or after having incurred a tax debt;
- 2) the transfer of assets was for less than fair market value of the assets;
- 3) the transfer of assets has left the taxpayer without the capability of paying tax debts,
- 4) TAK has notified the taxpayer and the other entity of the determination that the transfer of assets will result in an assessment against the third party and provided the third party their appeal right.

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

No

**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?**

Regarding the tax benefit of foreign foundation to get the same tax benefit as a national foundation, the tax law refers to the Law No. 04/L-057 on Freedom of Association of Non-Governmental Organisations which regulates these issue in terms of categorizing the same tax benefit both for local or foreign foundations.

It is notable that a foreign and/or international NGO (association or foundation) is considered as a legal person established outside of Kosovo under legislation that substantially meets the requirements of establishment of foundations in Kosovo according to Article 7 of the law. Thus, referring to Article 8 of the law, legal persons, including NGOs, may found foundations to advance their lawful purpose, whether for public or private benefit.

Furthermore, according to the application process of the registration of foreign foundations, based on Article 9, paragraph 6 of the law in question, applications for the registration of foundations shall be submitted to and accepted by the competent body. As such, according to Article 9, paragraph 7, documents submitted by a foundation in support of its application for registration shall be in corresponding languages in compliance with Constitution of Republic of Kosovo.

In accordance with Article 5 of Constitution of the Republic of Kosovo, the official languages in the Republic of Kosovo are Albanian and Serbian. Also, Turkish, Bosnian and Roma languages have the status of official languages at the municipal level or will be in official use at all levels as provided by law. Whereas, based on Article 9, paragraph 8 of the relevant law, documents submitted by a foreign or international foundation as proof that it is a legal person in another country, shall be submitted in their original language, together with translation of documentation in official languages in the Republic of Kosovo. Translation should be from the licensed authorized interpreter. Any substantive or misleading difference between the original language and translated document is a reason for withdrawing the organization's registration.

In sum, it results that after the whole procedure and filled requirements by foreign foundations applicant, they enjoy the same tax treatment as local foundation.

Regarding the issue of registration process of local foundation, based on Article 9 of the relevant law, the foundation applicant shall attach to registration application the following documents:

- I. an application form;
- II. founding instrument;
- III. the statute;
- IV. photocopies of ID or passports of the founders;
- V. The list of member list, completed with data;
- VI. Official symbol – logo;
- VII. An elected person as authorized person;
- VIII. Address of the organization in Kosovo: name, address and contact – other information of the authorized representative;
- IX. Request for the registration of foundation and a written statement by an authorized representative of the foundation, showing goals of the foundation and a general description of the activities that the foundation plans to implement in Kosovo.

On the other hand, based on Article 9, paragraph 5 of the relevant law, a foreign or international foundation registers by filing the following documentation:

- V. An application form;
- VI. Proof that it is a legal person in another country;
- VII. The organization's address in Kosovo; and
- VIII. A written statement from a representative of the foundations headquarters with the authority to provide such statement stating:
  - d) The purpose of the foundation;
  - e) A general description of the activities that the foundation is planning to carry out in Kosovo; and
  - f) The name, address and other contact information of the Authorized Representative.

With regard to public benefit status gained by foundations, in compliance of Article 17, paragraph 3 of the relevant law, the foundation may apply for public beneficiary status upon initial registration by

the foundation or thereafter. The Competent Body shall grant public beneficiary status if the registration documents of the foundation demonstrate that the purposes and activities of the foundation satisfy the requirements stipulated in paragraph 1 and 2 of this Article, as follows:

- 1) Foundations registered under this law may apply for public beneficiary status if the foundation is organized and operated to undertake one or more of the following as its principal activities: humanitarian assistance and relief, support for disabled persons, charity activities, education, health, culture, youth, sport, environmental conservation or protection, economic reconstruction and development, the promotion of human rights, the promotion of democratic practices and civil society, or any other activity that serves the public beneficiary.
- 2) Education and health NGOs activities shall constitute public beneficiary activities only if significant benefits are provided free of charge or less than fair market value to disadvantaged individuals or groups. NGOs activity for economic development shall constitute a public beneficiary activity only if it is undertaken primarily for the benefit of disadvantaged individuals or groups.

**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?**

In accordance with Article 31, paragraphs 2 of the Law No.03/162 on Corporate Income Tax, income earned from agreements or contracts, whether written or verbal, with Kosovo persons or entities by a non-resident person or entity from services performed in Kosovo shall be subject to withholding by the payer of that income, so long as the non-resident person or entity has no permanent establishment in Kosovo and the gross compensation paid to the non-resident is more than five thousand (5,000) € in any tax period.

However, in terms of clarifying the Article 31 of this law, the Administrative Instruction on application of Law No. 03/L-162 on Corporate Income Tax, defines that where such income is paid or credited to a non-resident person who or entity which is exempt from corporate income tax under Article 7 of the Law, under any other law of Kosovo or under an international agreement or convention, that income shall not be subject to withholding tax. In such cases, the onus is on the recipient of the income to provide written evidence to the payer that their income is exempt from Corporate Income Tax. Until such evidence is produced, the obligation remains on the payer to withhold tax.

As a result, the written evidence required shall be: in the case of organizations exempt from corporate income tax under paragraph 1.1 of Article 7 of The Law No. 03/L-162 on Corporate Income Tax (income of organizations registered under Legislation on the Registration and Operation of nongovernmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes), a copy of the non-governmental organization registration certificate. Thus, the foundations should represent their certification of registration which testifies that it maintains public benefit status.

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

**1. System of tax credit<sup>3</sup> or tax deduction<sup>4</sup>?**

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<sup>3</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>4</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)

Based on Article 5 of the Law No. 03/L-162 on Corporate Income Tax, taxable income for a tax period means the difference between gross incomes received or accrued during the tax period and the deductions and allowances allowable under this law with respect to such gross income. In details, there exist two main taxable income categories:

- 1) A taxpayer with annual gross income over fifty thousand (50.000) € shall calculate taxable income by preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in the present Law.
- 2) A taxpayer with annual gross income of fifty thousand (50.000) € or less shall calculate taxable income:
  - a) Taxpayers with annual gross income of fifty thousand (50.000) € or less who are not required to, or do not opt to, submit an annual tax declaration; or
  - b) by opting to prepare financial statements, adjust income and expenses recorded and maintained in the books and records and submit annual declarations in the manner prescribed in this law.

Normally, without special treatment of tax rate, based on Article 6, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax, the corporate income tax rate shall be ten percent (10%) of taxable income.

Referring to donors as allowable contributors whom can receive allowable deductions on their income in compliance with Article 10, paragraph 2 of the relevant law, it affects:

- 1) an organization registered under Legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo that has received and maintained public benefit status;
- 2) Any other non-commercial organizations that directly perform activities in the public interest and not for profit, such as:
  - a) Medical institutions;
  - b) Educational institutions;
  - c) Organizations to protect the environment;
  - d) Religious institutions;
  - e) Institutions that care for disabled or elderly persons;
  - f) Orphanages; and
  - g) Institutions that promote science, culture, sports or arts.

Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under the present law up to a maximum of five percent (5%) of taxable income computed before the charitable contributions are deducted. In details, according to Section 8 of the Administrative Instruction No. 14/2010 on implementation of Law No. 03/L-162 on Corporate Income Tax, the expression '*computed before the charitable contributions are deducted*' means that the 5% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income. In terms of clarifying further this calculation: Moreover, it is given an example in the related Administrative Instruction, as follow:

- If a company has a gross profit before charitable contributions of 10,000 euro and it has made a donation to a hospital of 400 euro, the 5% allowed limit shall be applied on the 10,000 euro and not on  $10,000 - 400 = 9,600$  euro. In this case 400 euro is totally deductible as it is within the allowed limit of  $10,000 \times 5\% = 500$  euro.

## **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***

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### ***contribution on which tax incentives can be claimed?***

Referring to Article 28, paragraph 1 of the Law No. 03/L-161 on Personal Income Tax, is defined that contributions made by taxpayers who maintain records under Article 33.4 of this Law for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction up to a maximum of five percent (5%) of taxable income computed before the charitable contribution is deducted. As such, under the paragraph 2 of the article in question is determined that a charitable contribution must be made to an organization registered under legislation on registration and operation of non-governmental organizations that has received and maintained public benefit status. Otherwise, there does not exist any criteria/requirement as a minimum and/or a ceiling to a contribution on which tax incentives can be claimed. Significantly, according to paragraph 3 of this Article, is defined that a charitable contribution shall not include a contribution that directly benefits the donor, or related persons of the donor.

In terms of clarifying the expression 'computed before the charitable contribution is deducted', under the Section 20, paragraph 1 of the Administrative Instruction No.13 / 2010 on Application of Law No. 03/L-161 on Personal Income Tax, is defined its means, that the 5% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income.

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

It is not defined precisely which assets are covers or falls under the qualification for tax deductibility.

## **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?***

Article 10, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax, under the allowable deductions stipulates that contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under the present law up to a maximum of five percent (5%) of taxable income computed before the charitable contributions are deducted. As such, the expression 'computed before the charitable contribution is deducted', under the Section 20, paragraph 1 of the Administrative Instruction 14/2010 on Implementation of the Law No. 03/L-162 on Corporate Income Tax, is defined its means, that the 5% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income.

In details, in Article 10, paragraph 2 of the Law No. 03/L-162 on Corporate Income Tax is determined that an allowable contribution must be made to an organization registered under Legislation on the Registration and Operation of non-governmental organizations (associations or foundations) that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes. But, referring to paragraph 3 of the Article in question is defined that all allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor.

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

It is not defined precisely which assets are covered or falls under the qualification for tax deductibility.

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

No

**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 to 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?)?***

With regard to allowed deduction for charitable contributions (donations), under the Section 8, paragraph 2 of the Administrative Instruction No. 13 / 2010 on Application of Law No. 03/L-161 on Personal Income Tax is defined that taxpayers who claim a deduction in respect of charitable contributions made during the tax period shall furnish, at the time of filing the annual tax declaration and respective financial statements, receipts signed and stamped by the beneficiaries of the charitable contributions, certifying the purpose of those donations, the amounts of those donations and the times when the donations were made. A charitable contribution deduction can only be claimed by those taxpayers who pay tax on a real income basis and thus who are already required to submit an annual tax declaration. Presumptive taxpayers cannot claim for this deduction.

Furthermore, in compliance with Section 8, paragraph 3 of the Administrative Instruction No. 13 / 2010 on Application of Law No. 03/L-161 on Personal Income Tax, is defined that each receipt shall contain the following information:

1. name of the donor;
2. tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number;
3. address of the donor;
4. donor contact person's name and telephone number;
5. name of the recipient;
6. tax identification number (fiscal number) of the recipient;
7. address of the recipient;
8. recipient contact person's name and telephone number;

9. amount of charitable contribution donated;
10. date of donation;
11. a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.

**7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?**

Not applicable – cross-border donations are not deductible.

***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?))***

Not applicable – cross-border donations are not deductible.

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

**1. Individuals**

**2. Legal entities**

Regarding the legal entities incomes, the only definition which is related to this issue is defined in the Article 7, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax, the income shall be exempt from corporate income tax in cases when income of organizations are registered under Legislation on the Registration and Operation of non- governmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes.

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

There are not different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad. Based in assessment of the legislation in force, it results that mostly these requirements belongs to the donor to declare the objective and the destination of those donations, including beneficiary data. In the case of irregularities, upon request, the beneficiary may declare the incomes purpose and their sources where do they come from.

**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)?**

Income of foundations received from gifts and inheritances are not taxed.

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

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

There does not exist any threshold for non-taxable amount from gift and inheritance tax for donations/legacies to public-benefit organizations.

**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?**

These issues are not defined with related provisions of the legislation in force.

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

In the light of tax treatment of legacies to non-resident public benefit foundations, despite the fact that the issue in focus is not regulated in concise manner with particular provisions, after the registration process and filled requirements by non-resident public-benefit foundations, they get the same treatment as national public benefit foundations.

## **VI. Trends and developments**

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

In the Republic of Kosovo, there are no current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors, whom are protected by the fundamental freedoms of the EC Treaty should be treated differently. Moreover, there have not been any changes or discussion on issues regarding to Kosovo's legislation, resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments.

**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)?**

In terms of prevention of money laundering and terrorist financing activities, in the field of legal framework, recently the Law no. 04/L-178 on Amending and Supplementing the Law no. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing was approved, which aims to fill the legal gaps of the Law no. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing.

In order to combat effectively money laundering and terrorist financing in Kosovo, based on Article 4 of relevant law, it is established the FIU within the Ministry of Finance, as a central independent national institution, is the responsible unit for requesting, receiving, analyzing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing. Article 2 of the Law no. 04/L-178 on Amending and Supplementing the Law no. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing, lists Non-Governmental Organisations (associations and foundations) as the entities required to make reports to the FIU. Article 2 of the Law no. 04/L-178 on Amending and Supplementing the Law no. 03/L-196 on the Prevention of Money Laundering and Prevention of Terrorist Financing, refers to the “Financial Action Task Force”, which acts as an independent inter - governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

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

In the perspective of legal environment of public benefit foundations, it is expected in the near future to be approved an Administrative Instruction on implementing the Law No. 04/L-057 on Freedom of Association in Non-Governmental Organisations, by the Ministry of Public Administration. It will address further in details the registration requirements, procedures and categorisation of foundation’s activities.

Also, it is expected in the near future to be adopted the new regulation of the government on donor coordination in terms of coordination, reviewing and supervising the progress of the ongoing donor assistance related to sector strategies, donor programmes and individual projects of Kosovo authorities. Regulation No. 041/2011 on Donor Coordination is still in force, but it is expected to be replaced with the new one.

### **4. Public fundraising**

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

There does not exist yet any specific laws that regulate fundraising in particular, and their affection to foundations.

#### **Useful contacts**

Please add names and contact details of persons who may be contacted for queries regarding the information in this profile or for further details of the legal and fiscal environment for foundations in your country.

#### **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.**

1. **“Tax Regime in Kosovo” – Brochure by the Ministry of Finance, the Republic of Kosovo, December 2013** link: <http://mf.rks-gov.net/Portals/0/Tax%20Brochure%20Dec%202013.pdf>
2. **List of Statutory Auditors and Audit Firms in Kosovo**, link: <http://mf.rks-gov.net/en-us/zyrat/sekretariatiikkrfse/listaeauditorvedhefirmaveaudituese.aspx>
3. **List of Kosovo Accounting Standards**, link: <http://mf.rks-gov.net/en-us/zyrat/sekretariatiikkrfse/standardetkosovaretekontabilitetit.aspx>
4. **List of International Accounting Standards applicable by Kosovo Authorities**, link: <http://mf.rks-gov.net/en-us/zyrat/sekretariatiikkrfse/standardetnderkombetaretekontabilitetit.aspx>
5. **List of International Financial Reporting Standards applicable by Kosovar Authorities**, link: <http://mf.rks-gov.net/en-us/zyrat/sekretariatiikkrfse/standardetnderkombetareteraportimitfinanciar.aspx>

➤ **LINKS OF RELEVANT INSTITUTIONS discussed in the profile:**

1. **Ministry of Public Administration**, link: <http://map.rks-gov.net/en/page.aspx?id=219>
2. **Ministry of Finance**, link: <http://mf.rks-gov.net/en-us/fillimi.aspx>
3. **Tax Administration in Kosovo**, link: <http://www.atk-ks.org/>
4. **The Office of Auditor General in the Republic of Kosovo**, link: <http://oag-rks.org/en-us/Legislation?>
5. **Financial Intelligence Unit in Kosovo**, link: <http://www.fic-ks.org/index.htm>

• ***Selected law texts online:***

Please list here the links to relevant national laws where these are available online

1. **Constitution of the Republic of Kosovo**, link: <http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf>

➤ **LIST OF LAWS** and related links:

1. **Law No. 04/L-057 on Freedom of Association in Non-Governmental Organizations**, link: <http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20freedom%20of%20association%20in%20NGO.pdf>
2. **Law No. 02/L-28 on the Administrative Procedure**, link: [http://www.kuvendikosoves.org/common/docs/ligjet/2005\\_02-L28\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2005_02-L28_en.pdf)
3. **Law No.03/L-172 on Protection of Personal Data**, link: <http://www.kuvendikosoves.org/common/docs/ligjet/2010-172-eng.pdf>

4. **Law No.03/L-222 on Tax Administration and Procedures**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/2010-222-eng.pdf>
5. **Law No. 04/L-223 on Amending and Supplementing the Law No. 03/L-222 on Tax Administration and Procedures, as amended and supplemented by law no. 04/L-102**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amending%20the%20law%20on%20tax%20administration%20and%20procedures.pdf>
6. **Law No. 03/L-075 on the Establishment of the Office of the Auditor General and Audit Office in Kosovo**, link: [http://oag-rks.org/repository/docs/ZAp-ang\\_638313.pdf](http://oag-rks.org/repository/docs/ZAp-ang_638313.pdf)
7. **Law No.04/L –014 on Accounting, Financial Reporting and Audit**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20accounting%20financ%20reporting%20and%20audit.pdf>
8. **Law no. 04/L-006 on Amending and Supplementing of the Law No.02/L-123 on Business Organisations**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amend%20law%20on%20business%20organisations.pdf>
9. **Law No.02/L-123 on Business Organisations**, link:  
[http://www.kuvendikosoves.org/common/docs/ligjet/2007\\_02-L123\\_en.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/2007_02-L123_en.pdf)
10. **Law No. 04/L-103 on Amending and Supplementing the Law No. 03/L-162 on Corporate Income Tax**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20corporate%20income%20tax.pdf>
11. **Law No.03/L-162 on Corporate Income Tax**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/2009-162-eng.pdf>
12. **Law No.03/L- 146 On Value Added Tax**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/2009-146-eng.pdf>
13. **Law no. 03/L-197 On Amending And Supplementing The Law No. 03/L-146 On Value Added Tax**, link: [http://www.atk-ks.org/wp-content/uploads/2010/09/Ligji\\_2010\\_3\\_L197\\_eng.pdf](http://www.atk-ks.org/wp-content/uploads/2010/09/Ligji_2010_3_L197_eng.pdf)
14. **Law No. 04/L-108 On Amending And Supplementing The Law No. 03/L-146 On Value Added Tax As Amended And Supplemented By The Law No. 03/L-197**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20value%20added%20tax.pdf>
15. **Law Nr.03/L-161 On Personal Income Tax**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/2009-161-eng.pdf>
16. **Law No. 04/L-104 On Amending And Supplementing The Law No. 03/I-161 on Personal Income Tax**, link:  
<http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20amend%20the%20law%20on%20personal%20income%20tax.pdf>

➤ **LIST OF BYLAWS (REGULATIONS, ADMINISTRATIVE INSTRUCTIONS)** and related links:

1. **Regulation No. 02/2012 on the Establishment and Operation of the Commission for Reviewing Appeals of NGOs**, link: [http://map.rks-gov.net/userfiles/file/document\\_page/Rregullorja\\_nr\\_02\\_2012\\_mbi\\_Themelimin\\_dhe\\_Funksionimin\\_e\\_Komisionit\\_per\\_Shqyrtimin\\_e\\_Ankesave\\_te\\_OJQ\\_ve\\_sq.pdf](http://map.rks-gov.net/userfiles/file/document_page/Rregullorja_nr_02_2012_mbi_Themelimin_dhe_Funksionimin_e_Komisionit_per_Shqyrtimin_e_Ankesave_te_OJQ_ve_sq.pdf)
2. **Regulation No. 04/2011 on Donor Coordination**, link: [http://www.md-ks.org/repository/docs/Rregullorja\\_04-2011\\_per\\_kordinimin\\_e\\_donatoreve.pdf](http://www.md-ks.org/repository/docs/Rregullorja_04-2011_per_kordinimin_e_donatoreve.pdf)
3. **Administrative Instruction No.12/2011 on Implementation of Law No. 03/L-222 on Tax Administration and Procedures**, link: [http://www.atk-ks.org/wp-content/uploads/2011/11/Udhezimi\\_administrativ\\_12\\_2011.pdf](http://www.atk-ks.org/wp-content/uploads/2011/11/Udhezimi_administrativ_12_2011.pdf)
4. **Administrative Instruction No. 15 /2010 on Implementation of Law No. 03/l-222 on Tax Administration and Procedures**, link: [http://www.atk-ks.org/wp-content/uploads/2010/09/UDHEZIMI\\_ADMINISTRATIV\\_Nr.\\_15\\_2010\\_A.pdf](http://www.atk-ks.org/wp-content/uploads/2010/09/UDHEZIMI_ADMINISTRATIV_Nr._15_2010_A.pdf)
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13. **Administrative Instruction No. 2 /2013/MF on Structure and Content of the Financial Reporting**, link: <http://mf.rks-gov.net/en-us/ministriaefinancave/legjislacioni/udhezimetadministrative.aspx>

➤ **GENERAL:**

1. **List of Laws Published in Kosovo in Official Gazette of the Republic of Kosovo (Last time modifies on 13.03.2014)**, link: <http://gzk.rks-gov.net/Search.aspx?index=2>
2. **General Link of Official Gazette in Kosovo**: <http://gzk.rks-gov.net/default.aspx>

#### **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