



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **SERBIA – 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)?**

According to the Law on Endowments and Foundations - LEF, Article 2), an endowment means a legal entity without membership to whom a founder has allocated certain assets for the charitable achievement of public or private benefit purposes that are not prohibited by the Constitution or law; For the purposes of this Law, a foundation shall mean a legal entity without membership and assets, established for the charitable achievement of public benefit purposes that are not prohibited by the Constitution or law.

Endowments and Foundations are non-profit, non-governmental organizations (Article 4, LEF).

Endowments and foundations are established voluntarily and are independent in determining their goals (Article 5, LEF).

LEF does not recognize different legal types of foundation & endowments; there is a possibility to establish domestic and foreign legal entity, with limited or unlimited duration of existence.

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

Foundations are established to pursue objectives of public interest. According to LEF (Article 3), activities undertaken for public benefit are activities focusing on the promotion and protection of human, civil and minority rights, promotion of democratic values, European integration and mutual understanding, sustainable development, regional development, gender equality, improvement of social and health protection, promotion and advancement of culture and public information, promotion and popularization of science, education, arts and amateur sport, advancement of the status of persons with disabilities, child and youth care, assistance to the elderly, environmental protection, combating corruption, consumer protection, animal protection, humanitarian and other activities that foundations undertake with the aim of achieving public benefit purposes, i.e. interests. Foundations shall be deemed to also engage in public benefit activities when their activities target only individuals that belong to a designated professional, national, language, cultural, religious and gender group, or individuals living within a designated geographic area.

Endowments can pursue private benefit activities, i.e. those aimed at achieving the individual interests of the endowment's founders, their family or third persons (family endowments established for the purpose of funding the education of family members and for other legally permissible purposes).

Law prescribes set of not permissible goals (Article 6, LEF)

### **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?**

Endowments and foundations may be established by one or more domestic or foreign natural or legal persons that possess full legal capacity.

Endowments and foundations shall be established by virtue of a deed of foundation or contract (hereinafter: founding act), made in writing.

The founding act shall be enacted by the founder.

The signatures of the founders on the founding act shall be notarized pursuant to the law.

An endowment may also be established through a will. If the testator has not designated an executor, the court in charge of conducting the estate proceedings shall designate an executor.

Rules governing inheritance shall apply to the executor of the will tasked to register the endowment with the Register of Endowments and Foundations.

Other natural and legal entities may join an endowment and a foundation as co-founders, in the manner prescribed by the statute of the endowment and foundation, unless provided otherwise by the founding act. (Article 10, LEF)

A foundation shall acquire the status of a legal entity as of the date of its registration in the Register (Article 29, LEF).

Registration shall be completed on the basis of an application for registration.

An application for registration shall contain: data on the applicant, data to be registered in the Register, application filing date and signature of the applicant.

An application for registration shall be submitted by the authorized representative of the endowment or foundation.

The following documents shall be submitted with the application:

- 1) proof of identity for the founder and authorized representative, i.e. copy of ID or passport or certificate of registration of the legal entity with the relevant register if the founder is a legal entity;
- 2) founding act of the endowment or foundation, with notarized signatures of the founders or the court's final estate ruling, if the endowment is established through a bequest;
- 3) decision on the appointment of a will executor, if the endowment was established through a bequest;
- 4) decision on the appointment of a management body the endowment or foundation;
- 5) statute of the endowment and foundation;
- 6) proof that the funds required for establishing an endowment have been paid up or a certified court evaluator's assessment of the value of the assets consisting of tangible property and rights allocated for the establishment of an endowment;
- 7) other documents required by law;
- 8) proof that administrative taxes have been paid.

(Article 25, LEF)

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

State approval is not required. An endowment and foundation shall acquire the status of a legal entity as of the date of its registration in the Register. (Article 29, LEF).

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

Yes, they have to register to the Register of endowments and foundations, run by the Serbian Business Registry Agency (SBRA) <http://www.apr.gov.rs/>

SBRA does not approve, it only checks if the documents and their contents are in accordance with LEF.

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

According to the Article 30 (LEF), the Register shall contain: the name, the seat and address of endowments and foundations; the purpose for which an endowment or foundation was established, with an indication of whether it was established for public or private benefit purposes; date of establishment of endowments and foundations; the business activity that the endowment and foundation directly engages in as its secondary activity; personal name, residence, domicile and unique personal identification number of the founder, and if the founder is a legal entity – name, registered office, registration code and tax identification number; first and last name, personal identification number or passport number of the members of the Board of Directors; personal name, residence, domicile and unique personal number of the authorized representative of the endowment or foundation; duration of the endowment or foundation; amendments to the statute; data on status changes; data on the assets of an endowment; data on revocation of an operating license of an endowment or foundation; data on liquidation and bankruptcy of an endowment and foundation; number and date of adoption of the decision approving registration.

The Register shall also contain the following data, if these are available, specifically:

- 1) abbreviated name;
- 2) name in foreign language;
- 3) annotations of data relevant for the legal transactions of an endowment and foundation.

In case of registration of data on foreign natural or legal entities, instead of the personal identification number or registration code, the Register shall contain the passport number and country of issue – for foreign nationals, and the number under which that legal entity is registered in the country of domicile and name of that register - for foreign legal entities.

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

Yes. Register is publicly available on the SBRA website.

<http://www.apr.gov.rs/eng/Registers/EndowmentsandFoundations.aspx>

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

There is no founding capital requirement for establishing a foundation.

However, Law prescribes the minimum value of assets required for establishing an endowment is the Serbian Dinar equivalent of EUR 30,000 according to the mean exchange rate of the National Bank of Serbia on the date of establishment, with two exceptions described in the LEF (Article 12).

The capital assets of an endowment may not be decreased below the minimum required value of assets.

The founder may prescribe the minimum value of assets of the endowment in the founding act, which may not be lower than the minimum value of assets prescribed by the law.

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

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

No, it is not mandatory to have a supervisory board. The only mandatory bodies are Board of Directors and Manager (other names may be used for those bodies, such as "managing board" and "director", or similar).

***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?***

Endowments and foundations shall be managed by a board of directors consisting of a minimum of three members. No maximum number is prescribed by the LEF.

A founder may be a member of the board of directors or of other bodies of the endowment or foundation envisaged in its statute.

Unless otherwise prescribed in the founding act and statute, the founder or executor of the will shall appoint the chairman and members of the board of directors of the endowment and foundation.

A member of the board of directors of a public benefit endowment or foundation may not be a minor, a person lacking legal capacity, an employee of that endowment or foundation, a member of other management or supervisory bodies of that endowment or foundation, a person supervising the operations of that endowment and foundation or a person whose interests conflict with the interests of that endowment or foundation.

A member of the board of directors of a private benefit endowment may not be a minor or a person lacking legal capacity, a member of other management or supervisory bodies of that endowment or a person supervising the operation of that endowment. (Article 36, LEF)

Membership in the board of directors shall be terminated upon expiry of the member's term of office, in the case of dismissal, resignation, loss of business capacity, death of the member and in other cases prescribed in the statute. (Article 40, LEF)

Unless otherwise prescribed by the statute, the members of the board of directors shall be appointed for a four-year term, with the possibility of being re-appointed. (Article 38, LEF).

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

The board of directors shall: appoint and dismiss the manager and adopt the statute – unless otherwise prescribed in the founding act; adopt a financial plan and final accounts; decide on the use of the endowment's and foundation's assets; adopt rules of procedure; perform other tasks pursuant to the law, the founding act and statute.

The board of directors shall also make decisions concerning the change of goals, the endowment's and foundation's status changes – if this is stipulated in its founding act, as well as concerning the dissolution of the endowment and foundation and the distribution of the remaining assets – unless the founding act provides that the founder shall deliberate on these issues. (Article 37)

***What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?***

The rights of the founders are defined by the LEF. Founder may be a member of the Board of directors and thus participate in the work and decision making of the foundation and/or endowment. Rights of founders are regulated in details by the founding act.

LEF prescribes that founders make decisions concerning the change of goals, the endowment's and foundation's status changes – if this is stipulated in its founding act. Concerning the dissolution of the endowment and foundation and the distribution of the remaining assets – founders make decision, except when the founding act prescribes differently. (Article37, LEF)

The founders may not transfer their right to participate in the management of a public benefit endowment or foundation and their other rights related to endowments and foundations to their heirs. (Article 16, ĆEF)

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

There is no reference to the rights of beneficiaries in the LEF

***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?***

A member of the board of directors of a public benefit endowment or foundation may not make decisions on ownership-related issues if either he, or his spouse or common-law partner, or lineal relatives by blood or collateral relatives by blood up to the third degree of kinship, or in-law kinship up to the second degree of kinship, regardless of whether the marriage has been dissolved or not, are an interested party, or on ownership issues related to a legal entity which he controls or in which he has an economic interest.

It shall not be deemed to be a conflict of interest when a spouse or lineal relative by blood or collateral relative up to the third degree of kinship is a member of the board of directors of a public benefit endowment or foundation established for the purpose of ensuring the independent living of persons with disabilities that use day care centers, assisted living and personal assistance services. (Article 39. LEF)

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

Essential duties of the Director and participation in decision making are prescribed by the LEF (Article 41, see point 8. below):

Director can not be a member of the board of directors, neither can other staff. Participation of all employees (including Director) in decision making bodies is regulated by the internal documents and policies of each foundation/endowments, providing they are in accordance with the Statute.

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

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

Representation is defined by the LEF: The Director of an endowment or foundation shall: represent the endowment and foundation, be accountable for the legitimacy of the work of the endowment or foundation, conduct its operations, manage the affairs of the endowment and foundation in accordance with the decisions of the board of directors, propose a financial plan and final accounts to the board of directors and perform other tasks in accordance with the law and statute. (Article 41, LEF)

In addition to the Director, who is the legal representative, the foundation/endowment can have one or more persons who are authorized to represent, by the Statute or the Power of Attorney. However, these persons do not represent the body (authority) of the endowment/foundation: they are not directors (endowments and foundations may have only one director); they are not responsible for the legality of endowments and foundations, nor can they perform other tasks that are legally prescribed for the Director.

## 9. Liability of the foundation and its organs

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

In discharging their duties, the members of the board of directors and director shall act with due diligence.

The members of the board of directors and the director shall act with due diligence when rendering decisions on the use of the assets of the foundation, and on decisions related to the business activities conducted by the endowment or foundation. (Article 42. LEF)

Law does not make special reference on paid or unpaid board members, however it is clear that board member is an unpaid (voluntary) position, from the following article (47):

The property of endowments and foundations shall only be used for the achievement of the goals established in their founding act and statute. The property of endowments and foundations may not be distributed among the founders, the members of the management bodies, employees and persons affiliated with them.

However, the ban on distribution of assets does not include the provision of appropriate rewards and coverage of reasonable expenses incurred in connection with the realization of the goals of the endowment and foundation (travel expenses, per diem, etc...), agreed obligations and payment of wages to employees.

### ***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?***

Members of the board of directors and director shall be held jointly and severally liable with their assets for any damage incurred to the endowment and foundation as a result of their decision, if that decision was made through gross negligence and with intent to cause damage, unless their dissent with that decision was recorded in the minutes from the board of director’s meeting, or if they did not participate in taking that decision. (Article 43,LEF)

### ***What is the liability of executive staff?***

As for Director, same as above.

As for the executive staff, depends on the internal acts and regulations of each foundation/endowment.

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

No one can go below the standard prescribed by the Law. However, it is possible to increase the requirements for standard.

### ***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).					Not applicable



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			

Endowments and foundations shall be liable for obligations arising from legal transactions with their entire assets. As an exception to this rule, for the legal commitments made by the foundation/endowments, the liable are founder, director and board member, if they used assets of the endowment/foundation as if it was their own (private), or misused endowment/foundation for any illegal or fraudulent purposes, in which case their responsibility is joint and unlimited.

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

Public benefit endowments and foundations may also acquire income by engaging in direct business activity, provided that:

- 1) the activity is related to the goals of the endowment or foundation;
- 2) the activity is envisaged by the statute;
- 3) the activity is a secondary activity of the endowment or foundation;
- 4) the activity is registered in the Register.

The legal transactions that the endowment and foundation stipulates in violation of the provisions set forth in paragraph 1 of this Article are valid, unless the third party to the transaction knew or should have known about non-compliance with paragraph 1 of this Article at the time when the transaction was concluded.

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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.

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

Yes. Endowments and foundations may acquire property through voluntary contributions, gifts, donations, financial subsidies, bequests, **interests on shares**, rents, copyrights, **dividends** and other income generated in a legally permissible manner. (Article 45, LEF)

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

There are no rules/limitations in other civil/tax laws, however it can be regulated by the statutes of the foundation.

The property of foundations shall only be used for the achievement of the goals established in their founding act and statute. The property of foundations may not be distributed among the founders, the members of the management bodies, employees and persons affiliated with them.

An affiliated person is the founder's spouse or extramarital partner, or straight-line blood relative or side line relative by blood up to the third degree of kinship, or in-law kinship up to the second degree of kinship, regardless of whether the marriage has been dissolved or not.

The provision under paragraph 2 of this Article shall not apply to the granting of appropriate awards and reimbursement of justified costs incurred in connection with the achievement of the goals of the foundations, (travel costs, per diems, etc.), commitments arising from contracts and salaries of employees. (Article 47. LEF)

Investments abroad are not allowed.

### **13. Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income? (recoverable grants; low interest loans; equities)**

Yes, however this area is still not very developed in Serbia. Foundations are not allowed to provide low interest loans (micro financing).

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

The board of directors makes decisions concerning the change of goals, the endowment's and foundation's status changes – if this is stipulated in its founding act, as well as concerning the dissolution of the endowment and foundation and the distribution of the remaining assets – unless the founding act provides that the founder shall deliberate on these issues. (Article 37)

According to LEF, all changes need to be submitted to the SBRA.

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

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

- annual financial report YES
- annual activity report YES
- public benefit/activity report, N/A
- tax report/tax return, YES

- other reports e.g. on 1% schemes N/A

***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)?***

Financial reports are submitted to the supervisory authority, SBRA:

Foundations shall deliver their annual accounts to the Serbian Business Registers Agency (SBRA), in accordance with the law governing accounting and auditing (Article 8, LEF).

SBRA is in charge of keeping the registers prescribed by law, as unique, integrated, electronic databases.

As for tax reports, when they are submitted to the tax authority, they relate to things like employees and taxes/benefits on their salaries, VAT exemption, tax on earned income...

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

Reports are checked by the SBRA in terms of numerical and logical control.

Tax authority is in charge of supervising financial reports of foundations and endowments.

***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)***

Foundations shall make their annual report and annual accounts available to the public, via internet, print or in other appropriate manner. (Article 8, LEF)

A fine ranging from 50,000 to 200,000 dinars shall be levied on endowments and foundations if they do not make their report on the work available to public (Article 63, LEF)

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

External audit is not required by Law for foundations/endowments; The Law on Audit recognizes two situations when foundation/endowment may be subject to the statutory audit (see paragraph below).

Most foundations and endowments in Serbia are categorized as micro legal entities and thus are not subject to the statutory audit of financial statements. Foundation/endowment is subject to statutory audit of financial statements in case they are categorized as medium or large legal entities or in case as small legal entities they make the operating income over 4,400,000 euros (in its dinar equivalent) for commercial activities in the previous year, which may happen only in an extremely small number of cases.

Auditing projects and financial statements at the request of the endowments/foundations or funder represents voluntary audits in Serbia.

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

Pursuant to Article 22, of the Law on Auditing, audits of financial statements are conducted through appropriate application of this law and other acts, which means that it can be conducted by auditing companies and independent licensed auditors in the way and under conditions stipulated by this Law.

There are requirements and guidelines regarding international and national auditing agencies and standards. More information could be found on the website of the Chamber of Authorized Auditors, <http://www.kor.rs/>

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

***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 implementation of this law is supervised by the Ministry of Culture. (Article 61, LEF)

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

No, the Ministry of Culture does not review reports, nor does it make inquiries. No specific inspection is prescribed, except in cases related to tax reporting, financial management and similar, which is not carried out by the Ministry of Culture, but by relevant tax and similar authorities.

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

No. Board of Directors should make decisions according to the Statute and LEF. However, SBRA controls the regularity of the statutory changes (not in terms of approval, but in terms of accordance with the LEF).

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

No such requirement exists in LEF.

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

Penalty provisions are prescribed by Articles 62-65. LEF

A pecuniary fine ranging from RSD 300,000 to RSD 600,000 shall be levied against an endowment or foundation that directly engages in commercial activities that are not related to the basic goals of the endowment or foundation or that are not envisaged by the statute (Article 45, para. 1, item 1) and 2)).

A pecuniary fine ranging from RSD 30,000 to RSD 100,000 shall be levied against the responsible person of the endowment or foundation for committing a commercial offence under para. 1 of this Article. (Art. 62. LEF)

A pecuniary fine ranging from RSD 150,000 to RSD 400,000 shall be levied against an endowment or foundation that:

- 1) begins activity before registering with the Register
- 2) engages in commercial activity as its main activity
- 3) uses its assets for purposes other than the achievement of its goals

A pecuniary fine ranging from RSD 10,000 to RSD 20,000 shall be levied against the responsible person of an endowment or foundation for misdemeanors under paragraph 1 of this Article. (Art.63.LEF)

A pecuniary fine ranging from RSD 50,000 to RSD 200,000 shall be levied against an endowment or foundation that:

- 1) fails to make its business report available to the public
- 2) fails to use its name or abbreviated name in the form entered into the Register
- 3) fails to report any changes of registered data to the Register within 30 days

A pecuniary fine ranging from RSD 7,000 to RSD 15,000 shall be levied against the responsible person of the endowment or foundation for misdemeanors under para. 1 of this Article. (Article 64, LEF)

A pecuniary fine ranging from RSD 50,000 to RSD 150,000 shall be levied against the person managing the representative office of a foreign foundation or endowment for failing to apply for registration with the Register of Foreign Endowments and Foundations within six month from the effective date of this law. (Art.65. LEF)

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

Following strike-off from the Register, endowments and foundations shall lose the status of legal entity.

The strike-off from the Register shall be performed:

- 1) when the competent authority of an endowment or foundation or its founder, if so envisaged by the founding act or statute, has rendered a decision to dissolve the endowment and foundation;
- 2) upon termination of bankruptcy proceedings;
- 3) if the endowment and foundation's operating license has been revoked;
- 4) if a status change has been made pursuant to this Law resulting in the dissolution of an endowment and foundation;
- 5) if the decision on the registration of an endowment and foundation in the Register has been invalidated;
- 6) in other cases stipulated by the founding act or statute of the endowment and foundation.

In the cases set forth in paragraph 2, item 1), 3), 5) and 6) of this Article, the strike-off from the Registers shall be completed after the termination of liquidation or bankruptcy.

An annotation on the completion of the liquidation or bankruptcy proceeding shall be entered into the Register.

A Registrar's decision on strike-off from the Register shall be final and may not be appealed in an administrative proceeding.

The decision under paragraph 5 of this Article shall be submitted to the Ministry without delay. (Article 51, LEF)

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

A foreign endowment or foundation shall mean a legal entity without membership with registered office in another country, established in accordance with the laws and regulations of that country for the purpose of pursuing goals deemed for public benefit that are not prohibited by the constitution and law (Article 56, LEF).

A representative office of a foreign endowment or foundation may engage in activity in the Republic of Serbia after registering with the Register of Representative Offices of Foreign Endowments and Foundations. (Article 57, LEF)

**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?**

Yes, grant making, operating and fundraising are allowed. However, there are burdensome administrative procedures for some of these activities abroad (grant-making for example, but not fundraising). It is not allowed to invest abroad.

**II. Tax treatment of the foundation**

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

The funds acquired by a foundation, (voluntary contributions, gifts, donations, grants, bequests and similar) are exempt from the payment of taxes levied under the law. (Article 7, LEF)

According to the Article 21, Paragraph 1 (tax exemptions) of the **Property Tax Law** which in its Items 5) and 5a) stipulates that gift tax is not to be paid by:

*5) a foundation on property inherited or received as gift, which serves exclusively for the general purposes in the aid of which the foundations is established;*

*5a) a foundation or an association established with the general purpose in the context of the law regulating foundations, and registered in compliance with the law – on property inherited or received as gift, which serves exclusively for the purposes in the aid of which foundations or associations are established;*

Since inheritance and gift tax (2,5%) is paid on the basis of the solution by the competent tax office and upon the tax returns filed by the taxpayer, it is necessary to point out the following:

If the amount of money, rights or things received by CSOs in the form of a donation or a similar form of voluntary contribution from the same person is lower than 100.000 dinars during the same calendar year, pursuant to Article 14, Paragraph 6, Item 3 of this Law there is a tax exemption and the foundation, endowment and association are not obliged to file tax returns having in mind that they are not subject to taxation. If the amount of the donation or some other form of voluntary contribution given for the general purpose in money, things or rights is received by a foundation, endowment or association for statutory purposes in the aid of which CSOs were established, is higher than 100.000 dinars from the same person during one calendar year, then CSOs are obliged to file tax returns asking to be exempted from tax law pursuant to Article 21, Paragraph 1, Items 5) or 5a). If the conditions for tax exemption have been fulfilled in case of the property received by a foundation, endowment or association for achieving a general purpose and is used or will be used for those purposes, the competent tax office will exempted those CSOs from paying gift tax. **Moreover, tax returns on form PPI-3 are filed within 30 days of the creation of tax obligation.**

Apart from tax exemption on donations, voluntary contributions and gifts received with the aim of realizing general-purpose activities, CSOs are also exempted from paying gift tax as the recipients of donations according to the international agreement closed by the Republic of Serbia when that agreement stipulates that no gift tax will be paid on money, things or rights received from the Republic of Serbia, the autonomous province or the local self-government unit. This tax exemption is realized in the same way as it has been mentioned in the above text.

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

As mentioned above, if the conditions for tax exemption have been fulfilled in case of the property received by a foundation, endowment or association for achieving a general purpose and is used or will be used for those purposes, the competent tax office will exempt those CSOs from paying gift tax. **Tax returns on form PPI-3 are filed within 30 days of the creation of tax obligation.**

The PPI-3 form requires to list the legal basis for the tax exemption (according to the Property tax Law, Article 21) and to provide proofs, although it does not specify what are the proofs (in practice, that would be the statute and the contract related to specific donation).

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

Yes. It is regulated by the **Regulation on Criteria of Financing and Co-financing CSOs Activities from the State Budget, Art.9, par.** Mutual rights, obligations and liabilities of parties, are prescribed by contract, and especially: object of the program, period and deadline in which program is implemented, specific obligations of the parties, amount of funds approved and ways of providing and transfer of funds, guarantee instruments in case of improper spending of funds and non-fulfillment of contract obligations

It has been introduced as a practice recently that funds provided from the State budget need to be audited by the independent licensed auditors. It is stipulated in the contract and funds are provided for it.

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

State does not require specific reporting on donors and beneficiaries, however the public benefit endowments and foundations are obliged by LEF to make their annual report and annual accounts available to the public, via internet, print or in other appropriate manner. Although there is no format for the annual report, it is a practice to have both information included in the reports (on donors and beneficiaries)

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

LEF in its Article 50 prescribes that "endowments and foundations shall keep business books, draft and submit financial statements in accordance with regulations governing accounting and auditing".

The new Law on accounting (adopted in 2013, coming into force in 2014) simplified accounting procedures for CSOs in general (non profit organizations, including foundations). Starting from drafting the regular annual financial statement for 2014, CSOs will keep books and present financial statements in the special chart of accounting and forms of financial statements for so called "other" legal entities.

Starting from 2014 CSOs will regardless of their size, draft their business books and financial statements according to the special act for recognizing, evaluation, presentation and making public positions in the financial statements in compliance with Article 22 of the Law on Accounting. Regardless of their size, CSOs will be able to decide whether to apply IFRS for small and medium legal entities with the condition of permanent application of these standards, or not to change the basis for drafting financial statements, although it is not realistic to expect that CSOs will opt for these standards

According to the new rules of categorization the largest number of CSOs will be classified as micro legal entities (a micro legal entity is the one satisfying any two of three criteria: fewer than 10 employees, operating income lower than 700.000 euros, average value of total assets lower than 350.000 euros) and accordingly will be obliged to draft only the balance sheet and the income statement (as well as the statistics annex).

It is of particular importance for CSOs (including foundations) that the regulations of 15 of the old Law (chart of accounting) cease to be valid on 30<sup>th</sup> December 2014, which means that the financial report for 2014 (on special forms for non-profit organizations) will be made on the basis of the accounting sheets and turnover according to the new chart of accounts. CSOs will be able to evidence according to the old chart of accounts for business subjects until 30<sup>th</sup> December 2014, when they will have to switch to the new chart of accounting and according to the final list made in that way to submit the financial statements on the new forms.

**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.**

Yes, it is prescribed in the Article 3 of LEF:

For the purposes of this Law, activities undertaken for public benefit are activities focusing on the promotion and protection of human, civil and minority rights, promotion of democratic values, European integration and mutual understanding, sustainable development, regional development, gender equality, improvement of social and health protection, promotion and advancement of culture and public information, promotion and popularization of science, education, arts and amateur sport, advancement of the status of persons with disabilities, child and youth care, assistance to the elderly, environmental protection, combating corruption, consumer protection, animal protection, humanitarian and other activities that endowments and foundations undertake with the aim of achieving public benefit purposes, i.e. interests.

Endowments and foundations shall be deemed to also engage in public benefit activities under paragraph 1 of this Article when their activities target only individuals that belong to a designated professional, national, language, cultural, religious and gender group, or individuals living within a designated geographic area.

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

No, there is no such definition in the tax laws. Public benefit status is defined in the Law on Associations and Law on Endowments & Associations, as "common good", as well as in different laws. For example, in the Law on churches and religious communities, it is defined in general as "common good". In the Law on youth, it is defined as "social well-being". In the Law on Culture, it is defined as "common interest in culture", etc.

According to the Corporate Profit Tax Law:

Expenditures for health care, cultural, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes, including contributions to the social security institutions established in compliance with the social security law, shall be recognized as expenditure amounting to not more than 5% of the total revenue. The mentioned expenditures shall be recognized as expenditures only if they were made to the entities registered for that purpose by special provisions according to which the mentioned contributions should be used exclusively for performing those duties (Article 15, Paragraphs 2 and 3 of this Law);



The advantage of the existing legal solution is a substantial tax-recognized percent, the fact that the basis for the total revenues are the basis for the recognized expenditures and not profits. Another advantage is that all forms of giving are recognized (in money, goods, services and rights).

However, the disadvantage is the narrow scope of activities of public interest and its consequence is that the activities not listed in Article 15, Paragraph 1 of this Law are not recognized as tax expenditures – for example, contributions for protection of human rights, building a legal state, anti-corruption campaign, animal protection or sustainable development will not be recognized as expenditures in tax statements of legal entities giving them, which may have a discouraging effect.

The other disadvantage is the fact that the expenditure for social service providing is recognized as expenditure, only if the activities are performed by social security institutions (state), and not by associations and/or foundations performing those activities.

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

Public benefit purpose <sup>2</sup>	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			

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<sup>2</sup> Tentative list

(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				
(12) Public safety and accident prevention (including fire and work safety and disaster response)		X		
(13) International understanding and tolerance				
(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		
Other – please add other purposes listed in your country’s legislation				

**9. Support of “the public at large”**

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

No. Endowments and foundations shall be deemed to also engage in public benefit activities under paragraph 1 of this Article when their activities target only individuals that belong to a designated professional, national, language, cultural, religious and gender group, or individuals living within a designated geographic area.( Art.3. LEF)

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

N/A

***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

***Does a tax-exempt foundation generally have to follow a “non-distribution constraint”<sup>3</sup> which forbids any financial support of the foundation board, staff, etc.?***

Yes, there are non-distribution constraints.

The property of foundations may not be distributed among the founders, the members of the management bodies, employees and persons affiliated with them.

It shall not apply to the granting of appropriate awards and reimbursement of justified costs incurred in connection with the achievement of the goals of the foundations, (travel costs, per diems, etc.), commitments arising from contracts and salaries of employees.

An affiliated person is the founder’s spouse or extramarital partner, or lineal relatives by blood or side-lines relatives by blood up to the third degree of kinship, or in-law kinship up to the second degree of kinship, regardless of whether the marriage has been dissolved or not.

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

The remaining property of endowments and foundations shall be distributed as stipulated in the founding act or statute.

The property of public benefit endowments and foundations may only be distributed to other endowments, foundations or associations established for the achievement of the same or similar public interest purposes.

The decision on the distribution of the remaining property of endowments and foundations shall be taken by the management body, unless otherwise prescribed by the founding act or statute.

If the management body or other body or person designated by the statute fails to render a decision on the distribution of property, the decision on the distribution of the remaining property shall be taken by the competent local government authority on whose territory the endowment or foundation has its registered office. (Article 55, LEF)

## 11. “Altruistic” Element

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

Yes, it is allowed, however in a very limited way (costs of travel, meals and accommodation, per diem, similar). As already mentioned: the property of foundations may not be distributed among the founders, the members of the management bodies, employees and persons affiliated with them. That shall not apply to the granting of appropriate awards and reimbursement of justified costs incurred in connection with the achievement of the goals of the endowments and foundations, (travel costs, per diems, etc.), commitments arising from contracts and salaries of employees (Article 47 LEF)

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<sup>3</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.

**Does tax law allow a donor/founder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)**

It is not regulated by any tax law. Usually, it is regulated by internal rules of the foundation.

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

No.

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

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

**12. Hybrid Structures (elements of private benefit in public benefit foundations)**

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

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

					X
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**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

***Are foundations allowed to spend down their capital?***

Foundations do not have a capital. Endowments have minimal capital prescribed by the LEF. If the value of the basic capital falls below the minimum prescribed by the Law, and the endowment does not initiate the liquidation process, the endowment changes its legal status and transforms into the foundation, in accordance with the decision of the relevant endowment body.

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

Yes, they are allowed. The minimum length of time is not prescribed by law.

Foundations shall be established for an unlimited period of time, unless the founding act stipulates that they shall last until a certain date, until the occurrence of an event or the achievement of a goal. Unless otherwise stipulated in their Articles of Associations foundations are established for an unlimited period of time. (Article 9.LEF)

***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)?***

There is no requirement by any Law for foundation to spend its income within certain period of time.

Income is defined in the Article 44 of LEF: Endowments and foundations may acquire property through voluntary contributions, gifts, donations, financial subsidies, bequests, interests on shares, rents, copyrights, dividends and other income generated in a legally permissible manner.

**d) Would donations/contributions designated as being for building up the endowment be included in /excluded from the income to be spent**

They should be excluded from the income to be spent.

**e) What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?**

Any expenditure made by the foundation, if in accordance with the Statute, the Law and donor requirements will count.

**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”?**

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

Not prescribed by any Law

	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?**

Not prescribed by any Law

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

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

No.

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

Cross-border grants are based on contracts between the foundation and the grantee. The foundation has to pay in foreign currency; however it is not required to have its own foreign bank account. The

bank takes care of the transfer, and each bank has its own procedures and regulations for these payments. Banks require a proof for the money transfer (most common, a signed contract).

## 16. Income tax treatment

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

#### ***Grants and donations***

The Property Tax Law from 2010 abolished gift tax on donations, grants, voluntary contributions, presents and similar unencumbered contributions which CSOs receive as financial aid without obligation to return and with the obligation of using them for specific general purposes for which they were established.

Since inheritance and gift tax (2.5%) is paid on the basis of the solution by the competent tax office and upon the tax returns filed by the taxpayer, it is necessary to point out the following:

If the amount of money, rights or things received by CSOs in the form of a donation or a similar form of voluntary contribution from the same person is lower than 100.000 dinars during the same calendar year, pursuant to Article 14, Paragraph 6, Item 3 of this Law there is a tax exemption and the foundation, endowment and association are not obliged to file tax returns having in mind that they are not subject to taxation. If the amount of the donation or some other form of voluntary contribution given for the general purpose in money, things or rights is received by a foundation, endowment or association for statutory purposes in the aid of which CSOs were established, is higher than 100.000 dinars from the same person during one calendar year, then CSOs are obliged to file tax returns asking to be exempted from tax law pursuant to Article 21, Paragraph 1, Items 5) or 5a). If the conditions for tax exemption have been fulfilled in case of the property received by a foundation, endowment or association for achieving a general purpose and is used or will be used for those purposes, the competent tax office will exempt those CSOs from paying gift tax. Moreover, tax returns on form PPI-3 are filed within 30 days of the creation of tax obligation.

Apart from tax exemption on donations, voluntary contributions and gifts received with the aim of realizing general-purpose activities, CSOs are also exempted from paying gift tax as the recipients of donations according to the international agreement closed by the Republic of Serbia when that agreement stipulates that no gift tax will be paid on money, things or rights received from the Republic of Serbia, the autonomous province or the local self-government unit. This tax exemption is realized in the same way as it has been mentioned in the above text.

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

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

#### ***Economic activities related/unrelated)***

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



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

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

When non-profit organization has made no income in the market, it is not a payer of profit tax and it is not obliged to submit a blank tax statement and tax returns to the competent tax office. However, income statement and a statement that the organization has not made any income in the market must be submitted to the competent tax office.

Corporate Profit Tax Law ( Article 44) exempts foundations/endowments (CSOs in general) from taxation on profit foundation made performing some economic activities if:

- 1) income from economic activities did not exceed a given threshold of 400,000 dinars (or EUR 3,500);
- 2) earnings were not distributed to the founders, employees, members of the management board, or any affiliated person thereof;
- 3) salaries for the members of the management board and employees do not exceed double the average salary paid by organizations engaged in the same activities in the commercial sector;
- 4) all earned profit was used to further the objectives for which the organization was created; and
- 5) the NGO's economic activities do not give rise to unfair competition with the private business sector, as defined by the antitrust law.

However, any nonprofit organization which fulfills all these conditions set out in Article 44 of this Law, although exempted from profit tax, is obliged to submit tax statement, tax returns and appropriate evidence that it fulfills the stipulated conditions.

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

They are treated as income deriving from the commercial activity and are not tax exempted.

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

The largest number of CSOs are not payers of VAT because they do not perform the commercial activity of turnover of goods and services with compensation or because they perform a commercial activity making profit, but the total turnover of goods and services with commercial compensation is below the limit for mandatory evidencing in VAT, amounting to 8.000.000 dinars. Namely, pursuant to Article 3 of the Value Added Tax Law, the subject of the VAT shall be the following: 1) delivery of goods and provision of services carried out by a taxpayer in the Republic for a charge, in the conduct of its business; 2) import of goods into the Republic. In most cases CSOs are not obliged to calculate and pay VAT, they do not file tax returns for VAT, they do not keep records of VAT, they are not entitled to the previous tax and are not obliged to give receipts.

The legal entity which is not the payer of VAT has the same status as the final user, and this refers to NGOs as well. When buying all goods and services in the market, a non-government organization bears VAT as the expenditure of business operations.

Foundations become taxpayers if they have the turnover within a commercial or any other activity with the aim of gaining income and if within 12 previous months they have gained the total turnover of goods and services higher than 8.000.000 dinars. They have all the rights and obligations stipulated by the Law.

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

In Serbia there's no any exemption from property tax on the real estate for foundations and similar CSOs performing activities of public interest.

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

Yes, like with any other legal entity. No exemptions.

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

According to the Property Tax Law, Article 4 CSOs represent other legal entities which keep business books and as such are payers of property tax on real estate.

**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?

A foreign foundation can register its branch in Serbia, in which case there is no difference in treating domestic and foreign foundations. There are specific forms provided by tax administration and it requires documents providing evidence that income is aimed at public purpose. It does not specify which document (probably Statute, contract, other).

**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?**

N/A

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

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

System of tax deduction.

#### **2. Tax treatment of individual donors**

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

Individual charitable giving is not recognized by the Law as the ground for tax deduction.

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

Individual charitable giving is not recognized by the Law as the ground for tax deduction.

#### **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?***

Expenditures for health care, cultural, educational, scientific, humanitarian, religious, environmental protection and sport-related purposes, including contributions to the social security institutions established in compliance with the social security law, shall be recognized as expenditure amounting to not more than **5% of the total revenue**. The mentioned expenditures shall be recognized as expenditures only if they were made to the persons registered for that purpose by special provisions according to which the mentioned contributions should be used exclusively for performing those duties (Corporate Profit Tax Law, Article 15)

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

All forms of giving are recognized (in money, goods, services and rights).

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

No tax incentives.

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

Not existing in Serbia

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

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

**6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?**

- a) ***What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?***

If it is a foundation as a donor, there are no tax benefits, only tax exemptions on income they receive. For individuals - no tax benefits.

If it is corporate donor, than as already mentioned above

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

- a) ***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 clear question.

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

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

**If donation is given to the individual, these are the incomes which are exempted from taxation:**

Article 9 of this Law lists all the incomes exempted from the taxable incomes and for which no taxes and contributions are paid. It is extremely important for the work of the non-government sector that no tax is paid on the incomes of citizens or social security contributions on the incomes realized on the following grounds:

- organized social and humanitarian aid;
- compensation for foster families and compensation for keeping users in foster families;
- compensation for volunteering costs made by a volunteer in with the law regulating volunteering work;
- monetary assistance to physical persons for medical treatment in the country or abroad in the amount of actual treatment expenses documented by receipts of the health institution conducting the treatment.

## 2. Legal entities

Same as already explained for foundations (if a legal entity is a non-profit body).

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

Already explained above when dealing with the tax treatment of foundations.

## 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)?

As already explained above (gift tax). It should be stressed that grants/donations are treated as gifts (Property Tax Law).

In reference to gift tax, the most significant regulation is Property Tax Law, Article 21, Paragraph 1) which in its Items 5) and 5a) stipulates that gift tax is not to be paid by:

*5) a foundation on property inherited or received as gift, which serves exclusively for the general purposes in the aid of which the foundations is established;*

*5a) an endowment or an association established with the general purpose in the context of the law regulating foundations, and registered in compliance with the law – on property inherited or received as gift, which serves exclusively for the purposes in the aid of which endowments or associations are established;*

If the amount of money, rights or things received by CSOs in the form of a donation or a similar form of voluntary contribution **from the same person** is lower than 100.000 dinars **during the same calendar year**, pursuant to Article 14, Paragraph 6, Item 3 of the Property Tax Law there is a tax exemption and the CSOs are not obliged to file tax returns having in mind that they are not subject to taxation. If that amount is higher than 100.000 dinars, then CSOs are obliged to file tax returns asking to be exempted from tax law pursuant to Property Tax Law, Article 21, Paragraph 1, Items 5) or 5a). If the conditions for tax exemption have been fulfilled in case of the property received by a CSO for achieving a general purpose and is used or will be used for those purposes, the competent tax office will exempted those CSOs from paying gift tax. Moreover, tax returns on form PPI-3 are filed within 30 days of the creation of tax obligation.

The funds acquired by an endowment established for public benefit purposes and a foundation, (voluntary contributions, gifts, donations, grants, bequests and similar) are exempt from the payment of taxes levied under the law. (Law on Endowments and Foundations, Article 7)

### 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?

See above

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

See above

**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?**

N/A

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

Not clear question.

**VI. Trends and developments**

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

No such discussions going on.

**2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws / rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)?**

A LAW ON THE PREVENTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM has been adopted in 2009.

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

Yes. Office for cooperation with civil society has initiated a process of designing the National strategy for enabling environment for CSO development, which will include among others, legal and fiscal environment. The first event will happen in February 2014. In the last several years, TRAG foundation has been leading advocacy efforts related to these issues (notably, adoption of the Law on Endowments and Foundations was result of these activities). Furthermore, together with Civic Initiatives (association), TRAG worked on improvement of the tax treatment of CSOs in general. There are ongoing efforts to standardized the definition of "public benefit" in the tax laws.

**4. Public fundraising**

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

No.

### **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.

Prof. Dr Dragan Golubović, non profit law expert, dragan.golubovic2@gmail.com

Mia Vukojević, TRAG Foundation, Executive Director, mia@tragfondacija.org

Dr Milan Negovanovic, tax expert, Milan.Negovanovic@privsav.rs

### **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

**Vodič za primenu Zakona o udruženjima**, Civic Initiatives, 2009

**"Priručnik o računovodstvenom, poreskom i carinskom poslovanju NVO u Srbiji"**, Civic Initiatives, 2007

<http://www.gradjanske.org/admin/download/files/cms/attach?id=88>

**"Vodič za primenu Zakona o zadužbinama i fondacijama"**, TRAG Foundation (ex BCIF), 2011

<http://www.apr.gov.rs/Portals/0/zaduzbineiFondacije/Vodic%20za%20primenu%20Zakona%20o%20zadu%C5%BEbinama%20i%20fondacijama.pdf>

### **Selected law texts online:**

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

**Law on Endowments and Foundations** "RS Official Gazette" no. 88/2010, **Law on Endowments and foundations**

**Law on Associations** "RS Official Gazette" no. 51/2009

**Law on Associations**

**Corporate Profit Tax Law** "RS Official Gazette" Nos. 25/2001, 80/2002, 80/2002, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013 and 108/2013)

Serbian version available at:

[http://www.paragraf.rs/propisi/zakon\\_o\\_porezu\\_na\\_dobit\\_pravnih\\_lica.html](http://www.paragraf.rs/propisi/zakon_o_porezu_na_dobit_pravnih_lica.html)

**The Property Tax Law** "RS Official Gazette" Nos. 26/01, 45/02, FRY Official Gazette, No. 42/02, RS Official Gazette, Nos. 80/02, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 - decision US an 47/2013)

Serbian version available at:

[http://www.paragraf.rs/propisi/zakon\\_o\\_porezima\\_na\\_imovinu.html](http://www.paragraf.rs/propisi/zakon_o_porezima_na_imovinu.html)

**Value Added Tax law** "RS Official Gazette" Nos. 84/2004, 86/2004, 61/2005, 61/2007, 93/2012 i 108/2013)

Serbian version available at:

[http://paragraf.rs/propisi/zakon\\_o\\_porezu\\_na\\_dodatu\\_vrednost.html](http://paragraf.rs/propisi/zakon_o_porezu_na_dodatu_vrednost.html)

**Law on Auditing** "RS Official Gazette" no. 62/2013

Serbian version available at:

<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2013/2270-13Lat.pdf>

**Law on Accounting** "RS Official Gazette" no. 62/2013

Serbian version available at:

<http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2013/2276-13Lat.pdf>

**Regulation on Criteria of Financing and Co-financing CSOs Activities from the State Budget.**

"RS Official Gazette" nos. 8/2012 i 94/2013,

Serbian version available at:

<http://civilnodrustvo.gov.rs/en/documents/republic-of-serbia-legislation/>

**Law on the prevention of money laundering and the financing of terrorism**

[http://www.nbs.rs/export/sites/default/internet/english/20/laws/law\\_money\\_laundering.pdf](http://www.nbs.rs/export/sites/default/internet/english/20/laws/law_money_laundering.pdf)



### **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