

EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

ALBANIA – 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)?

Foundations are private law legal persons, which are regulated by articles 54 – 63 of the Albanian Civil Code (“ACC”) as well as by Law no.8788 of 7 May 2001 “On Non-Profit Organisations” as amended, (“NPO Law”), and Law no.8789 of 7 May 2001 “On the Registration of Non-Profit Organisations” (“NPO Reg. Law”). The ACC provides in article 54 a definition for foundations as follows: “A foundation is a non-membership legal person whose object is the attainment of a lawful goal through the disposition of its own assets for the benefit of and in the interest of the public.”

Foundations are governed by civil law, have own legal personality and can be established by one or more natural or legal persons either *inter vivos* or by way of a will.

Foundations in Albania can be established only “for the benefit of and in the interest of the public”. Activities for the benefit of and in the interest of the public imply, among others, activities which relate to and encourage as well as support the development of spiritual and humanitarian values, protection of human life and health, provision of public and social services, provision of assistance in case of catastrophes, protection of the environment, development, and encouragement of cultural, historical, educational, and scientific values, as well as the promotion of democracy.

2. What purposes can foundations pursue?

In general, the purpose of a foundation has to be lawful and for the benefit of and/or in the interest of the public (Art.54 of ACC). As such, private-benefit foundations are not recognised by the Albanian legislation.

However, Albanian legislation on VAT distinguishes, for VAT exemption purposes, between foundations in general and foundations having the status of a “non-profit organisation for public benefit”.. Thus in order to be VAT exempted, a foundation must pursue primarily activities in the field of education, protection of human health, and in the field economic development (poverty relief support for people in need. (Art.1.1 of Government Decision no.1679 of 24 December 2008 “On the Criteria and Procedures for the Granting of the Status of Non-Profit Organisations for Public Benefit” (“Decision on PBS”)).

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?

If a foundation is created *inter vivos*, the ACC requires that the foundation deed be made in writing in the form of a public deed by a notary public. However, if a foundation is established by way of a will, the legally required form for a testament is accepted as a foundation deed (Art.55 of the ACC).

Details required to be contained in the foundation deed include the foundation’s goal and object of activities, name of foundation and identity of the founder(s), whether the foundation is established

for a limited or unlimited period of time, as well as the source and the value of assets necessary for the fulfilment of the foundation's goals.

The foundation's statutes or charter is the main document setting out in detail the internal organisational structure, the organisation's governing and executive bodies and their competencies, the procedure for amending the statutes and the foundation deed, as well as the procedure for the transformation or liquidation of the organisation. Both the foundation deed and the statutes have to be signed by the founder or founders and be made through the notarial deed before a notary public.

The establishment (including registration) of a foundation in Albania is finally effected through decision of a sole judge in the Court of First Instance in the Judicial District of Tirana. Registration of foundations, for the purposes of gaining legal personality, is centralised and takes place only at this court (Arts.4 – 5 of NPO Reg.Law).

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?)

No State approval is required for the establishment or registration of a foundation. However, for the obtainment of the public benefit status for VAT exemption purposes, the approval by the Minister of Finances is required.

Foundations are registered with the Court of First Instance in Tirana, and the foundation deed as well as the statutes or charter need to be made through the notarial deed before a notary public (see above).

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

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

Yes, foundations need be registered with the Court of First Instance in Tirana. The registration is effected also for the purpose of gaining legal personality. The information kept in the register of foundations includes: name of foundation; address of seat; address of branches or representative office as applicable; purpose and object of activities; value of and type of founding assets; details, such as name, place and date of birth, of members of management bodies as well as of the liquidator; the date when the foundation statutes were approved and signed by the founders; provisions of the foundation statutes specifying the duration of the foundation's activity; competencies of the foundation's management bodies and of liquidator to represent the foundation as well as changes in these competencies; changes in the membership of the management bodies as well as of the liquidator; name, place and date of birth of the founder(s); value of the assets that each founder contributed (if available); any change or amendment of the foundation's statutes; the date when the foundation began its activity; the date when liquidation proceedings were opened; and the date of dissolution, merger or separation of the foundation (Art.31 of NPO Reg.Law).

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

Yes, the register of foundations is publicly available (Art.7 of NPO Reg.Law). However, the register is kept only in paper form, and therefore it is not possible to access it electronically via the internet.

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 explicit provision requiring foundations to have a certain minimum capital. Article 16 of NPO Law requires only that the foundation deed show the nature, source and value of assets needed for the realisation of the purpose for which the foundation is founded. Additionally, the ACC and the NPO Law require foundations to have sufficient assets to realize the goal for which they are being established, without specifying any figure as to a minimum capital. However, the Courts have accepted a minimum value of ALL 100,000 or approximately €715 as a minimum capital for foundations.

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

NPO Law specifies that a foundation must have a highest decision-making body, as well as an executive body. The specific rules for the election and functioning of these bodies must be stipulated in the foundation's statutes.

a) Is it mandatory to have a supervisory board?

Yes, the highest decision-making body of the organisation plays also the role of the supervisory board. It supervises the work and activity of the executive body, and monitors the achievement of the foundation's goals.

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?

Article 17 of the NPO Law requires that the first board members be included in the foundation's statutes upon registration as a legal person, which implies that the first board members are appointed by the founder. Other than that, there are no other specific requirements set out in the law regarding board members. Moreover, foundations are free to define in their statutes what specific requirements board members should fulfil. Foundations may also determine the procedure of appointment or dismissal of the board members.

Regarding the minimum or maximum number of board members, the NPO Law requires that where the foundation's statutes do not foresee otherwise, the board (i.e. the highest decision-making body of the organisation) must not have less than 3 members. (Art.24 of NPO Law). As already noted, the foundation has however the freedom to set in its statutes that the board has less than 3 members.

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

According to the NPO Law, the board is a collegial body, and the rights and duties of the board are exercised in a collegial way, rather than individually by the members. Article 20 of the NPO Law sets out the rights and duties of the board. As the highest-decision making body of a foundation, some of the key rights and duties of the board include the right to amend the foundation's statutes, to define the main policies and strategies of the organisation, to approve the annual accounts as well as the budget of the organisation, the right to elect or appoint and dismiss the members of the executive

body, as well as the right to issue a regulatory framework necessary for the proper functioning of the organisation.

Recently, through a new law¹ amending the existing NPO Law, with the view to strengthen the role of the board in preventing that the organisation's resources are used to finance terrorism, the board was given the additional duty to oversee the activity of the organisation with this focus in mind. In this respect, the board is expected to work closely and communicate intensively with the executive body to ensure that the organisation complies with the respective legislation on the prevention of money laundering and financing of terrorism.

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

The law is silent concerning the rights of the founders. As soon as a foundation gains legal personality, the highest decision-making body of the foundation becomes the board of directors or the supervisory board (names can vary). The founder may still serve as a board member with the respective rights and duties. However, in practice the courts have not opposed to the founder playing an important role in the management of a foundation, despite the existence of a board as the highest decision-making body. This may include the founder(s) having veto powers with regard to decisions made by the foundation's board, when such powers have been stipulated in the foundation's statutes. However, decisions regarding changing the purpose of the foundation are expected to be made by the foundation's board as the highest decision-making body of the organisation.

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

No legal rights set out in the law.

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?

Articles 26 and 27 of NPO Law require that board members, either of the supervisory or executive board, avoid conflicts of interest in their dealings with the organisation. The foundation may, through its statutes, define specific rules regarding what is considered a conflict of interest and how these conflicts resolved.

Article 26 of the NPO Law requires that when a foundation enters into a contract with a board member, such contracts may be allowed only after receiving prior approval by the supervisory board. The supervisory board may allow such contracts only when they serve the fulfilment of the foundation's purpose, are fair to the organisation, and are at market rates. "At market rates" implies namely that the foundation shall not pay for goods or services more than it would normally pay if it obtained those goods or services in the same quality, in the same amount or for the same conditions on the open market.

Additionally, members of the supervisory or executive board cannot participate in the discussion when the relevant board is discussing a contract or agreement between the foundation and that board member or between the foundation and another person, either natural or legal to which that board member is related, or in which that board member has an economic or personal interest.

When the procedures for the avoidance or resolution of conflict of interest situations have not been followed, the foundation may file a claim with the court to declare the agreement or contract void and

¹ Law No.92/2013 "On some amendments and additions to the Law No. 8788 of 7.5.2001 "On Non-Profit Organisations" as amended".

may also require compensation for damages. In this case, the claim in the court may be filed by the executive director or by the head of the executive body of the organisation.

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

Paid staff cannot become a member of the highest decision-making body of a foundation. They may participate in board meetings, with no voting rights however.

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

The new law amending the existing NPO Law provides explicitly in article 22 paragraph (b) that a non-profit organisation is represented vis-à-vis third parties by the executive body or the executive director.²

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

Yes, the executive body or the executive director have representation powers. However, the statutes of a foundation may authorise other persons to represent the foundation. Additionally, the executive body or director may, through power of attorney, authorise persons possessing expertise on a certain area (e.g. lawyers, financiers, etc.), to represent the foundation vis-à-vis third parties.

9. Liability of the foundation and its organs

Normally, members of the steering organs or employees of a foundation are not liable for damages caused to third parties in the course of their duties on behalf of the foundation. The only case when these persons may be held liable is when they caused damages to third parties by acting intentionally or by gross negligence (Art.25 of NPO Law). It is also in these cases that a foundation may seek recourse from the person or persons acting in breach of the law (Art.32 of ACC).

According to the new law amending the existing NPO Law, a foundation may be held criminally or civilly liable for actions carried out by the member of one of its organs or employees. Holding a legal person criminally liable is a novelty in the Albanian legislation, however, with little or no practice so far. When a foundation is found to be liable, it must compensate the damaged party for the damages suffered.

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

The NPO Law does not differentiate between paid and unpaid board members. They will be personally liable for damages caused by intent or severe negligence while acting on behalf of the organisation.

b) Is there a “business judgment rule”, giving a board member a “safe harbour”, if she/he (1) acts on an informed basis; (2) acts in good faith, (3) acts in the best interests of the corporation, (4) does not act out of self-interest (duty of loyalty concept plays a role here), and (5) is not wasteful?

There is not such rule in Albanian legislation regarding foundations.

² Law No.92/2013 “On some amendments and additions to the Law No. 8788 of 7.5.2001 “On Non-Profit Organisations” as amended”.

c) What is the liability the directors and officers?

See above.

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

Normally yes, but the practice is very seldom.

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

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

10. Are economic activities³ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

A foundation may conduct economic activities as a means to generate income for the achievement of its goals. The economic activities can be conducted within the legal structure of the foundation without the entity having to register a separate legal person.

However, the economic activity or activities (i) must comply with the foundation's purpose and goals; (ii) must have been declared as one of the sources of income; (iii) and must not be the main activity or the main goal for which a foundation is established (Art.36 of NPO Law and Art.56/1 of ACC). Regarding ceilings or limits on economic activities, there is nothing prescribed in the law regarding the maximum level of annual income that a foundation may generate from economic activities, there is nothing prescribed in the law regarding the maximum level of annual income that a foundation may generate from economic activities. The NPO Law requires however that all

incomes generated should be used for achieving goals or purposes specified in the foundation's statutes and/or in the act of founding.

11. Are foundations permitted to be major shareholders?

There is no restriction by the NPO, tax or other legislation for 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?

The law does not set out rules or limitations regarding foundations' asset management, except for the general requirement that a foundation's assets should be used for the foundation's goals and purposes. In this respect no asset may be distributed for the personal profit of members of the board or employees except for reasonable salaries or remunerations in accordance with the foundation's statutes.

Article 56/1 of ACC stipulates that a foundation may own movable or immovable property, may generate income from the administration or management of this property and that all income generated must be used only for the realisation of the foundation's purpose. Additionally, article 35 of NPO Law states that a foundation may incur expenditures for the maintenance of its assets, but does not specify any rule about maintaining the value of the assets.

A foundation's statutes may contain prohibitions or other limitations regarding how the assets are to be invested. However, these prohibitions or limitations are individual for each organisation.

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)

The NPO Law requires only that the assets of a foundation are used solely to realise the organisation's goals and purposes and that the organisation manage and maintain these assets. In this respect, a foundation may use its assets to allocate funds towards furthering their public benefit purpose income. However, the granting of loans is an activity strictly reserved to financial institutions which are regulated through a special law. Therefore, foundations may not grant low interest loans, since this would contradict legislation on financial services.

Notwithstanding, foundations may use their assets to provide financial assistance for persons in need, but in the same time observe the principles of non-distribution of profit and avoid conflict of interests, should persons obtaining financial assistance be in a family relationship with board members or other persons in leading positions in the organisation.

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

The procedure for amending the statutes should be specified in the statutes of the foundation. Article 18 of NPO Law requires the highest decision-making body of the foundation to approve the amendments. The statutes may specify whether the amendments to the statutes should be approved by a simple or qualified majority. The quorum for the highest decision-making body is 50%+1 of the members of the body, and the decisions are normally made by a simple majority of the present members.

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

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

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

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

Foundations submit yearly at the regional tax office, under whose territorial jurisdiction they operate, a copy of their balance sheet of assets and liabilities. Additionally, they submit on a monthly basis a VAT statement, the book of sales and purchases (invoices showing VAT), the report of social and health contributions for employees, a statement of the income tax withheld for employees, as well as a report on the staff turnover in the organisation.

Furthermore, foundations wishing to obtain tax public benefit status are required to submit the annual accounts of the previous three years audited by an auditor (paragraph 3 of Decision on PBS).

³ 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.

Moreover, the Law on Accounting and Financial Reporting⁴ requires that legal entities, including foundations, deposit their annual accounts with the court of their registration, ie. the Court of First Instance in Tirana, no later than one month from the date of their approval by the respective body of the organisation

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

Tax authorities as well as authorities dealing with the prevention of money laundry and the financing of terrorism.

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 depositing of the annual accounts with the court of registration, as explained above, is deemed to be considered as a publishing of the annual accounts, since it is assumed that any interested person may have access to the information if he/she so wishes. Moreover, foundations are free to publish annual reports or accounts in their websites or through other media..

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

No. The law does not require an external audit for all foundations. However, foundations are free to audit their accounts and audit may be requested by the tax authorities.

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

Audits may be undertaken only by an external auditor. The auditing report by the auditor shall comply with the International Auditing Standards as compiled by the International Federation of Accountants (Art.2.14 of Law no.10091 of 05.03.2009 "On the Legal Auditing and on the Organisation of the Profession of the Registered Auditor and Chartered Accountant").

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⁴ Law no. 9228 of 29.4.2004 "On Accounting and Financial Reporting".

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⁵ Law no. 9228 of 29.4.2004 "On Accounting and Financial Reporting".

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?

There is no specific authority charged with the supervision of foundations. Rather, the supervision of foundations is shared among various governmental bodies whose area of competence relates to or covers activities carried out by the foundations. Typically, a foundation will be supervised by tax, customs, and social insurance authorities. Additionally, if a foundation carries out an economic activity which requires the obtainment of a licence or permit, then the foundation will be supervised also by the authority issuing the licence or permit.

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

The supervision powers are broad, and they certainly include making inquiries, reviewing reports and making on-site inspections. After the recent amendments to the NPO Law, foundations will be subject to more scrutiny from the tax as well as from authorities dealing with money laundering prevention to ensure that assets of a foundation will not be used to finance terrorism. Specific details on how this scrutiny will look like are still to be provided by the Minister of Finances.

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

No

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

No

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

Article 60 of the ACC provides that the head of a supervisory authority may ask the court to cancel a decision of the foundation bodies when such a decision contravenes the purpose of the foundation, the foundation deed, or the requirements of the law. Additionally, a foundation's public-benefit status for tax purposes may be revoked when the requirements of the tax laws are no longer met (Paragraph 4 of Decision on PBS).

17. When and how does a foundation dissolve?

Pursuant to Article 43 and 44 of NPO Law, a foundation may be dissolved voluntarily through a decision of the highest decision-making body. Additionally, the Court may force the dissolution of a foundation when its activity contravenes the Albanian Constitution, when a foundation has carried unlawful activities, when it has not been established in compliance with the requirements of the law, or when a foundation has become insolvent. After the dissolution, the remaining assets of the organisation will go to other organisations as stipulated in the decision of the highest decision-making

body. When the dissolution is ordered by the Court, the remaining assets will go to organisations pursuing similar goals to those of the dissolved foundation. The Court shall decide which these organisations are.

Additionally, foundations may also be transformed into or merged with a centre (another form of non-membership non-profit organisation) or separated when the statutes allow.

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

Foreign foundations may operate either temporarily or permanently in Albania. Foreign foundations wishing to carry out activities in Albania for a period of time longer than six months need either to be established as a foundation under Albanian law or to register a branch in Albania. In the latter case, the same legislation as for the establishment of Albanian foundations applies.

Foreign foundations wishing to operate in Albania for a period of time longer than thirty consecutive days but not longer than six months may apply for a permit to carry out activities temporarily. The permit is issued by the governmental authority that operates in the same or similar fields of activities as in which the foreign foundation wishes to operate.

Foreign foundations enjoy the same rights and duties as domestic foundations, except when otherwise stipulated by international agreements.

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?

There are no limitations in civil 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?

Foundations are exempted from corporate-profit tax when they carry out the activities enumerated in Article 18 of the Income Tax Act. These activities include religious, humanitarian, benevolent, educational or scientific activities and comply with the non-distribution of profit constraint. Incomes generated through activities other than those enumerated above are subject to corporate profit tax. Additionally, regardless of the activities they carry out, foundations are exempted from corporate-profit tax on the donations they receive.

After the recent amendments to the NPO Law, regardless of the goals they pursue or the activities they carry out, foundations are exempted from the corporate profit tax for incomes from donations, grants, interest from bank deposits. As a precondition for exemption from profit tax, the incomes generated by a foundation must be destined for the achievement of goals or for carrying out activities listed in the foundation's statutes.

Furthermore, as stipulated in the Decision on Public-benefit Status, for foundations to be VAT exempted they must carry out primarily activities qualified as "for public benefit". Such activities are related to the education, health care, or support of the economic development of people in need. However, for these activities to be qualified as "for public benefit" they must be provided either free

of charge or at a price which is at least fifty percent lower than the market price for that service in the area in which the foundation operates.

Currently, a new VAT law, which resembles very much the EU VAT Directive, has been drafted by the Albanian Government. The draft expands the list of “public benefit” activities for which a foundation may claim VAT exemption. Additionally, the draft law does not require anymore that foundations obtain the “public benefit status”, as is currently the case under the existing law, in order to be VAT exempted. Instead, the draft law exempts non-profit organisations, including foundations, either automatically from the VAT when they carry out a certain category of exempted activities, or uses the factor “price” for the supply provided, as a precondition for VAT exemption.

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?)

For tax exemption purposes, tax authorities might require foundations to file, besides tax statement, also a copy of the statutes and activity reports to ensure that incomes generated by the foundation are used in accordance with the purposes stated in the statutes.

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

No, but foundations will be subject to inspections by state authorities (e.g. The State Audit) with regard to these funds.

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

No obligation by law.

5. Are there specific accounting rules for foundations?

No

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.

No. Article 2 of the NPO Law defines only what are considered “activities for the benefit of and in the interest of the public.” These activities include activities which relate to, as well as encourage and support, the development of spiritual and humanitarian values; protection of human life and health; provision of public and social services; the provision of assistance in case of catastrophes; protection of the environment; development and encouragement of cultural, historical, educational, or scientific values; and the promotion of democracy.

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.

For VAT exemption purposes, public-benefit activities are considered only activities in the field of education, health care, and the economic development of people in need, and only when such activities are provided free of charge or at a price which is at least fifty percent lower than the market price for that service in the area in which the foundation operates.

However, the new VAT draft law expands the list of activities which are considered as for the benefit of the public, and therefore exempted from the VAT. See comment above.

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

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

<i>Supply of transport services for sick or wounded persons</i>	X			
<i>Supply of services by non-profit organisation to their members based on membership fees</i>	X			
<i>Supply of goods and services related to organisation of fundraising activities</i>	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”?

Yes

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

No

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” which forbids any financial support of the foundation board, staff, etc.?

Yes. However, salaries to executive officers and employees are allowed. Additionally, the reimbursement of certain type of expenditures for board members is also allowed. See below.

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

In case of voluntary dissolution, the highest decision-making body of the organisation decides on the recipients. Nevertheless, the non-distribution constraint must be complied with. In case of forced dissolution, the assets will usually go to one or more organisations which pursue same or similar goals to those pursued by the dissolved organisation (Art.47 of NPO Law).

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?

Usually, board members carry out their duties free of charge. However, when the financial circumstances of the foundation allow it and when it is in the best interest of the organisation, the foundation may reimburse the expenditures incurred by board members for participating in the board meetings. Additionally, the foundation may decide to reasonably remunerate board members for participation in board meetings or when they perform particular tasks for the foundation (Art.21 of NPO Law).

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)

Benefits obtained by donors in return for a donation will be treated as taxable supply for VAT purposes and will be charged accordingly with VAT (Art.8.5 of Instruction no.17 of 15 May 2008 “On the Value Added Tax” (VAT Instruction)). However, mentioning the name of a donor in a public activity will not be considered as an advertising service for that donor, and therefore will not be subject to VAT.

c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined?

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

See above.

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

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

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

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

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

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

There is no specific limitation in the law regarding this issue. The NPO Law allows a foundation to incur expenditures only for the attainment of its purpose and for the maintenance of its assets. However, foundations are not required to maintain a certain amount of capital.

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

Yes, foundations are allowed to be set up for a limited period of time. However, there is not mentioning in the NPO Law or ACC about the minimum length of this time.

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

No

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

No

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

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

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

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

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

There is no specific regulation with respect to this matter. The tax-exempt status for public-benefit activities relates normally to specific activities of a non-profit organisation carried out in Albania to the benefit of the Albanian public and not to the activities of the organisation as a whole. For the tax authorities it is irrelevant whether a public-benefit organisation, apart from activities carried out in Albania, which are tax-exempt, carries out activities also abroad. Therefore, it is not expected that an organisation would put its tax-exempt status at risk for activities carried out abroad, regardless of whether they are or not tax-exempt.

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

There are no civil and/or tax law rules 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

Regardless of their public-benefit status or the activities they carry out, foundations are exempted from income tax on grants and donations (Art.40 of NPO Law).

Investment income (asset administration)

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

Income from asset administration is normally not taxed, except for income from leasing of foundation's property.

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)

If economic activities have been declared in the foundation's statutes as a source of income, the income is used to support stated non-profit goals and the foundation observes the non-distribution constraint, the income is not taxed. Additionally, under the new VAT Law, some economic activities may be exempted from VAT if the income generated from these activities does not exceed 20% of the foundation's general yearly income.

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

Foundations are not allowed to grant loans, guarantees or equities, and therefore there are no known cases of such income being taxed or not.

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

It is not clear whether major shareholding is considered economic activity for tax reasons. However, income tax legislation does not explicitly exempt income of NPOs from major shareholding. Income in the form of dividends (for shares owned in a company) is exempted from income tax when the company making the distribution is subject to income tax. This exemption is valid disregarding the percentage of shares owned in the company by the shareholder.

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 same treatment as income from economic activities, and therefore are subject to the same limitations and exemptions.

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

No. Generally, foundations are subject to VAT when they supply non-exempted goods and/or services. Foundations having public-benefit status for VAT purposes are exempted from the payment of VAT when they supply educational, health care and/or support services for the economic development of people in need. These supplies are exempted supplies. Additionally, imports of goods needed for the above mentioned exempted supplies are also VAT exempted.

Albanian legislation on VAT does not allow for the refund of input VAT for tax-exempted supplies or for supplies which do not relate to the object of activity of the taxable person (such as, e.g. supplies of theatre or cinema tickets for its employees). Additionally, input VAT paid on certain expenditures, even if made for business purposes, such as, for example, per diems, hotel accommodation, and car maintenance, cannot be refunded.

However, if the input supplies are for exempted as well as for non-exempted output supplies, then a foundation is entitled to a partial refund of VAT, proportional to the percentage of input supplies used for non-exempted output supplies. In these cases, the taxable person must submit evidence showing clearly the part of input supplies used for non-exempted or taxable output supplies.

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

There is no capital tax on the value of assets.

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

There are no particular legal provisions regarding taxes on the transfer of assets. However, when a foundation donates immovable property to another foundation (or another non-profit organisation), the donor foundation may be exempted from the tax on the transfer of immovable property, when the donation relates to the non-profit activity of the benefiting organisation.

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

Currently, under the Local Taxes Law, only religious organisations, including foundations, are exempted from the tax on real property.

Additionally, foundations may also be exempted from custom tax for imports, subject to authorisations issued by the customs authorities. Recently, with the introduction of public-benefit status for VAT purposes, the customs authorities have tied the issuance of the authorisations for import-tax exemptions with the obtainment of public-benefit status.

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

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

Yes. Foreign foundations enjoy the same rights and duties as a domestic foundation. In order to benefit from tax reductions or exemptions a foreign foundation would either have to register as a foundation in Albania or as a branch of a foreign foundation, should it wish to pursue activities permanently in Albania. Alternatively, a foreign foundation may apply for a permit to operate temporarily in Albania for a period of no longer than six months.

Foreign foundations would have to submit the same documents, for tax reasons, as local foundations do, for example a copy of statutes and the annual accounts. However, in the case of foreign foundations, these documents need to be translated in the Albanian language and notarised before an Albanian notary public.

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?

There is no requirement that a foundation in Albania pay withholding tax on income from foreign investment.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit⁶ or tax deduction⁷?

There is a system of tax deduction.

2. Tax treatment of individual donors

Individual donors, namely natural persons, cannot deduct, for tax purposes, donations to non-profit organisations, including foundations.

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?

See above.

b) Which assets qualify for tax deductibility?

See above.

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?

Donations of up to three percent of profit before tax by corporate donors are recognised as deductible expenditures for tax reasons. (Art.12/3 of Income/Profit Tax Law).

b) Which assets qualify for tax deductibility?

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

There is no special tax treatment for this kind of donations.

5. Other frameworks such as percentage law systems

There are no other frameworks.

⁶ 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)

⁷ 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?

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?)?

The corporate donor has to keep a book of income and expenditure in which expenditures, including donations, are recorded. The records kept must show the name of the recipient non-profit organisation, date of donation and amount of donation.

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

What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required?)? Annual financial report (translation required?)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

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

1. Individuals

No taxes are levied. Additionally, scholarships as well as financial support to disadvantaged people are also tax exempt.

2. Legal entities

No taxes are levied. Grants and donations by a non-profit organisation to another non-profit organisation are exempted from income tax.

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

V. Gift and inheritance tax

There is no gift and inheritance tax for foundations.

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

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

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

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

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

VI. Trends and developments

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

No. EU case law and legislation is not yet applicable in Albania.

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

a) Is there a specific national/regional anti-terrorism act (legislation) in your country, (which one and date of entry into force or adoption)?

Yes, Law no.9917 of 19 May2008 "On the Prevention of Money Laundering and the Financing of Terrorism", as amended. Additionally, the new amendments to the NPO Law contained specific provisions regarding the prevention of money laundering and financing of terrorism.

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

Yes. With the purpose to prevent money laundering as well as to prevent that the assets of a foundation are used to finance terrorism, the new amendments of the NPO Law, foresee an increased role of the executive as well as supervisory bodies of a foundation.

Thus, the amendments (art.20 (ç)) require that the financial annual accounts prepared by the executive body must describe in detail the material and financial sources of the organisation (i.e. where does the organisation obtain the assets), their use and what the assets of the organisation are.

Moreover, the amendments foresee that the supervisory board has the responsibility regarding the monitoring of the activities of the foundation to prevent the use of the organisation's resources for supporting terrorism (art.20 (g)). In this respect, the supervisory board must observe the

requirements of the Albanian legislation on the prevention of money laundering and financing of terrorism.

With respect to the role of the executive body or director of foundation, the amendments (art.22, para.3 (c)) require additionally that it cooperates with the General Directorate for the Prevention of Money Laundering to ensure that the organisation itself as well as donors that provide material or financial support are not misused or manipulated for terrorism purposes.

The cooperation according to the legislation on the prevention of money laundering as well as according the law "On Non-profit Organisations" implies supply of information to the state authorities (especially the Directorate mentioned above as well as tax authorities) as well as checks by these state authorities whenever they see it necessary to ensure that funds by donors are not used to support money laundering or terrorism. In this respect, pursuant to art.41 of the law, besides tax authorities, the amendments add an additional authority responsible for monitoring the work of non-profit organisations, namely the General Directorate for the Prevention of Money Laundering.

Last but not least, Art. 37 of the NPO Law requires that non-profit organisations hold their funds in bank accounts and that any transaction with those funds be channelled through these accounts. Nevertheless, it is believed that the requirements of art.59 of the Law on Taxation Procedures still apply, namely, requiring that only transactions above the threshold of 300.000 ALL be channelled through bank accounts.

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

Yes, see above.

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

No

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

n/a

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

In June 2007 a law on the criminal liability of legal persons, including also non-profit organisations, was adopted. Under this law, which so far has remain largely unapplied, the court may force an organisation to close down when its controlling or managing organs have committed criminal acts in the exercise of their duties while acting for or on behalf of the organisation.

Amendments to the VAT legislation exempted supplies of educational services from the payment of VAT starting from October 2010.

Additionally, new regulation on the introduction of public-benefit status for VAT exemption purposes was criticised by foundations because the obtainment of the status was made subject to very strict and severe requirements which made the obtainment of the status almost impossible. Furthermore, the public-benefit status covered only a very limited number of activities, namely education, health care and economic support for disadvantaged people, discriminating in this way foundations that carry out other public-benefit activities, such as environmental protection, children and youth work, etc. to benefit from VAT exemptions.

A new VAT Law might be passed by the Albanian Parliament anytime soon. As already mentioned above, this new regulation of the VAT tax, including VAT exemption will directly affect the operations of foundations in Albania. The draft VAT Law resembles very much to the EU VAT Directive; it does expand the list of exempted activities, which are typically activities carried out by foundations in Albania, but it still leaves unresolved the issue of reimbursement for irrecoverable VAT.

4. Public fundraising

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

There are no specific laws regulating fundraising. Foundations are allowed to carry out various activities for raising funds in order to use them for the attainment of their purposes.

Useful contacts

Nehemia Foundation
Rruga "Nehemia"
Pogradec, Albania
www.nehemia-al.org

Nehemiah Gateway University
Rruga "Nehemia"
7304 Buçimas, Pogradec, Albania
www.nehemia-uni.org

Nehemiah Gateway gGmbH
Zickstraße 8
D-90429 Nürnberg, Germany
www.nehemiah-gateway.org

Swiss Foundation for Innovation
Rruga "Frosine Plaku", Nr.36
Tirana, Albania
www.swissfoundation-sfi.org

Selected bibliography

Tarelli, E., "Public Benefit Foundations in Albania and their VAT Treatment: A Brief Look into the VAT Treatment of NPOs under the EU VAT Directive", Institut für Stiftungsrecht und das Recht der Non-Profit Organisationen, npoR Heft 2/2009, S.53-84.

Selected law texts online

- Albanian Civil Code
- Law no. 8788 of 7.5.2001 “On Non-Profit Organisations”, as amended.
- Law no. 8789 of 7.5.2001 “On the Registration of Non-Profit Organisations”.
- Law no.9917 of 19.5.2008 “On the Prevention of Money Laundering and the Financing of Terrorism”, as amended.
- Law no. 9228 of 29.4.2004 “On Accounting and Financial Reporting”

About the EFC Legal and Fiscal Country profiles

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

www.efc.be

About the European Foundation Centre

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

