



# EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for  
foundations*

## **BULGARIA – 2014**

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***The operating environment for foundations***

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Contents

I. Legal framework for foundations .....	3
II. Tax treatment of the foundation.....	17
III. Tax treatment of donors of public benefit foundations .....	25
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation).....	28
V. Gift and inheritance tax .....	30
VI. Trends and developments.....	31
Useful contacts .....	32
Selected bibliography .....	33
Selected law texts online: .....	33
About the EFC Legal and Fiscal Country profiles .....	34
About the European Foundation Centre.....	34

## **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)?**

Article 33 of the Law on Non-Profit Legal Entities (LNPLE) prescribes that a foundation shall be founded during a founder's lifetime or on the occasion of a death by a unilateral founding act which gratuitously concedes property for achieving a non-profit goal. The only difference between types of foundation provided for by the LNPLE is with regard to the determination of their activity – for public or for private benefit.

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

Bulgarian foundations can pursue both public benefit and private benefit purposes. They can freely determine their purposes as well as the means of achieving them, which shall be set forth in the Articles of Incorporation and therefore in the court registration decision.

The LNPLE inexhaustively defines public benefit purposes: Health; science; education; the development and establishment of spiritual values, civil society, engineering, technology, and physical culture; the support of the socially vulnerable, needy, and handicapped; the support of social integration and personal advancement; and the protection of human rights and the environment. The designation for performing public benefit activities is irrevocable after the court registration.

In the LNPLE the following are the only provisions relating to public benefit activities:

Definition of activities

Article 2

(1) Non-profit legal entities shall freely determine their objectives and may define their status as organisations pursuing activities for public or private benefit. Their status and objectives shall be set forth in the statute, the articles of association or amendments to it.

(2) The determination of public benefit status shall be irrevocable following registration of that status in the register of non-profit legal entities within the jurisdiction of the district court in the domicile of the respective non-profit legal entity.

(3) Non-profit legal entities defined as pursuing activities for public benefit shall be subject to registration upon their establishment in a special register at the Ministry of Justice.

Article 38

(1) Non-profit legal entities defined as pursuing activities for public benefit shall use their property for:

1. Development and strengthening of spiritual values, civil society, health care, education, science, culture, engineering, technology or physical culture
2. Assistance to the socially disadvantaged, the disabled or persons in need of care
3. Support of social integration and personal realisation
4. Protection of human rights or the environment
5. Other objectives determined by law

(2) Foreign non-profit legal entities may pursue activities for public benefit through their branches in this country in compliance with this Act.

(3)(Amend. SG No 79/2006) Non-profit legal entities defined as pursuing activities for public benefit should apply for registration of that status under Article 45, paragraph 2 in the central register within two-months of entering the definition in the court registry.

### **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?**

Generally in order to be recognised as and to receive the status of legal persons associations/foundations should be registered by the respective District court. According to the regulation of the Non-profit Legal Entities Act the procedure consists of preparing a set of documents: The Statute and the Minutes from the General Assembly in the case of an Association and deed of incorporation in the case of a Foundation.

The Court checks the legality documents and ensures that they observe the rule of law. Upon court registration, public benefit organisations have to be registered in the Central Register at the Ministry of Justice.

#### Court registration

For establishing a foundation *inter vivos* it is necessary to have Articles of Incorporation with signatures certified by a notary. When property rights over chattels are transferred, the Articles of Incorporation are entered by a judge at the district court in the district where the property is located. The property transferred with the Articles of Incorporation is considered to be the property of the foundation from the time of its establishment, whether through incorporation *inter vivos* or via a will.

The application for registration is made by the founder or by a person or organ empowered by him, the executor of the will, an heir or any of the persons that according to the Articles of Incorporation would benefit from the activities of the foundation.

Generally in order to be recognised as and to receive the status of legal persons, foundations should be registered by the respective district court. The court checks the legality of the Articles of Incorporation and ensures that they observe the law.

In addition, foundations registered as public benefit organisations are required, upon court registration, to submit an application for entry in a special Central Registry at the Ministry of Justice, within 2 months of the entry of the public benefit designation of the organisation in the court registry. After being registered in court, foundations can act and hold property and take on responsibilities in their own name, as a separate legal entity.

Entry in the Central Registry may be denied if the foundation has not been registered by the competent court as an organisation for performing public benefit activities or if the provisions of the Articles of Incorporation contradict the law. If registration is not completed within 14 days after the application, there is a silent denial of registration.

#### Articles of Incorporation

The Articles of Incorporation are a unilateral legal act in the form of a donation or bequest through which property is granted for achieving non-profit purposes. Essential elements are the purpose and the granted property. The rest of the elements may be added later by a person authorised by the founder, by the person executing the bequest or the inheritor, (if the founder has died), by another person who would benefit from the foundation's activity, or by a court. As noted above, foundations set up with a donation should have the signature of the founder under the Articles of Incorporation certified by a notary.

The Articles of Incorporation consist of two main parts – provisions related to property issues and an organisational part. The Articles of Incorporation may also regulate the reserved rights of each founder, if s/he wishes to have any. According to the LNPLE, the document shall contain: The name, the seat and the purposes of the foundation, the type of activity, the property transferred, the organs and the branches of the foundation, rules regarding the powers of the organs, the manner of representation of the foundation, and the term of existence of the foundation. However, for its validity it is sufficient for the Articles of Incorporation to have the non-profit purposes and the property donated.

In practice and for the sake of clarity, two separate documents are created and, when combined, constitute the creation of a foundation. The first document is the initial deed of donation, which regulates only the act of transfer of property for the establishment of a foundation having certain legal individualisation – name, seat, address, bodies and composition of bodies. It also contains an expressed will for the adoption of the second document, which is the governing document – the statutes.

#### **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

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

A foundation should register with the respective District court in order to receive the status of a legal entity. Additional public benefit foundations upon court registration have to be registered in the Central Register at the Ministry of Justice.

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

According to the LNPLE, the set of documents kept at the respective district court are, mainly: the deed of incorporation and the statutes. Public benefit organisations, upon court registration, have to be registered in the Central Register at the Ministry of Justice, where the same types of documents as above are kept together with the annual reports of the organisation.

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

Yes, it is. However, it is not always fully up to date.

All NGOs in Bulgaria, including foundations, are subject to post-court registrations in BULSTAT and in the Central Registry at the Ministry of Justice. Public benefit organisations are also subject to registration with the Financial Intelligence Agency and under the Personal Data Protection Act.

Foundations registered as PBOs shall be subject to an independent audit under the conditions of the Accountancy Law if they exceed at least one of the following conditions:

- Sum of the asset balance of the preceding year exceeds 1 million Bulgarian leva (BGN) (approximately €510,000)
- Sum of the revenue from the activity and the net amount of the revenue from sales, as well as the financial revenue for the preceding year exceeds 2 million BGN (approximately €1,020,000)
- The total amount of the funding received in the current year and the funds received in previous years but not spent by 31 December exceeds 1 million BGN.

Foundations registered as PBOs are required to keep a record of the minutes of the sessions of their collective organs and the acts of their individual organs. The person chairing the meeting of the collective organ and the person who has prepared the protocol are required to certify the truthfulness of its content.

Financial Intelligence Agency

Under the Act on Measures Against Money Laundering (AMAML), all NGOs are obliged to register with the Financial Intelligence Agency (FIA). They are required to develop, accept and submit to FIA special procedures and rules so as to prevent money laundering. Under the Act on Measures Against Financing of Terrorism, NGOs have similar responsibilities.

Under the AMAML, all legal entities, including non-profit ones, are obliged to identify their clients when establishing long-term business relations, as well as when implementing operations and concluding a transaction with a value above 30,000 BGN (approximately €15,000 ). This is also valid in cases where more than one operation or transaction is being implemented, which separately do not exceed 30,000 BGN but where there is information that the operations or transactions are connected.

If they suspect money laundering, NGOs are obliged to notify the FIA immediately, before the implementation of the operation or the transaction, and to delay its completion within the admissible term according to the normative acts defining the respective type of activity. If a delay is objectively impossible, they shall notify FIA immediately after completion of the operation or transaction.

Personal Data Protection Act

According to the Personal Data Protection Act (PDPA), NGOs which collect personal information, including information required for labour contracts, must register in advance with the Commission for Protection of Personal Data. According to the PDPA, "personal data" means information about an individual, revealing his or her physical, psychological, mental, marital, economic, cultural or social

identity, as well as human genome data and personal information concerning participation in civil associations, government bodies, or institutions for control and supervision of legal entities.

Any person intending to process personal data and to create a personal data register is obliged to register with the Commission for Protection of Personal Data. Taking into consideration the wide definition of personal data, non-profit legal entities, including foundations, almost always act as personal data administrators and have to observe the requirements of the PDPA.

The purpose of the PDPA is to guarantee the inviolability of personality and privacy by ensuring protection of individuals in case of unauthorised processing of their personal data, as well as to regulate the right of access to such data. After a personal data administrator has filed the application for registration, the Commission can conduct preliminary checks and give preliminary instructions regarding the conditions for processing personal data and maintaining the register of personal data within the organisation. For violation of the provisions of the PDPA, the personal data administrator is penalised by a fine.

#### Oversight over the financial activity of foundations as non-profit legal entities

According to current Bulgarian legislation, the National Audit Office (NAO) has some powers related to exercising financial oversight over the activity of certain entities spending public funds (foundations which are operating with state budget or EU funds.) The NAO can audit the state budget, the budget of the State Social Insurance Fund, the budget of the National Health Insurance Fund, the municipal budgets and other budgets adopted by the National Assembly. It can also audit:

- The budgets and the extra-budgetary accounts and funds of budget-spending units of the above-mentioned institutions and the management of their property
- The budgetary and extra-budgetary funds, granted to persons, performing economic or non-economic activities
- The resources from EU funds and programmes and their management by the respective authorities and end-beneficiaries

Non-profit legal entities, including foundations, can fall under the second and third points above, which potentially makes them subject to audit by the NAO. The implementing Regulations of the National Audit Office Act explicitly provide that the revenues and expenses of non-profit legal entities and funds established with budgetary resources or guaranteed by the state are subject to oversight by the NAO.

The oversight of the spending of budgetary funds, granted to persons performing economic or non-economic activities includes:

- The legal grounds and terms for granting and spending of budgetary funds
- The appropriate spending of the granted budgetary funds and their accounting

The oversight of the revenues and expenses of non-profit legal entities and funds established with budgetary resources or guaranteed by the state includes:

- The appropriate spending of the budgetary funds granted to non-profit legal entities as well as the revenues and expenses relating to their activity
- The type and amount of the guarantees and the terms for their use
- The accounting of the granted budgetary funds and the revenues and expenses of non-profit legal entities

When establishing damages and infringements in the execution of the budgets and extra-budgetary accounts and funds, or in property management, which do not constitute a crime, the audit documents and the audit report shall be forwarded with a decision of the National Audit Office to the respective competent authority to seek after property or administrative penal liability. The respective competent authority is obliged within a period of 14 days from receipt of the audit documents or the audit report to initiate the necessary actions for quest of liability.

When a criminal act is detected, upon a decision of the NAO, the audit documents or the audit report shall be forwarded to the prosecution authorities. The documents from the audit or the audit report are legal grounds for initiating a preliminary procedure.

When a criminal act is detected, relating to the management of EU funds and programmes, upon a decision of the NAO, the audit documents or the audit report shall be forwarded to the EU specialised bodies for preventing and fighting against fraud and corruption, and to the person in charge of national activities under the Memorandum of Understanding between the Government of Bulgaria and the European Commission for the establishment of a National Fund.

If the audited entities do not assist the NAO in carrying out the audits, they are penalised by a fine.

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

No

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

a) Is it mandatory to have a supervisory board?

Governing board:

In comparison with the association (the second type of non-profit legal entity according to the LNPLE), the foundation has no corporate nature, which is reflected in its structure. There is no legal limitation in terms of the number of bodies and board members in the foundation. However, the foundation should have at least one governing body which may be one-man or collective. When more than a single body is envisaged, the law stipulates that the rules for the general assembly (GA) and the managing board (MB) of associations shall apply to the bodies of the foundation.

The LNPLE divides the two bodies functionally and establishes that the general assembly is the supreme body and the managing board is the governing body.

The law sets forth in detail the powers of the general assembly. However, the statutes may stipulate additional powers. The law makes a significant distinction between non-transferable and transferable powers of the GA. While the latter can be delegated to other bodies of the organisation upon a decision of the GA, the non-transferable powers can only be executed by the GA and they characterise it as the supreme body. Thus, the law explicitly forbids the delegation of the rights to amend and supplement the main act, the statutes or the statutory purposes; to elect and dismiss members of the governing body; or to make decisions for transformation or dissolution of the organisation, amongst other things. Regarding the transferable rights, in order to delegate some of them, the GA must make an explicit decision which requires relevant amendment of the statutes.

The managing board is the body which manages the activity of the organisation according to the decisions of the GA. The law allows the functions of the MB to be performed by a single person – a manager. The law also governs the minimum number of members in the MB: Three persons. Among the key powers of the MB are its representative and management powers, such as organising the activity of the association, and preparation of performance reports and draft budgets.

With regard to public benefit NGOs, the LNPLE sets forth the requirement that public benefit organisations (PBOs) must always have a two-body structure where the supreme one should be collective, and the governing one may be either collective or a one-man body. In fact, this

requirement refers only to foundations, as with associations it is observed by default. Therefore, foundations having only one body can exist only as foundations established for private benefit. Foundations registered as PBOs shall have a collective supreme organ and a managing organ.

The decisions of the supreme body are binding on the rest of the bodies and this rule is an expression of its supremacy. Internal oversight over the decisions of the other bodies and the right to revoke them is explicitly set forth in the law. When a decision contradicts the law, the statutes, or a previous decision of the supreme body, this decision may be appealed before the GA upon the initiative of interested members of a foundation body or by one of its bodies.

The LNPLE also provides the possibility for review of the regulations of foundation bodies in court. Regulations that contradict the law, the statutes, or a previous decision of the GA may be reviewed by a court. Any member of a foundation body or the prosecutor can start such proceedings. If a contradiction is found, the court revokes the appealed decision.

The organs of a foundation can make decisions regarding the appointment or election of their members. If they are not in a position to appoint or elect members, any one of their members, or any person who would have benefited from the foundation's activities, may request the District Court at the seat of the foundation to make the appointments in accordance with the intent of the statutes.

If the organs of a foundation are not specified in its statutes, they have to be determined by the court at its seat following the procedure laid down in the law.

The LNPLE does not specify the composition of the governing board. It can be freely detailed in the statutes.

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

The minimum number of board members is 3. The appointment of the Board members, as well as their resignation, depends on the decision of the founders of the Foundation and it must be stated in their deed of incorporation.

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

The issue of the rights and duties of members of foundation bodies is directly linked to the issue of the internal relationships that may arise in a foundation. In general, board members have the following groups of rights: property rights, non-property rights, and organisational rights. With regard to the rights and obligations of foundation board members, there is no explicit regulation in legislation but they may be freely detailed in the statutes.

In practice, some of the most important rights are: The right to participate in the organisation's management, the right to receive information about its activities and to benefit from its results pursuant to the procedure set forth in the statutes, the right of oversight over the decisions of the bodies, and the right to use the organisation's property. Among the obligations of foundations' board members deserving attention is the obligation to participate in the organisation's activities and to perform their activity in good faith and in compliance with the law and the statutes.

In cases of non-performance of the obligations resulting in damages to the organisation, board members are held liable in person. The most common cases of non-performance are non-participation in board meetings and lack of active contribution to the achievement of the organisation's purposes.

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?

When a foundation is incorporated, its founders may reserve for themselves or for third parties designated by them some of the powers to ensure further observance of their will. The most common

rights that are reserved in practice include: Vetoing of amendments to the statutes, deciding on termination or transformation of the organisation, and, in some cases, selecting the board members of the foundation.

The powers reserved for the founder or a third party designated by the founder shall pass to the appropriate organ of the foundation, if the founder or such third person appointee dies, is incapacitated, is dissolved in the event it is a legal person, or their whereabouts are unknown.

If the persons referred to in the foregoing paragraph do not exercise their powers with due diligence, or are unable to exercise their powers, the registration court, upon a motion of the governing body, may decide to transfer the powers of these persons to the appropriate organ of the foundation for a definite or indefinite term.

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

The rights of the beneficiaries are not defined by any 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?

Since October 2008 there is a Law to prevent and detect conflicts of interest, but it regulates only the conflict of interest of people working in the public administration.

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

The obligations and responsibilities of the staff are not determined by law. It is a decision of the governing body and must be stated in the statutes of the foundation.

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

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

It is stated in the LNPLE, that a non-profit legal entity shall express its will and shall conduct legal activities through its bodies. It shall be represented by its managing body. In the course of litigation between the non-profit legal entity and its managing body, members of the managing body and the legal entity may also be represented by one or several persons elected by its general meeting. A non-profit legal entity may partake in the work of a body of another non-profit legal entity through its representative or a person authorised thereby. Non-profit legal entities may have branches. The manager of a branch shall represent the non-profit legal entity for the purposes of the branch's activities.

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

With regard to the rights and obligations of foundation board members, there is no explicit regulation in legislation but they may be freely detailed in the statutes.

In practice, some of the most important rights are: The right to participate in the organisation's management, the right to receive information about its activities and to benefit from its results – pursuant to the procedure set forth in the statutes, the right of oversight over the decisions of the bodies, and the right to use the organisation's property. Among the obligations of foundations' board members deserving attention is the obligation to participate in the organisation's activities and to perform their activity in good faith and in compliance with the law and the statutes.

In cases of non-performance of the obligations resulting in damages to the organisation, board members are held liable in person. The most common cases of non-performance are non-participation in board meetings and lack of active contribution to the achievement of the organisation's purposes.

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

No, there is no legal differentiation between voluntary and paid board members, although the board members of foundations are usually volunteers.

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?

This is not mentioned in the LNPLE. Each foundation can include such rules in its statutes.

c) What is the liability of executive staff?

The rights and liabilities of the directors and officers are defined and determined in the statutes of each foundation.

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

When a foundation is incorporated, its founders may reserve for themselves or for third parties designated by them some powers to ensure further observance of their will. The most common rights that are reserved in practice include: Vetoing amendments to the statutes, deciding on termination or transformation of the organisation, and in some cases selecting the board members of the foundation. The powers reserved for the founder or a third party designated by the founder shall pass to the appropriate organ of the foundation, if the founder or such third person appointee dies, is incapacitated, is dissolved in the event it is a legal person, or their whereabouts are unknown. If the persons referred to above do not exercise their powers with due diligence, or are unable to exercise their powers, the registration court, upon a motion of the governing body, may decide to transfer the powers of these persons to the appropriate organ of the foundation for a definite or indefinite term.

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

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

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

According to the LNPLE, foundations can pursue additional business activities only if:

- They are related to the subject of the basic scope of activities specified in their registration, and
- The revenues are used for the purpose of attaining the objectives set forth in the statutes.

The types of business activities a foundation can engage in have to be set forth in its statutes. Foundations are allowed to pursue business activities only in compliance with the terms and procedures stipulated by the laws regulating the respective types of business activities. In addition, foundations are prohibited from distributing profit.

The business activities must be additional, i.e. their volume should not exceed the volume of the basic non-economic activities. The bulk of all the foundation's resources (e.g. material, human, financial, etc.) should be mobilised for achieving the basic statutory purposes.

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

There is no limitation with regard to shareholding. Foundations can own shares in commercial companies, including being the sole owner or major shareholder in these.

**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 is no limitation with regard to shareholding. Foundations can own shares in commercial companies, including being the sole owner or major shareholder in these.

Foundations can own property including chattels. They can use this property to obtain income which, however, will be taxed. Foundations can own shares in mutual funds as well.

Hedge funds/private equity?

No specific rules apply for the asset management of foundations.

**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)**

Foundations can provide loans as part of their activity. They cannot, however, attract deposits, which is an activity typical for banks only. As this is an economic activity, it is subject to the legal limitations

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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.

applicable to NGO economic activity (i.e. to be additional to the main non-profit activity and to be related to the non-profit purposes of the organisation).

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

The power to make amendments to the statutes or to the statutory purposes is reserved for the supreme body of the foundation and cannot be delegated to another organ. Founders or third parties designated by them may, however, have a reserved right to veto the amendments to the statutes. If the statutes need to be amended and it is not possible for such action to be taken by the founder, or according to a procedure established by the founder or by law, upon request of interested applicants, the district court at the seat of the foundation shall make the amendments. The court shall take action in accordance with the intent of the statutes.

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

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

- annual financial report - yes
- annual activity report – yes, for the public benefit foundations
- public benefit/activity report, - public benefit organizations must provide activity report and financial report
- tax report/tax return – yes, for the organizations, which have implemented for-profit activities in the reported year.
- 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)?

Yes:

- annual financial report – National Statistical Office
- annual activity report – Central Register within the ministry of Justice
- public benefit/activity report, - Central Register within the ministry of Justice
- tax report/tax return – National Revenue Agency

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

Yes:

- annual financial report – National Statistical Office
- annual activity report – Central Register within the ministry of Justice
- public benefit/activity report, - Central Register within the ministry of Justice
- tax report/tax return – National Revenue Agency

##### 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 annual reports of the public benefit foundations are public on the page of the central register within the ministry of justice. <http://ngo.mjs.bg/search.aspx> (In Bulgarian language only)

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

Foundations are obliged to have an external audit in case they have more than 1 mln BGN cash flow for the respective reported year.

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

As part of the annual oversight procedures, foundations established as PBOs and entered in the Central Registry at the Ministry of Justice are obliged to submit annual reports on their activities, including received funds and expenses. If infringements of the law are found, the Minister of Justice notifies the public prosecutor and the bodies of the State Financial Control who will conduct preliminary checks. These measures can result in deletion of the registration in the Central Registry and deletion of the organisation's special status as a public benefit organisation. The Minister of Justice is also entitled to exercise ongoing oversight, requesting the current information entered in the register.

The registration can be deleted *ex officio* by the Minister of Justice or a person empowered by him at the request of the public prosecutor or the bodies of the State Financial Control, if a foundation registered as a PBO:

- Systematically fails to submit the information required for publication within the specified time limit
- For two subsequent years fails to submit an annual report to the Central Registry by 31 June
- Pursues activities contrary to the provisions of the law
- Systematically fails to pay public amounts receivable
- Has reduced the number of board members to less than the minimum required by law for a period of more than 6 months

In the case of the first two points, prior to deletion of the registration, the Minister of Justice notifies the organisation in writing, specifying an additional deadline to submit the information, after which, if the information is not submitted, the entry of the organisation in the Central Registry is deleted.

The deletion of the registration shall not relieve the foundation and the members of its managing bodies from their obligations and responsibilities in relation to its activities as a public benefit organisation. The foundation can apply for second registration not earlier than one year following the removal of the reasons for deletion and this right may be exercised only once.

A foundation whose registration as a non-profit legal entity, pursuing activities for public benefit has been deleted can continue to use its property only for the purposes of activities specified in the statutes, inasmuch as they are for public benefit and in case of liquidation the requirements concerning PBOs are observed.

## **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?

It is the Ministry of Justice.

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

See above.

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?

See above.

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

A foundation dissolves:

- Upon expiry of the term for which it was established
- By a decision of its supreme body
- By a decision of the district court where the non-profit legal entity is domiciled if: It has not been established in compliance with the legal procedure; it pursues activities contrary to the Constitution, the law, the public order or good morals; or it has been declared bankrupt

The dissolution of foundations always involves a procedure for liquidation. It is conducted by the managing body or a person assigned by it. Where no liquidator has been assigned, such a person is assigned by the district court where the foundation is domiciled. With regard to insolvency, bankruptcy, the liquidation procedure and the authority of the liquidator, the relevant provisions of the Commerce Act shall apply. Following the distribution of the property, the liquidator is bound to request deletion of the registration of the foundation by the district court where the foundation is domiciled.

Who can claim dissolution of the foundation?

Dissolution of the foundation can be claimed:

- Upon expiry of the term for which it has been established
- If it has not been established in compliance with the legal procedure
- If it pursues activities contrary to the Constitution, the law, the public order or good morals
- If it has been declared bankrupt

The dissolution follows a court decision, which can be issued on the grounds of claim by any interested party or the public prosecutor. The court grants a 6-month term for removal of the reasons for dissolution before taking a decision.

Property after liquidation

Foundations established for private benefit:

The distribution of the property remaining after the satisfaction of creditors of a foundation established for private benefit is determined in compliance with its statutes or by the supreme body of the foundation, unless otherwise provided in the LNPLE. Where no decision to that effect has been taken prior to the dissolution, such a decision is made by the liquidator.

Where there are no persons in existence to acquire the property of the dissolved foundation, or where they cannot be identified, the property shall be delivered into possession of the municipality where the foundation is domiciled. The municipality is obligated to use the property for purposes as close

as possible to the objectives of the dissolved foundation. Persons who have acquired property as a result of the liquidation are liable for the obligations of the dissolved foundation up to the amount of the value of the acquired property.

Foundations established for public benefit:

The liquidator is obligated, if possible, to satisfy the creditors of the foundation pursuing activities for public benefit from the available cash funds, or should that be impossible, by converting into cash funds first the movable properties and then the real properties of the foundation.

The LNPLE stipulates that the property of the foundation established as a PBO may not be assigned in any way whatsoever to:

- a) The founders
- b) Persons who have been members of the bodies, and employees of the foundation
- c) The liquidators, except for their due valuable consideration
- d) Spouses of persons under points a), b) or c)
- e) Relatives of persons under points a), b), or c) of direct descent – without limit, collateral relatives – to the fourth branch, or in-laws to the second branch, inclusive
- f) Legal entities in which persons under points a) – e) are managers or may impose decisions or hinder decision making

Any property remaining after the satisfaction of creditors shall be transferred to a non-profit legal entity designated for performing public benefit activities, with the same or similar non-profit purposes. The recipient organisation can be specified in the statute, but if it is not, the registration court shall determine the recipient.

In cases where a recipient organisation cannot be found, the property shall be delivered to the municipality where the dissolved foundation had its seat. The municipality shall donate the property for the achievement of purposes that are most similar to the purposes of the dissolved foundation.

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

The LNPLE generally does not differentiate between foreign and domestic legal and natural persons. According to Article 38, para. 2 “Foreign non-profit legal entities may perform public benefit activities through their branches in the country under the conditions of this Act”. The legal capacity, establishment, reorganisation and dissolution of non-profit legal entities, their management, representation and membership shall be governed by the laws of the country of their domicile. Therefore, according to Article 52 of the LNPLE, the laws of the country of domicile of the branch shall govern the establishment, operation and closing down of branches of foreign non-profits. They may establish branches in this country provided their purposes are not contrary to the public order and laws of Bulgaria. The law does not distinguish between nationals and non-nationals for purposes of governing, membership or management of an association and does not stipulate any additional requirements on the basis of citizenship.

#### **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?**

The law does not have any special requirements on this. It depends on the statutes of the foundation.

## **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 general principle is that legal entities with non-profit purposes, including foundations, are not taxed for activities pursuing their statutory goals. Foundations can register as public-benefit under the Law on Non-Profit Legal Entities (LNPE). See page 1 for more information. However, income from business activities performed by non-profit legal entities is subject to profits tax.

The general criterion for obtaining tax-exempt status by legal entities with non-profit purposes is their court registration. Most of the laws providing special tax benefits add the requirement that non-profit legal entities be further registered in the Central Registry and pursue public benefit purposes.

### **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?)**

There are no special reporting requirements, just a registration for public benefit.

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

No. There is a state call for organisations for public benefit and the requirement is just the form of registration. Most of the calls (EU funds, as well as programmes for social services delivered by NGOs) do not require a public benefit status.

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

There is no State regulation concerning reporting to donors and beneficiaries.

### **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.**

The definition is given on first page of the profile.

### **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

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

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection				X

Civil or human rights				X
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination				X
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief		X		
Development aid and development cooperation				X
Assistance to refugees or immigrants				X
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities				X
Protection of animals				X
Science, research and innovation				X
Education and training	X			
European and international understanding				X
Health, well-being and medical care	X			
Consumer protection				X
Assistance to, or protection of vulnerable and disadvantaged persons	X			
Amateur sports				X
Infrastructure support for public benefit purpose organisations	X			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

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

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

No

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

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

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

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

## 10. Non-Distribution Constraint

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

No

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

## 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**?

Remuneration is not mentioned in the LNPLE.

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)

It is not mentioned in the Law for Taxation of the Income of Physical Persons<sup>2</sup> or Law for the Corporate Income Tax Levying, but usually if the donor receives some benefit in return of its donation it is treated as sponsorship.

c) 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

<sup>2</sup> [http://www.bcnl.org/doc\\_en.php?DID=323](http://www.bcnl.org/doc_en.php?DID=323)

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

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

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

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

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		
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### 13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

According to LNPLE there is no requirement regarding capital for setting up a foundation. Reserves of the budget of the foundation can be treated as capital and can be spent as the managing body of the foundation decides.

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

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 "pay-out rule"?

No

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

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

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

	Yes	Probably yes	Unclear	Probably no	No

A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public benefit purpose of the foundation.	X, but they pay taxes on the				
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#### 14. Does activity abroad put the tax-exempt status at risk?

No, if the registration is for public benefit.

#### 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.

#### 16. Income tax treatment

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

##### Grants and donations

According to the Law for Local Taxes and Fees (LLTF), donations made and received by public benefit organisations registered in the Central Registry at the Ministry of Justice are exempt from tax. Thus, foundations registered for pursuing activities for public benefit purposes are tax-exempt for donations they receive. However, the tax is due if the property received is transferred and the transaction is not consistent with the statutory purposes for which the organisation was established. Otherwise, the amount of the tax on donations is 5%. This tax shall be paid by foundations registered for pursuing activities for private benefit.

##### Investment income (asset administration)

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

Income from interest on bank deposits is not taxed as long as the funds deposited come from non-profit activity. If it comes from for-profit activity it is taxed at the standard corporate tax rate.

Income from sale of shares on a regulated Bulgarian market is tax-exempt.

Dividends are taxed at a rate of 5%.

Capital gains are generally not tax-exempt, thus 10% profit tax is due (according to tax rates in 2008).

##### 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)

According to the Law on Corporate Income Tax (LCIT), legal entities with non-profit purposes are taxable if they perform economic activity.

According to the LCIT, legal entities which are not traders, including organisations on state budget subsidies and religious organisations, shall be taxed for their profits received from commercial transactions in accordance with Art.1 of the Commercial Code, including the leasing of movable or immovable property. If non-profit legal entities carry out business activities, they shall pay corporate income tax at the same rate as commercial organisations (10%). These provisions fully apply to foundations as one of the two types of non-profit legal entities according to Bulgarian legislation. There is no differentiation with regard to taxation based on whether the economic activity is related or not. Under the law, NGOs are allowed to carry out only related economic activity.

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

The important thing is whether the income is considered to be from non-profit or from commercial activity. If from non-profit activity, it is not taxed. That is why grants received are not taxed. However, interest from a loan might be considered an economic activity and taxed accordingly.

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

Income from shareholding is first taxed in the subsidiary company with a corporate tax (10%). Afterwards the profit is subject to a dividends tax (5%), which is withheld at the source. There is no other tax after that because this will be considered to be double taxation

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

n/a

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

Non-profit legal entities, including foundations, are taxable persons according to the new Law on Value Added Tax (LVAT), in force since 1 January 2007, and they pay VAT at the same rate as commercial organisations. The rate of VAT in Bulgaria is 20% on all goods and services (except for some tourist services where the rate is 7%). Legal entities must register and charge VAT if their independent economic activity results in turnover exceeding 50,000 BGN (approximately €25,000). A non-profit legal entity has the right to a tax refund after registration as a taxable person under LVAT.

The LVAT, however, defines some transactions as tax-exempt. These categories are similar to the categories in the 6<sup>th</sup> VAT Directive.

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

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

There are specific taxes for transfers of real estate. Other transfers of assets are generally not taxed. Only in the case of liquidation of the foundation (or any other legal entity) is a 7% withholding tax is due.

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

No

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

- Statutes – yes, translation required
- Last annual financial report - no
- 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 organization's country of seat but are required according to the legislation of the country from which tax benefits are sought? - no
- Documents, providing evidence for the registration of the organization. Translation in Bulgarian needed.
- Contracts for the donations.

Yes, in 2008 and 2009 amendments in the corporate laws were made. The amendments foresee that the donors of the public benefit organizations in the EU and European Economical Area can use tax deductions for donations they make to such organizations.

**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?**

According the Law on local taxes and fees adopted in December 2009, the exemption from inheritance and gift tax offered to the Bulgarian Red Cross, the registered religions in the country, the community cultural centres and the other non-profit legal entities except the non-profit legal entities acting for private profit, will be applicable also in cases where the property is inherited by identical or similar entities, established in another Member State of the European Union or a state party to the Agreement on the European Economic Area. The exemption in such cases will be made provided that the person provides an official document certifying his status or capacity, issued or certified by the competent authority of the relevant state, and its legalised translation in Bulgarian.

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

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

Tax deduction.

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

- a) \\
- b)
- c)
- d)
- e)
- f) 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?

Deductions between 5% and 50% from the tax base. There is no minimum contribution on which tax deductions can be claimed.

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

According to the Law on Physical Persons' Income Taxation (LPPIT) (new and in force since 1 January 2007) individuals working under a labour contract, self-employed individuals, or people receiving income from rent, annuities, or and leases are entitled to deduct donations from their taxable income. The donations must be made in favour of recipients, exhaustively listed in the law, among which are public benefit organisations registered in the Central Registry, including foundations pursuing public benefit purposes.

The amount of the deduction varies between 5% and 50% of the income depending on the donation recipient. It is made after deducting the activity expenses and certain insurance contributions.

The tax deduction is 5 % of the profit before taxation if the donation is made in favour of:

- Healthcare establishments and medical treatment establishments;
- Specialised institutions for the provision of social services under the Law on Social Support, and the Social Support Agency, and the Social Support Fund with the Minister of Labour and Social Policy
- (suppl. – SG 106/08, in force from 1 January 2009) Specialised institutions for children under the Law on Child Protection, and public establishments for raising children who are deprived of a parent's care, under the Law on Public Education, and homes for medical and social services for children under the Law on the Medical Establishments
- Public nurseries, kindergartens, schools, higher schools and academies
- State-budget enterprises within the meaning of the Accounting Law
- Religions registered within the country
- Specialised enterprises or cooperative societies of disabled persons, which are entered in the Register referred to in Art. 29 of the Law on the Integration of disabled Persons, and the ones in favour of the disabled Persons Agency

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<sup>3</sup> For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

<sup>4</sup> For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

- (amend. - SG 35/09, in force from 12 May 2009) Persons who have suffered damage in disastrous situations within the meaning of the Law on Protection in Disastrous Situations, or the families thereof
- The Bulgarian Red Cross
- Low-income persons
- Disabled children or children who have no parents
- Cultural institutions, or for the purpose of cultural, educational or scientific exchange under an international treaty, the Republic of Bulgaria being a party thereto
- Not-for-profit legal entities registered in the Central Register of not-for-profit legal entities for the purpose of carrying out activities for the public benefit, with the exception of those organisations which support culture within the meaning of the Law on Maecenasship
- (amend. – SG 32/09, in force from 1 January 2010) Pupils and students in schools in a Member State of the European Union, or in another state party to the Agreement on the European Economic Area for the scholarships they have been granted
- The Power Efficiency Fund
- Communes for treatment of drug addicts, as well as in favour of drug addicts for the purpose of their medical treatment
- (new – SG 106/08, in force from 1 January 2009) the United Nations Children's Fund (UNICEF)

The tax deduction is 15% of the profit before taxation if the aid provided freely under the conditions and in accordance with the procedure set forth in the Law on Maecenasship.

The tax deduction is 50% of the profit before taxation if the donation is made in favour of the "Fund for Treatment of Children" Centre, the "Assisted Reproduction Fund", the "Transplantation Fund" Centre, or the "Central Fund for Treatment of Children".

In addition, the total amount of the expenses for donations of computers and their peripheral devices, produced up to one year before the date of the donation, made in favour of Bulgarian schools and universities, are accounted for tax purposes.

The total amount of the deduction for the different categories of organisations cannot exceed 65% of the total income.

All these deductions may also apply to donations provided to persons identical to the ones specified in paras. 1 to 4, or persons similar to them, who are citizens of or established in another Member State of the European Union, or a state party to the Agreement on the European Economic Area, provided that the person who made the donation has an official legalised document, certifying the status of the person receiving the donation, issued or verified by a competent authority of the respective foreign country, along with a translation in Bulgarian language, carried out by a certified translator.

### **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?

b) Which assets qualify for tax deductibility?

Cash, real estate and in-kind donations are accepted.

Under the Law on Corporate Income Taxation (LCIT) (new and in force since 1 January 2010) donations made by corporate donors in favour of recipients, exhaustively listed in the law, must be accounted as expenses. They are not liable to tax withheld at the source and lead directly to decrease of the financial result if they total up to 10%, 15% or 50% (depending on the recipient) of the positive financial result. If the expenses for donation exceed this percentage, the financial result is increased by the excess amount, which means that it is subject to corporate tax (10%).

The tax deduction is 10% of the profit before taxation if the donation is made in favour of:

- Healthcare establishments and medical treatment establishments
- Specialised institutions for the provision of social services under the Law on Social Support, and the Social Support Agency, and the Social Support Fund with the Minister of Labour and Social Policy
- (suppl. – SG 106/08, in force from 1 January 2009) Specialised institutions for children under the Law on Child Protection, and public establishments for raising children who are deprived of parent's care, under the Law on Public Education and homes for medical and social services for children under the Law on the Medical Establishments
- Public nurseries, kindergartens, schools, higher schools and academies
- State-budget enterprises within the meaning of the Accounting Law
- Religions registered within the country
- Specialised enterprises or cooperative societies of disabled persons, which are entered in the Register referred to in Art. 29 of the Law on the Integration of disabled Persons, and the ones in favour of the disabled Persons Agency
- Disabled persons, and technical relief devices for them
- (amend. - SG 35/09, in force from 12 May 2009) Persons who have suffered damage in disastrous situations within the meaning of the Law on Protection in Disastrous Situations, or the families thereof
- The Bulgarian Red Cross
- Low-income persons
- Disabled children or children who have no parents
- Cultural institutions, or for the purpose of cultural, educational or scientific exchange under an international treaty, the Republic of Bulgaria being a party thereto
- Not-for-profit legal entities registered in the Central Register of not-for-profit legal entities for the purpose of carrying out activities for the public benefit, with the exception of those organisations which support culture within the meaning of the Law on Maecenasship
- (amend. – SG 32/09, in force from 01.01.2010) Pupils and students in schools in a Member State of the European Union, or in another state – party to the Agreement on the European Economic Area for the scholarships they have been granted
- The Power Efficiency Fund
- Communes for treatment of drug addicts, as well as in favour of drug addicts for the purpose of their medical treatment
- (new – SG 106/08, in force from 01.01.2009) The United Nations Children's Fund (UNICEF)

The tax deduction is 15% of the profit before taxation of the profit before taxation if The aid provided freely under the conditions and in accordance with the procedure set forth in the Law on Maecenasship amounting to up to 15 percent shall be recognized for tax purposes.

The tax deduction is 50% of the profit before taxation if the donation is made in favour of the "Fund for Treatment of Children" Centre, the "Assisted Reproduction Fund", and the "Central Fund for Treatment of Children".

In addition, the total amount of the expenses for donations of computers and their peripheral devices, produced up to one year before the date of the donation, made in favour of Bulgarian schools and universities, are also accounted for tax purposes.

The total amount of the deduction for the different categories of organisations cannot exceed 65% of the total income.

All these deductions may also apply to donations provided to persons identical to the ones specified in paras 1 through 4 or similar to them, who are citizens of or established in another Member State of the European Union, or a state party to the Agreement on the European Economic Area, provided that the person who made the donation, has an official legalised document, certifying the status of the person receiving the donation, issued or verified by a competent authority of the respective foreign country, along with a translation in Bulgarian language, carried out by a certified translator.

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

Yes, they are tax deductible in some cases, described in the above questions.

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

None

#### **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 contract for the donation signed by donor and beneficiary, as well as a protocol for the accepted donation is required. In the case of donations to public benefit organisations, a certificate for registration in the Central Register must be attached to the contract.

#### **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**

According to the Law for Local Taxes and Fees (LLTF), the following are exempt from donation tax:

- Properties acquired by people with disabilities
- Grants for treatment of Bulgarian citizens as well as for technical equipment for people with disabilities
- Grants with a humanitarian objective to persons with a reduced working ability of 50% to 100% and to socially disadvantaged citizens

## **2. Legal entities**

According to the Law for Local Taxes and Fees (LLTF), properties acquired by the following are exempt from donation tax:

- The state and municipalities
- Bulgarian health, education, culture and scientific organisations which are supported entirely or partially by the state budget as well as homes for social care and “mother and child” homes
- The Bulgarian Red Cross
- National representative organisations of disabled people
- Funds for support of victims of natural disasters and for preservation and restoration of historical and cultural heritage
- Also exempt from donation tax are:
  - Non-profit legal entities, registered in the Central Registry of non-profit legal entities for pursuing public benefit purposes. (Non-profit legal entities carrying out activities for private benefit are obliged to pay tax in the amount of 5% of the received donations.)
  - Grants in favour of public cultural centres
  - Grants received under the terms and conditions of the Law for Sponsorship
  - Non-monetary inputs into the capital of a commercial company, cooperative or non-profit legal entities

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

**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)?** See q. 5

**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?** 5%, see q.5

**3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?** See q. 5%

**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?** See q. 5

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

In Bulgaria, property taxes, such as the inheritance tax, donation tax, and tax on chattels, based on all fixed or intangible assets reflected in an organisation's balance sheet, are payable to municipalities in accordance with the LLTF. This law stipulates that non-profit legal entities registered as public benefit organisations are exempt from gift and inheritance taxes, as are municipalities, "chitalishta" (traditional community centres), buildings of the Bulgarian Red Cross, buildings used by universities and the Bulgarian Academy of Science, park and sport facilities for public use, historical buildings and cultural monuments, museums, galleries and libraries, and other entities exhaustively listed in the Law (e.g. national organisations for the disabled, funds used to assist victims of natural disasters, funds used for the restoration of historical and cultural monuments, and Bulgarian educational, health, cultural, and scientific organisations on a state budget subsidy). According to Article 38, para.1, the property inherited by the state, municipalities, the Bulgarian Red Cross, "chitalishta" and other non-profit legal entities except NGOs designated for performing mutual benefit activities shall not be subject to inheritance and gift taxes. The foregoing provision fully applies to foundations performing public benefit activity and registered in the Central Registry at the Ministry of Justice, which are also exempt from such taxes.

If, however, property received is transferred and the transaction is not consistent with the statutory purposes for which the organisation was established, a 5% gift tax will be imposed on the organisation, regardless of its form or purpose.

## **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?**

Yes, in 2008 and 2009 there were changes to the basic tax laws, widening the tax exempt status of organisations in the EU.

**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)?**

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

The Act on Measures Against Financing of Terrorism. Entry into force: 18 February 2003; last adoption: 4 April 2008

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

Under the Act on Measures Against Financing of Terrorism, all NGOs are obliged to register with the Financial Intelligence Agency (FIA) four months after their establishment. They have to develop, accept and submit to the FIA special procedures and rules so as to prevent financing of terrorism and to receive an approval of these rules and procedures from the FIA. Under the Act on Measures Against Money Laundering, all legal entities, including non-profit ones, are obliged to identify their

clients when establishing long-term business relations, as well as when implementing operations and concluding a transaction with a value above 30,000 Bulgarian leva (BGN) (approximately €15,000 ). This is also valid in cases where more than one operation or transaction is being implemented, which separately do not exceed 30,000 BGN but there is information that the operations or transactions are connected. If they suspect money laundering, NGOs are obliged to immediately notify the FIA before the implementation of the operation or the transaction, delaying its completion within the admissible term according to the normative acts defining the respective type of activity. If a delay is impossible, they shall notify the FIA immediately after completion of the operation or transaction.

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

The new requirements are public and can be found on the website of the FIA.

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

No

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?

No

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

An increase in corporate donations by 20% in the last 2 years.

Corporate donations remain mostly one-off actions.

Re-granting foundations are decreasing in number due to a decrease in foreign funding, while foundations with indigenous funding are still an exception.

The legal and fiscal environment for giving remains chaotic and non-structured.

### **4. Public fundraising**

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

No, there are no specific regulations regarding fundraising.

Additionally: In September 2013 the Ministry of finance elaborated a new regulation, which allowed to release the charitable SMSs form VAT. It affected the fundraising efforts of the public campaigns by increasing them with 20%.

#### **Useful contacts**

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

[www.bcnl.org](http://www.bcnl.org)  
[www.minfin.bg](http://www.minfin.bg)

### **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.