

EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

IRELAND – 2014

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The operating environment for foundations

Drafted by Philanthropy Ireland

Background Note

Una Ni Dhubhghaill, has recently been appointed Chief Executive Designate of the Charities Regulatory Authority, in a note published on the May 2014 she outlined the priority actions for the Authority as it commences operations. The establishment of the Charity Regulator in May 2014 and the (long delayed) enactment of the Charities Act 2009 are the single greatest change in the regulatory environment for many years.

In a statement Una Ni Dhubhghaill said that;

With the establishment of the Charities Regulatory Authority we will, for the first time in Ireland, have a dedicated, statutory regulator for charities. This is a fundamental change for the sector and I want to take this opportunity to explain what, at least initially, it is likely to involve.

There are many responsibilities and powers set out for the new Authority in the Act. We will be introducing these on a phased basis as our resources permit.

Our first priority is the formal establishment of the Authority later in the year and there are several important milestones we will have to pass to get there. These include the appointment of the Board; the making of the Statutory Orders needed to establish the Authority in law; the completion of the arrangements to transfer the functions of the Commissioners of Charitable Donations and Bequests; and setting up an office and website for the Authority. I will be working with my team over coming months to get everything in place.

Our other main priority at the moment is developing the new Register of Charities, which will be a critical part of the new regulatory system. The Charities Act allows the approximately 8,000 charities that are already registered with the Revenue Commissioners for charitable tax exemption to be automatically placed on this Register. Once we have developed our registration system, we will be asking these charities to verify their data to ensure that we have the information we need to complete their automatic registration. When this process is complete, we hope to be able to publish the initial Register of Charities.

Once the Register is in place, the various obligations that flow from registration will start to take effect. All registered charities will have to make an annual activity report to the Authority. These reports have the potential to become a valuable mechanism for charities to demonstrate their effectiveness, accountability and transparency to their donor and beneficiary communities. We want to be sure that the reports fulfil that potential and so we plan to work with charities and other stakeholders to develop the right format and content. We also want to build on the important conversation that is already taking place about what accounting standards the new Authority might mandate. Many individuals and organisations within the sector have already contributed ideas by way of our consultation last year on the implementation of the Act and I want to thank them for their helpful contributions thus far.

With the initial Register in place, we will move on to design a process to reach out and register those charities not automatically registered through their charitable tax status.

And we will work to develop programmes to deliver our other statutory functions under the Act.

So, what will this mean for charities over coming months? Around Easter, the Minister for Justice and Equality plans to make appointments to the Board of the new Authority. That Board will then begin to oversee the initial work described above. Charities registered with Revenue can expect to be contacted by the Authority later in the year to verify their registration data in advance of its publication in the Register. We will also seek input from the sector on reporting formats and templates.

This will be a learning process, not only for my team and me, but also for all the charities that will come under the remit of the new Authority. Both in meeting the challenges and taking the opportunities that lie ahead, I am looking forward to working with the charity sector itself, which has long supported the objectives of the Charities Act.

This piece was originally written for the spring edition 2014 of [Be The Change](#) magazine.

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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)?

There is no one legal form for foundations in Ireland, and the form that any particular foundation can take is not prescribed in law. They are most likely to be companies limited by guarantee (without share capital) or trusts.

All the information in this document hence applies to all charities, not specifically foundations.

Charitable status does not yet exist in Ireland, but it is on the way (see below).

However, foundations can obtain a 'charity number' from the tax authorities (the Revenue Commissioners) entitling them to tax relief provided they come within the ambit of the law on charity. As in England and Wales, there is no definition of charity but rather four categories based on the purpose of the organisation: The advancement of religion, the advancement of education, the relief of poverty, and 'other purposes' beneficial to the community.

The definition currently used is derived from the Pemsel Case in 1891 based on English jurisprudence, and the Irish Income Tax Act 1967. The latter defines a charity as a body 'established for charitable purposes only'. The Pemsel Case is more helpful as it offers four categories of activities (as listed above), which constitute charitable work.

While the new charities legislation (the Charities Act 2009, hereafter referred to as "the Act") was enacted in February 2009 it has not yet been fully commenced, so the legal definition is not yet in force. In any case the new legal definition is based on the Pemsel Categories.

Only three provisions from the Act have been commenced to date and the remainder are unlikely to be commenced until the new Charities Regulatory Authority (CRA) is in place. It is anticipated that this will be before the end of 2014.

2. What purposes can foundations pursue?

Public benefit, as defined above.

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?

The foundation must draw up their governing document (memorandum and articles of association for a limited company, trust deed for a charitable trust). If a charity number is required for tax purposes, they must register with the Revenue Commissioners.

This still remains the position until the full Act is commenced.

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, but see previous question).

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

Foundations that have charitable tax relief exempt status will be listed by the Revenue Commissioners. This is the only list in existence at present. There will be a register of charities under the Act but this has not yet been commenced.

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

The Revenue List indicates the name and legal address of the charitable foundation along with its charity tax registration number.

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

The Revenue List, the most recent version of which is July 2014, is available online on the Revenue Commissioners website (www.revenue.ie).

The newly established Charities Regulatory Authority is currently working on developing an online official register of charities which is expected to be ready in early 2015

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?

Revenue commissioners require at least three trustees/directors for a charity to be given a charity number, and a majority must reside within the state.

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?

Standard company and trust law applies here with no further restrictions for charities.

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

When Act is commenced this information will be specified therein

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?

In order to maintain charity tax exemption any changes to the charitable purpose have to have prior approval from the Revenue Commissioners. When the act is commenced any changes will have to have approval of the Charities regulatory Authority.

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

Under the new Act charities will have to report annually on both activities and finance. The reports will be made available to the public electronically.

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?

Trust law applies.

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

Informally, there is nothing to prevent this. Ultimately, it is the Charity's trustees that are responsible for the decision making.

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

This is dictated by the statutes of an organisation. The board of the foundation has collective responsibility in law for the administration of the foundation. The statutes of the foundation may permit the board to delegate responsibility for individual tasks to third parties, but the board will retain legal responsibility for the supervision of that third party's activities.

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

See above.

9. Liability of the foundation and its organs

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

If a foundation is established as a trust, trust law will govern the general standard of care. Board members of a charitable foundation in Ireland cannot be paid, so there is no difference of standard based on remuneration. Company law covers the standard of diligence for directors. The new Act sets out further details on this matter.

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?

No. It was intended that statutory provisions of this nature would be introduced in the new Charities Bill, but the drafters deleted these sections from the general scheme of Bill. Section 90 of the Act has been commenced.

The purpose of this Order is to grant powers in any proceedings to the courts to grant relief to charity trustees from personal liability for breach of trust, where the opinion of the court is that, while the trustee may be liable for the breach, he or she acted in good faith and ought to be excused. In such circumstances, the court may then grant relief in whole or in part under the provisions of section 90 of the Act.

c) What is the liability of executive staff?

It depends on the legal structure of the organisation concerned.

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

Yes, but any modifications to the foundation's statutes will require prior approval from the Revenue Commissioners. And when Act is fully commenced they will need to get approval from the CRA. Section 91 of the Charities Act 2009, once commenced, will allow a charitable foundation to purchase insurance to indemnify board members against personal liabilities where they have acted in good faith and in the performance of their functions as charity trustees.

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

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

10. Are economic activities¹ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

No

11. Are foundations permitted to be major shareholders?

Yes

¹ For the purposes of this profile economic activity can be understood as "trade or business activity involving the sale of goods and services". "Related" economic activity is in itself related to and supports the pursuance of the public benefit purpose of the foundation. According to the above, normal asset administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

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?

No

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

Yes, see the question about economic activities

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

Amendments to the governing document must be approved by the Revenue Commissioners. When Act is commenced approval by the CRA will also be required.

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

At present audited accounts must be provided to the Revenue Commissioners if a charity's income is over €100,000.

Under the new Act annual returns and annual activity reports are to be made by charities to the new Authority.

Audited accounts will be required for income above a prescribed threshold of up to a maximum of €500,000 Examination of accounts will be required for income below the prescribed threshold – less onerous and less expensive for smaller charities. Charities with total income/expenditure of less than €10,000 in a given year will not be required to submit audited or examined accounts but will have to include a summary of their finances in their annual activity report. The Act provides that the regulations can vary the level and detail of information to be required from different classes of charities e.g. smaller charities. This information will be publicly available, except in the case of private foundations, where no funding is raised from the public: These will have to make the returns to the Regulator but the information will not be required to be made public.

In the case of charities structured as companies that already make annual returns to

the Companies Registration Office (CRO) under company law, the CRO will send these returns to the new CRA to avoid dual reporting.

All charities regardless of legal structure will be required to submit an annual activity report to the CRA.

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)

None at present. Under the Act both a financial and an activity report will have to be submitted to the CRA.

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

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

The revenue checks at the moment, but the CRA will check on an annual basis when the new Act is implemented.

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)

Not at present. However, accounts and reports will need to be made public under the new Act – where is yet to be decided, but provision has been made in the Act for electronic disclosure.

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

This currently depends on the legal structure of the foundation. If the foundation is incorporated then it must comply with company law in this regard. The new Charities Act, when commenced, will determine the legal requirements regarding external audit.

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

n/a

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

The Revenue Commissioners currently have the power to remove charitable tax exemption. The proposed Charities Regulatory Authority (CRA), to be established under the new Charities Act, was set up in April 2014. The CRA is intended to be a public independent body with the power to supervise, inspect and investigate public benefit organisations. Boards of directors will require the CRA's approval before entering into certain agreements with charity trustees or connected persons. The ultimate sanction given to the CRA is the power to remove a charity from the Register (s.43). Exercise of this power in many instances requires the prior approval of the High Court. The CRA may impose intermediate sanctions falling short of removal from the Register and without recourse to the High Court under s.73 Charities Act 2009. Neither of these provisions is yet in force at the time of writing.

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

The CRA will be a public independent body.

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?

Yes, see above.

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?

Charities must inform the Revenue Commissioners of the following:

- The date the organisation ceases to exist officially
- Final set of accounts of the organisation
- Confirmation of how any residual funds, at the time of dissolution, were distributed

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

At present they are not recognised. The Charities Act will require that every charitable organisation that intends to operate or carry out activities in Ireland must register with the charities regulator, even if they are headquartered outside of Ireland.

19. Does the civil law in your country allow a foundation to conduct (some or all) activities (grant-making, operating, asset administration, fundraising) abroad? Is there any limitation?

Yes. Foundations may carry out activities or have offices abroad, but must be approved for charitable tax exemption by the Revenue Commissioners in Ireland.

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?

Charities must be judged to have charitable purposes, and conform to the restrictions listed in section I of this profile. Tax exemption for donors and for the foundation only applies two years after a charity number is issued.

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?)

Charities must be judged to have charitable purposes, and conform to the restrictions listed in section I of this profile. Tax exemption for donors and for the foundation only applies two years after a charity number is issued.

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

n/a

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

n/a

5. Are there specific accounting rules for foundations?

The Act makes provision in relation to the keeping of proper books of accounts, as well as the provision of annual statements of accounts, by charitable organisations that are not companies and in relation to the audit, or examination, of such accounts.

In recognition of the fact that many charitable organisations are small with limited resources, both financial and otherwise, a key principle of the Act is to provide for regulation in a proportionate manner. There are varying reporting and audit requirements depending on whether a charity's income or expenditure is above or below a level to be prescribed by the Minister, that level not to be more than €500,000. The Act provides that the Companies Acts will continue to apply to charities that are registered as companies insofar as accounting requirements are concerned. The Act minimises the potential for dual filing by charitable organisations that are incorporated, in that the same documentation will not have to be filed separately with both the CRO and the Authority. The CRO will pass on financial information it receives under the companies acts to the new Authority.

The Act also provides that all charitable organisations will be required to make annual reports on their charitable activities to the Authority (CRA). These reports will be accessible to the public, except those in respect of private trusts that are not funded by donations from the public. The Department of Justice carried out an initial consultation in relation to annual reports and financial reporting with the sector during January – March 2013 and it is expected that the new Charities Regulatory Authority will follow up on this work before developing detailed regulations.

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 Charities Act 2009 provides a definition of charitable purpose and guidance on the nature of public benefit in s. 3 of the Act. This section has yet to be commenced. Section 3 provides:

“(1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:

- (a) The prevention or relief of poverty or economic hardship
 - (b) The advancement of education
 - (c) The advancement of religion
 - (d) Any other purpose that is of benefit to the community.
- (2) A purpose shall not be a charitable purpose unless it is of public benefit.
- (3) Subject to subsection
- (4), a gift shall not be of public benefit unless:
- (a) It is intended to benefit the public or a section of the public, and

(b) In a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit

(4) It shall be presumed, unless the contrary is proved, that a gift for the advancement of religion is of public benefit.

(5) The Authority shall not make a determination that a gift for the advancement of religion is not of public benefit without the consent of the Attorney General.

(6) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.(7) In determining whether a gift is of public benefit or not, account shall be taken of:

(a) Any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift, and

(b)The amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift

(8) A limitation referred to in subsection (7) shall not be justified and reasonable if all of the intended beneficiaries of the gift or a significant number of them have a personal connection with the donor of the gift.

(9) There shall be no appeal to the Tribunal from a determination of the Authority to which subsection (5) applies.

(10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult:

(a) The principal object of which is the making of profit, or

(b) That employs oppressive psychological manipulation

(i) Of its followers, or

(ii) For the purpose of gaining new followers

(11) In this section “purpose that is of benefit to the community” includes:

(a) The advancement of community welfare including the relief of those in need by Reason of youth, age, ill-health, or disability

(b) The advancement of community development, including rural or urban regeneration

(c) The promotion of civic responsibility or voluntary work

(d) The promotion of health, including the prevention or relief of sickness, disease or human suffering

(e) The advancement of conflict resolution or reconciliation

(f) The promotion of religious or racial harmony and harmonious community relations

(g) The protection of the natural environment

(h) The advancement of environmental sustainability

(i) The advancement of the efficient and effective use of the property of charitable organisations

(j) The prevention or relief of suffering of animals

(k) The advancement of the arts, culture, heritage or sciences, and

(l) The integration of those who are disadvantaged and the promotion of their full participation, in society”

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.

The Taxes Consolidation Act 1997 does not define public benefit purpose. Rather s.207 states that ‘charity’ means any body of persons or trust established for charitable purposes only.” To this end, the Revenue Commissioners apply the common law in deciding whether an organisation is eligible for charitable tax-exempt status. To so benefit, an organisation must provide sufficient “public benefit” and its purposes must come within one of four broad categories considered to be ‘charitable’ for the purpose of taxation:

- Relief of poverty

- Education
- Religious activities
- Other purposes beneficial to the community

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”?

Yes. To be charitable the activity must result in sufficient public benefit. The Revenue Commissioners will consider the quantum of benefit to the public at large, the existence of any private benefit, and the size of the group to benefit in determining this matter. The new Charities Act 2009 further elaborates on matters to be considered in deciding the public benefit question.

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

Under the new Act, in determining whether a gift is of public benefit or not, account shall be taken of any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift, and the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift.

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

Once the Revenue has granted charitable tax exemption, a foundation could support activities benefiting certain groups as described below.

	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 the foundation’s assets in case of dissolution?

In the event of dissolution, a foundation’s assets are given or transferred to some other charitable institution or institutions having similar purposes or goals as those of the foundation under the *cy près* doctrine. The institution in receipt of these assets must use the assets to help it achieve its purposes and goals as set out in its own governing document. *Cy près* schemes are drawn up by a statutory body, the Commissioners of Charitable Donations and Bequests. The new charities legislation will dissolve this body and its powers, including the power to draft *cy près* schemes will be transferred to the new Charities Regulatory Authority (CRA). The High Court enjoys original jurisdiction to give directions on the design or implementation of any *cy près* scheme.

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 of Board members is not allowed for organisations seeking charitable tax exemption. They are allowed to be reimbursed for out-of-pocket expenses. The same applies under the new Charities Act 2009.

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)

No. A donation must not confer any benefit on the donor or any person connected with the donor if it is to qualify for tax relief.

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

‘Administration costs’ are not defined at present and no maximum is in place. The Revenue Commissioners do review the expenditure of organisations to ensure that their activities are charitable as per the definition above. The same applies under the new Charities Act, with no maximum amount stipulated.

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

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance

- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

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

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

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

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?

Yes

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?)?

There is not currently a set amount or percentage of income that must be spent each year. An organisation is, however, required to use its income for the charitable purposes as outlined in its governing document. Failure to pursue the charitable purpose set out in the governing document would result in a foundation losing charitable tax exemption.

If a foundation wishes to accumulate capital for more than 2 years, the foundation must first obtain permission from the Revenue Commissioners. This will remain the same under the new Charities Act 2009.

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”?

Not at present.

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?

No

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

16. Income tax treatment

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

Grants and donations

Exempt

Investment income (asset administration)

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

Exempt

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)

Economic activities are allowed and exempt as long as they are in support of charitable purposes.

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

Exempt

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

Exempt, as long as they are in support of charitable purposes.

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

Exempt

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

Not exempt.

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?

Exempt

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

Property tax was introduced in Ireland in 2014. Charities are not automatically exempt from property tax. There are very limited exemptions depending on the charitable purpose to which the building is put.

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?

This was changed under Finance Act 2010. Charities based in European Economic Area /European Free Trade Association countries can apply for tax exemption. A two year waiting period applies before a charity can access the donations relief scheme (s 848A).

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?

If the selling of shares is liable for capital gains tax or income tax, then they will be exempt from these taxes.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit² or tax deduction³?

Charities are able to claim the tax back from all donations over €250, the percentage which can be claimed by the Charity is 31% (grossed up).

2. Tax treatment of individual donors

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

Minimum donation of €250 and a maximum of €1m but in all cases the tax relief goes to the charity not the individual donor.

b) Which assets qualify for tax deductibility?

Cash and publicly-quoted shares can be donated.

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?

Corporate donations to approved bodies must be of at least €250. The company can deduct the donated amount as if it were a trading expense. Cash and publically quoted shares can be donated tax effectively.

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?

Donations must be to charities which have had an Irish Charity number for at least two years. EEA based organisations are eligible to apply for a charity number under the same conditions as a domestic organisation.

5. Other frameworks such as percentage law systems

None

² 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)

³ 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?)?

It is the Charity rather than the donor who receives the taxable benefit. Tax relief under section 848A TCA 1997 in respect of donations made on or after 1 January 2013 by individuals (whether self-assessed or PAYE-only taxpayers) to an approved body is allowed to the body rather than to the donor. A donation which satisfies the conditions of section 848A is grossed up at the specified rate (currently 31%) and the approved body is deemed for the purposes of the relief to have received the grossed up amount net of tax deducted at the specified rate. The donor must complete and sign an Approved Certificate (covering one OR five years) which they send to the charity. The information provided is used by the charity to complete the tax reclaim form. Renewal of the original signed form has been simplified and can be executed by letter, email, text message, online form, or recorded phone message, provided there is a clear audit trail. The tax reclaim process has been automated (as of Jan. 2014) and is made by the charity through the Revenue Online System.

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

Taxed as income.

2. Legal entities

As long as the legal entity obtains a charity number from the Revenue Commissioners, it will be exempt from tax on grants and donations (see section II of this profile).

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

V. Gift and inheritance tax

Exempt

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?

Yes, the effects of the Stauffer and Hein Persche judgments can be seen both in civil law and in tax law. Under the provisions of s.39(5) of the Charities Act, non-resident charities with principal places of business in EEA states are treated more favourably than other non-resident charities under the registration provisions of the Act. In tax law, s.23 of the Finance Act 2010 takes account of Stauffer and Hein Persche and amends Irish tax law to allow a qualifying non-resident EEA charity to seek a determination entitling it to the same tax relief as a domestic resident charity. The consequences of the European Court's decisions have been discussed in an Irish context (see Breen, EU Regulation of Charitable Organizations: The Politics of Legally Enabling Civil Society, (2008) 10(3) *International Journal of Not-for-Profit Law* 50; see also Breen, Ford and Morgan, Cross-Border Issues in the Regulation of Charities: Experiences from the UK and Ireland, (2009) 11(3) *International Journal of Not-for-Profit Law* 5)

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. The main legislation in this area is the Offences Against the State Acts 1939-1998; the Criminal Justice (Terrorist Offences) Act 2005 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

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

The 2009 Charities Act addresses recommendations arising from the Financial Action Task Force (FATF) mutual evaluation report on Ireland's efforts to combat money laundering and terrorist financing, which was published in 2006, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism. Ireland's current anti-money laundering legislation is contained, primarily, in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. This Act gives effect to the recommendations

of the third mutual evaluation report on Ireland of the Financial Action Task Force. Under this legislation, foundations wishing to open bank accounts in Ireland must furnish prescribed documents, including governing instruments, lists of directors and mandate authorisations.

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

Not at present, since the CRA has only recently been set up.

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

Not at present.

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?

The absence of a dedicated foundation regulatory/supervisory authority(ies) in Ireland makes this difficult. Further discussions around anti-terrorist requirements for foundations have taken place in the context of the Charities Act 2009, which provides for greater collaboration with overseas law enforcement and regulatory bodies. These initiatives will be part of a general move toward greater transparency and good practice among charitable organisations.

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

The Government has published a new Charities Act 2009 as discussed in the answers above. Most of the sections have not yet been commenced. For an update, see attached background note above or visit [www.charitiesregulatoryauthority.ie//](http://www.charitiesregulatoryauthority.ie/) (government department) or www.philanthropy.ie (Philanthropy Ireland).

4. Public fundraising

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

Not yet commenced. Existing law is the 1962 Street and House to House collections Act requires a *Garda* permit for all collections of cash from the public in public places. The Act updates the Street and House to House Collections Act 1962. The main changes, when the relevant provisions are commenced, include, for the first time, bringing “non-cash” collections (ie “promises of money”), and collections where tokens are exchanged in return for contributions, into the permit system administered by *An Garda Síochána* (the Police force of the Republic of Ireland). Once the relevant provisions are commenced, such collections will require a permit from *An Garda Síochána*

Useful contacts

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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.