



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

ITALY – 2014

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The operating environment for foundations

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I. Legal framework for foundations

1. Does the jurisdiction have a basic legal definition of a foundation (Description where applicable)? What different legal types of foundation exist (autonomous, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations)?

In the Italian juridical system there is no basic legal definition of a foundation. However, authors and jurisprudence define it as a private autonomous non-profit organisation consisting of assets devoted to a purpose, private or public, defined by the founder (in fact, the deed of a foundation is considered in any case to be a unilateral act). The general concept of foundations is included in the Civil Code (Book One, about non-commercial bodies) and in Presidential Decree no. 361/2000, but special laws provide rules for particular kinds of foundations: Foundations with public benefit purposes regarded as “ONLUS” (i.e. *Organizzazione Non Lucrativa di Utilita' Sociale* / non-profit organisation); music foundations; foundations of banking origin; old public charities (called in Italy IPAB - *Istituzioni Pubbliche di Assistenza e Beneficienza*) transformed into foundations; and so on. Church foundations are regulated by Law no. 222/1985 (these are not considered in this profile). However, corporate foundations and enterprise foundations, as well as autonomous and non-autonomous foundations, are not dealt with per se by the law. Some legal theorists believe in a constitutional right to establish a foundation even though foundations are not directly mentioned in the Italian Constitution.

The registration of a foundation assigns it its legal personality. Authors and jurisprudence are not in accord regarding the possible existence of a “*de facto* foundation”, not registered and without a full legal personality.

2. What purposes can foundations pursue?

Both public benefit and private benefit purposes, but fiscal reliefs are only provided for some kinds of foundations which pursue public benefit. On the other hand, jurisprudence has considered public benefit purposes to be the very nature of foundations, therefore some scholars believe that foundations should not be allowed as their main aim to carry out economic activity or to increase the wealth of one family, while some others consider that an economic activity can be carried out if profits are fully reinvested or used for public-benefit purposes.

ONLUS can only pursue public-benefit purposes in the fields stipulated by the law (health, aid, charity, education, sport, art, culture, environment, or scientific research). Foundations of banking origin also have to pursue social purposes and promote economic development, choosing activity areas among certain fields provided by the law (foundations must choose five “relevant” sectors in which at least 50% of their grants are made, and can also choose other sectors for residual grant-making). Music foundations are set up, of course, for particular aims.

By law (Article 10 of Decree no. 460/1997), associations, committees, foundations and cooperatives which carry out activities in one or more of the following sectors are considered to be ONLUS:

- Social and health assistance
- Health care
- Charity
- Education
- Training
- Amateur sport
- Protection and promotion of historical buildings or handicrafts

- Protection and improvement of the environment
- Culture and art promotion
- Civil rights' protection
- Scientific research of public interest, carried out by foundations or universities

ONLUS which pursue health care, education, training, amateur sport, protection and promotion of historical buildings or handicrafts, civil rights' protection must pay their activities to people physically or mentally disadvantaged.

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?

Foundations can be set up by deed under seal or by will. Individuals as well as legal entities can set up a foundation, but in all cases an endowment proportionate to the foundation's purposes is required. This endowment is immediately acquired by the foundation, and the founder can dispose of it only by revoking the deed before the foundation's registration. Article 16 of the Italian Civil Code stipulates that foundations' statutes must cover the name, purposes, assets, and domicile of the foundation, and establish governance bodies and – if necessary – criteria for grantmaking.

Registration is necessary to obtain legal personality and is a fundamental requirement for foundations (except for very specific cases, such as a "trust foundation"). According to Decree no. 361/2000, legal personality is reached by enrolling in a legal entity register, which is kept under the direct oversight of the so-called *Prefettura* (the office which represents the national authority at local level) for foundations acting nationwide or in several regions, or which is supervised by regional administrations in the other cases.

A copy of the founding act and the statutes is handed over to the authority, which has to decide within 120 days after the registration application is submitted. Under Article 4 of the Decree, the register contains the following elements: date of establishment, aims, endowment, duration, foundation's address.

ONLUS must also be enrolled in a particular register (see Article 5, para. 3, of Decree no. 460/1997), kept by the Ministry of Finance: However, this registration is necessary only for obtaining fiscal reliefs provided to these bodies.

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, it is not. The prefect enrolls a foundation in the register within 120 days after it files an application, or it refuses registration, asking for more documents or explaining the reasons of the refusal. For foundations operating in the arts, the Ministry of Culture plays an active role in this process, giving its opinion upon prefectures' requests. The same procedure is applicable to modifications of statutes: Foundations must also demonstrate that they have followed their statutes' rules regarding changes to the statutes. Foreign foundations must be officially recognised before they can carry out activities in Italy. However, dual registration is allowed by law.

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

According to Decree no. 361/00, legal personality is reached by enrolling in a legal entities register, which is kept under the direct oversight of the so-called *Prefettura* (the office which represents the national authority at local level) for foundations acting nationwide or in several regions. A copy of the founding act and the statutes is submitted to the authority, which has to make a decision within 120 days after the registration application is submitted. Under Article 4 of the Decree, the register contains the following elements: Date of establishment, aims, endowment, duration, and the foundation's address. The ONLUS must also be enrolled in a particular register (see Article 5, para.

3, of Decree no. 460/1997), kept by the Ministry of Finance: However, this registration seems necessary only for obtaining tax relief provided to these bodies.

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

See previous question.

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

Yes, it is a public register.

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, it is not. But the administrative authority reviews whether a foundation's endowment is adequate for pursuing its purposes (generally speaking, the amount of €100,000 is regarded as a reasonable amount for a foundation operating nationwide). For Italian jurisprudence, the simple expectation of a future gift to the foundation or future income is not adequate.

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

Under the Italian Civil Code, foundations' governance is specified by their statutes; nevertheless, a governing board must be appointed to manage the foundation and represent it towards third parties. The board has to respect the founder's purposes as written down in the deed or in the will. Other organs can be appointed by statutes, but there are obligatory organs in some kinds of foundations: For instance, foundations of banking origin must have a board of governors (which sets strategies and programmes, and is responsible for ensuring that the foundation's aims really are pursued), an executive committee (which manages the foundation's operations) and an auditing committee.

The board can carry out every kind of operation; it is responsible towards the foundation under the rules provided for agency. Moreover, board members can be held civilly liable by third parties according to Article 18 of the Italian Civil Code, while foundations are also liable for the actions of their organs.

The founder has no management powers. However, he can appoint the first governing board without any term (but he does not have the right to appoint any board members when seats come up for renewal).

a) Is it mandatory to have a supervisory board?

A supervisory board is not generally provided by the Civil Code, which was constructed within a system where the main control on foundations was directly submitted to the State. Nevertheless, many "special" kinds of foundations (for instance, ONLUS, foundations of banking origin, music foundations) are obliged to have a supervisory board.

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 Italian Civil Code only requires that the Statutes define rules for the administration of foundations. Nevertheless, in this case too, a lot of specific laws provide particular duties for different kind of foundations, above all to assure administrators' honourableness and professionalism. In

practice, in the absence of explicit rules, provisions about corporate governance can be used by analogy.

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

The founder can only revoke the constitution deed before the registration of the foundation and only if the foundation has not yet begun its activity.

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

Generally speaking, no rights are provided by law. Some specific kinds of foundations are subject to particular rules regarding informing their shareholders, and all foundations' deeds (which are public documents) must contain rules concerning grants (see Art. 16 of Italian Civil Code).

e) 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?

No rules are specifically provided in this field by the Italian Civil Code, but specific rules are provided for particular kinds of foundations (see Art. 4, para. 1, sub *g* of Decree no. 153/99 for foundations of banking origin). However, as is the case for common foundations, administrators are liable for damages caused by the foundation for operations carried out without the normal due diligence of an agent, even though agreements closed in conflict of interest are not annulable.

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

The matter is determined by the provisions of the statutes.

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

Foundations are represented by their administrators, usually a board for bigger foundations and the president for smaller ones. In accordance with Art. 19, all limitations on powers of representation must be included in the register provided by Decree no. 361/00. Moreover, all foundations' statutes must also contain rules about administration, including powers of representation.

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

Usually not. Sometimes statutes provide a general power of representation for the Chief Executive Officer.

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?

The diligence required of administration board members is the same as that required of mandatory agents. Art. 1710 of Italian Civil Code establishes that "the mandatory agent must fulfil his duties with the diligence of a 'good father of a family', but if the mandatory agent is acting for free, the diligence must be evaluated with a lower severity".

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?

A board member is not subject to liability if, and only if, he/she was not informed about the behaviour of the other board members or did not vote favourably on the proposal which caused damage to the foundation.

c) What is the liability of executive staff?

Executive staff are civilly liable if their conduct procures an undue damage to a third party (in this case, the foundation too is liable), but they can also be criminally prosecuted, in particular cases, together with the employer (for instance, in case of a fiscal fraud).

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

No

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)?

In principle, they are allowed: Foundations can have economic activities if they are not dominant and are not in conflict with their objectives. More specific rules are provided for some kinds of foundations. For instance, ONLUS can carry out only specific institutional activities (see Article 10 of Decree no. 460/1997) or directly related economic activities if non-dominant; also, foundations of banking origin

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.

can carry out related economic activities only (see Decree no. 153/1999). Music foundations must operate in the field of opera house management.

11. Are foundations permitted to be major shareholders?

Major shareholding is not explicitly prohibited to foundations. ONLUS cannot own the major shareholding of joint-stock companies not acting in the fields provided by Article 10 of Decree no. 460/1997, nor can foundations of banking origin own major shareholding of non-instrumental enterprises. From a fiscal point of view, we stress the European Court of Justice decision (ECJ, Jan. 10th 2006, proc. C-222/04) which specifies that a foundation cannot be considered a commercial body just because it owns a major shareholding in a company (except if the foundation directly manages the company and interferes in the company's board).

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?

Generally speaking, alternative investments in the widest sense are allowed. Some rules are set out for foundations of banking origin due to their huge endowments. First of all: "foundations, in their asset management activity, follow prudential criteria of risk, preserving the endowment value and obtaining an adequate return from it..."; secondly: "Foundations cannot invest more than 15% of their patrimony in non-instrumental real estate", but the threshold can be exceeded with regard to historical buildings.

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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)

No, they are not. Recoverable grants, low-interest loans, and equities, as well as forward purchase of shareholding or other kind of contributions to third parties, are in Italy activities assigned to banks and financial intermediaries by the "Bank Law" (Decree no. 385/1993); an explicit prohibition is stipulated for foundations of banking origin by Article 3, para. 2 of Decree no.153/99. Nevertheless, some foundations are involved in micro-credit activities.

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

As stated above, the governing board cannot distort the purpose of the foundation, but it can modify the statutes with the approval of the competent authority (which requires proof that all rules provided

by the statute for changes to it have been respected). Any amendment of the statutes must be inscribed in the register under Article 4 of Decree no. 361/2000.

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

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

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

Foundations have to write an annual report. Commercial activities must be specifically and separately accounted as required by the law for commercial enterprises. Bookkeeping of ONLUS, music foundations and foundations of banking origin is substantially the same as for commercial bodies.

Foundations of banking origin must draft (as a part of the annual report) a public benefit report (called *bilancio di missione*) to be sent to the Supervisory Authority. Of course, foundations must yearly present all fiscal documents required by law to juridical bodies.

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)?

See above.

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

The Supervisory Authority. The Fiscal Authority checks fiscal documents.

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)

In principle, no. ONLUS and foundations of banking origin are obliged to draft an annual report and to send it to their supervisory authorities. Most of those foundations also publish them on their websites on a voluntary basis.

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

No. There is no specific audit requirement applying to all foundations.

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

Where required by law, auditors must usually be chosen from among professionals registered on a specific roll. Sometimes laws require also a statement of honourableness and professionalism.

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

As stated above, foundations fall under the supervision of prefectures or regional administrations depending on the type of foundation (foundations acting nationwide in the former case; regional foundations or foundations with regional scope in the latter). Foundations established before autumn 2000, however, fall under the supervision of the competent Ministry (the Ministry of Interior or, in some cases, the Ministry of Education) and there is special supervision of foundations that pursue cultural purposes (see Decree no. 368/1998). Foundations of banking origin fall under the supervision of the Ministry of Economy until all of them divest controlling shareholdings in banks (see Art. 52 of Decree no. 78 of 2010 and *Consiglio di Stato* [the supreme Italian administrative court], j. no. 5118/2011).

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 supervisory authority is usually a public administrative body, but for specific fields also independent agencies have also been created (for instance, there is a particular agency for ONLUS). The tax authority is an independent agency for all taxpayers in Italy. All decisions by administrations and agencies are subjected to the judgement of a Court to ensure that Italian and EU laws, as well as the Italian Constitution, are respected.

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

The administration has a general power to supervise foundation activity. In cases of misconduct or ineffectiveness, the administration also has power of intervention. It can appoint an external commissioner and authorise him to proceed against former board members; it can also dissolve or transform the foundation under Article 28 of the Italian Civil Code. In theory this power is very broad-ranging, but in practice it is not widely used. The administration authority can ask for yearly financial and activity reports.

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

Usually not. Sometimes specific laws require approval of the authority for relevant decisions of the Board, but also establish that after a period (normally a month) without any answer from the authority the decision must be considered as approved.

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

Generally speaking, no.

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

If foundations are not registered, all facts which should be indicated in the Register (seat, directors, liability...) are not enforceable against third parties and personal wealth of directors can be attacked by creditors. The founder can revoke the foundation until it is not registered. If the board is not appointed or it doesn't work, the governmental authority can appoint an extraordinary commissioner. From 1997, unregistered foundations could own real estate nor accept an inheritance or a legacy. This rule has, however, now been written off.

17. When and how does a foundation dissolve?

Foundations can be dissolved for reasons mentioned in the statutes, or when their purposes have been reached or if it has become impossible to achieve them (according to Article 27 of the Italian Civil Code). The foundation can be also dissolved by the supervisory authority (see above). The endowment is then transferred to other bodies with similar aims.

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

According to Art. 25 of Law no. 218/95, a foreign foundation is automatically recognised by Italian law if it is recognised in the country where it is headquartered. However, if the foundation has its administration in Italy or pursues its principal purposes there, it is considered to be an Italian foundation and must be recognised in accordance with Italian domestic laws. This automatic recognition does not work if the foundation's purposes do not respect Italian "public order" (*Ordine Pubblico*) or if a breach can be found in the principle of reciprocity in the exercise of civil rights.

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?

No

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 Italian fiscal system does not consider to be income for foundations (as far as it can be considered as a non-profit organisation according with Art. 149 of Decree no. 917/86): (i) public fundraising, if occasionally carried out; (ii) income from institutional activities, if carried out on the basis of an agreement with public administrations; (iii) grants or donations (also provided by public notices). Real estate income, commercial income, other income are taxed. In this field, not all foundations receive tax exemptions.

For instance, ONLUS are exempted from income tax with regard to income deriving from the organisation's institutional activities as well as from directly related activities; they are also exempt from VAT when they carry out their institutional activities and when they buy particular kinds of goods (for instance, ambulances). As indicated above, ONLUS can only operate in certain social fields stipulated by law, cannot distribute dividends, and are obliged to invest all income in their social activities and to publish an annual report. Foreign foundations could be considered as ONLUS (see Ministerial Memorandum no. 24/E of 2006 and question no. 22 below).

For foundations with legal personality which operate in the fields of social assistance, aid, charity, health, teaching, etc. (see Article 6 of President Decree no. 601/1973), the income tax rate is halved, while foundations of banking origin are not entitled to exemptions.

If a foundation is entitled to use tax reliefs, no specific annual processes are provided for.

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?)

Non-specific proofs are required to be considered as a non-profit entity, as Art. 149 considers quantitative indices contained in the annual statement of income (a specific annual report must be

filled by associations, if they don't want membership fees to be taxed). ONLUS – when they are constituted – must submit to the fiscal authority a specific form to be registered in their particular register. Other foundations have a particular status provided by law (for instance, music foundations). Generally speaking, fiscal authorities can randomly sample foundations that use the reliefs.

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

No, except if provided by the competition notice.

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

No, but a public-benefit report (bilancio di missione) is usually disseminated on a voluntary basis.

5. Are there specific accounting rules for foundations?

There are no specific rules for budget books, fiscal books, financial statements. All rules refer to the relevant provisions of commercial companies (as far as they are applicable). Accounting standards and guidelines have been issued by the Authority of ONLUS and Italian Association of Fiscal Experts.

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 answer to the questions here above cannot be univocal. In fact, different rules are provided for different kind of foundations. For instance, ONLUS must be registered in a specific roll and must accomplish all rules provided by Art. 10 of Decree no. 460/97, such as publication of an annual report. On the other hand, no specific reporting to donors is required by law.

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. However, foundations must pursue public benefit purposes. In Italy profitable activities should be carried out, in principle, only by companies under Art. 2247 of Civil Code. Regarding foundations of banking origin, Art. 2, para. 1, of Decree no. 153/99 provides that “foundations are fully independent non-profit entities which can pursue only public benefit purposes or aims of promoting economic development, in accordance with their own statutes”. The “public benefit purposes” are identified by a closed list of 18 fields of activity. Art. 3, para. 1, of Decree no. 367 of 1996 provides specific purposes for music foundations (“music foundations pursue, as not-for-profit entities, the dissemination of musical art, the professional improvement of artists, the musical education of people...”), while Art. 59, para. 3, of Law no. 388 of 2000 regulates university foundations (“one or more universities can set up fully private foundations with the participation of private entities and people to improve and support teaching and research”).

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, they do (even though in Italy a foundation can receive tax reliefs, it is never, in principle, tax-exempt). This also applies to family foundations: These foundations are allowed only to provide help to descendants of a given family if they are in a particular and objective situation indicated in the statute, such as financial problems or academic talent. However, a foundation aiming only to benefit all members of a given family cannot be set up in Italy.

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

Yes, in specific cases.

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”² which forbids any financial support of the foundation board, staff, etc.?

Art. 10, para. 2, under d), stipulates for ONLUS “the prohibition of all distributions, both directly or indirectly, of profits, funds, reserves or capital during the life of the organisation, except for distributions requested by law or to other ONLUS of the same kind”. Sales to donors at a discounted price, as well as purchases by donors at a price above market standards, wages to employees increased over 20% in relation to market standards, remunerations of board members above the thresholds provided by law are considered to be distributions of profit.

Art. 5 of Decree no. 153/99 stipulates that “the endowments of foundations [of banking origin] are fully bound to the pursuit of their statutory aims”; members of the board can be paid according with rules provided by law.

² For the purposes of this profile, a non-distribution constraint implies that any transactions/benefits to third parties going beyond reasonable compensation for services rendered are prohibited (such as unreasonable board remuneration or excessive payments to service deliverers) except where transactions/benefits provided are part of the direct promotion of the public benefit purpose.

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

Art. 31 of the Italian Civil Code stipulates that the assets' devolution must be made under the rules of the Statute or, in the absence of them, by the governmental authority to foundations with similar aims.

About ONLUS, Art. 10 of Decree no. 153/99 stipulates the "duty of assets' devolution to another ONLUS... in case of dissolution of the entity".

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**?

In civil law it is allowed. For the tax law, see above. According to tax law, remuneration of board members is allowed up to a threshold provided by law. For ONLUS, see section on "non-distribution constraint. For foundations of banking origin, payment of board members is permitted as provided by law.

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

Yes it does. For ONLUS, some benefits can be received by associates or donors if those benefits are purely honorary or of a moderate economic value (Art. 10).

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

No such limits, except for specific items (see below).

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) – in ONLUS staff salaries may not exceed 20% of the normal wages for the same contract positions
- Board remuneration – in ONLUS payments to board members cannot exceed the maximum rate provided by law for auditors of public companies
- Costs of external audit – no limits
- Other legal/accounting costs – no limits
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage) – no limits
- Insurance – no limits
- Publicity and promotion of the foundation (e.g. website, printed promotional materials) – no limits
- Asset administration costs – no limits (although ONLUS cannot borrow money at a high rate except from banks and other financial institutions)
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation – no limits
- Costs related to fundraising – no limits

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 they are. However, foundations of banking origin should “preserve the value of their endowment and obtain an adequate return” (Art. 5, para. 1, Decree no. 153/99).

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 they are, but the endowment cannot come back to the donor or his heirs.

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?)?

For foundations of banking origin, Decree no. 153/99 provides that at least half of the profits of the year, all legal funds deducted, must be granted in the following years while ONLUS are obliged to use their profit to pursue their institutional purposes. Of course, other foundations must also give some grants within a reasonable period of time in order not to become ineffectual and be dissolved or transformed by the governmental authority.

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 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?

Not in principle. There is no reference to this in the laws.

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

There are not.

16. Income tax treatment

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

Grants and donations

Grants and donations are completely tax-exempt in Italy as they are not considered to be income: In fact, according to Article 73 of the Italian Income Tax Code (Decree no. 917/86), non-profit organisations (which must not carry out business activities as their main purpose) are subject to corporate income tax, but the taxable income can derive only from “capital”, “real estate”, “business activities” if applicable, and “other income” as stipulated by law (see above).

Investment income (asset administration)

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

Investment income is taxed almost as for individuals: Generally speaking, coupons and returns of investment in trust are subjected to a withholding tax of 20%, except for non-harmonised investments, which are subject to common taxation or to a withholding tax of 27%. Dividends are subject to the common income tax but only on 5% of their total amount (if the dividends are produced by a “relevant participation” – see below under “capital gains tax” – income tax is applied to 49.72% of the dividends’ total amount).

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)

No difference exists between non-profit and for-profit organisations with regard to taxation of economic activities’ except for the tax exemption for ONLUS mentioned above. If the economic activity is carried out by a controlled company, income tax treatment is the same as for other dividends earned by the foundation (see above).

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

Investments in public-benefit programmes are not considered specifically by the law, so income deriving from them is taxed on the basis of its nature (real estate, capital gains, income from commercial activities, other income, etc.), according with Article 8 of Decree no. 917/73.

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

No, but dividends from “relevant shareholdings” (see next question) are taxed more than other dividends. ONLUS, banking foundations, music foundations etc. cannot be major shareholders, except for specific cases provided by law (see above).

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

Foundations pay a withholding tax of 20% if the capital gains are due to the sale of a shareholding considered “non-relevant” by the law (a shareholding is “non-relevant” if it is less than 20% of the capital of a non-listed company, or if it is less than 2% of a listed company); otherwise, the normal income tax is applied on 49.72% of the gains.

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

For ONLUS, see above under “requirements to receive tax exemptions”. However, generally speaking, foundations do not enjoy any privileged status as regards VAT. Only VAT paid on goods and services acquired for commercial activities may be recovered.

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

These are not levied in Italy.

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

The transfer of real estate is in general tax-free for the seller and subject to taxation for the buyer at the common VAT rate or registration fee. On the other hand, the transfer of shareholding is taxed if it brings a capital gain to the seller. The transfer of other assets (for instance, furniture or paintings) is not taxed.

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

Foundations are also subject to a large number of other taxes, including a local tax on “productive activity” (so-called IRAP - *Imposta regionale sulle attività produttive*) proportionate to the sum of the labour costs incurred by the organisation. Foundations bear the same labour costs as for-profit organisations. Furthermore, foundations are subject to a local tax on real estate (buildings exclusively devoted to activities in the fields of charity, health, teaching, culture, and religion are excluded).

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? Have they to fulfil exactly the same requirements as local based public benefit foundations?

In principle, most tax benefits are provided by law in Italy to foundations considered to be ONLUS. The Ministerial Memorandum [24/E of 26 February 2006](#) provides that foreign non-profit entities can be qualified in Italy as ONLUS. The fiscal authority finally recognised that if the foreign entity meets **all** the requirements of Art. 10, para. 1 of Decree no. 460/97, no law explicitly forbids such recognition.

Please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation is required)
- Documents providing evidence of the Foundation's activity in the fields provided by Art. 10, as well as of the fact that related commercial activities are residual for the Foundation. These documents are required even though they are not required by the organisation's country of seat.

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?

The rules for foreign investment income are the same as those mentioned above

As for the foreign public benefit foundation with investment income in Italy, generally in Italy the income is subject to the tax treatment established between Italy and their Country. In general the tax paid in Italy for this foundation is a credit that they can use in their Country; obviously they will pay taxes on this income in their Country.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Both. In some cases the law provides tax deductions, in other cases tax credits (see below for examples).

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?

Ceilings are provided for grants to ONLUS (€70,000), to music foundations (2% of total income), to NGOs (2% of total income) to amateur sport associations (€1.500), to political parties (€ 10,000), etc. See Art. 15 of TUIR (Decree no. 917/86) and the next question for an example. Tax deduction

³ 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)

⁴ 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)

for 100% of grants paid are provided for donors in the field of the scientific research (Art. 1, para. 353, Law no. 266/2005).

b) Which assets qualify for tax deductibility?

Usually the law provides tax deductions or tax credits for cash donations only, and just for donations to Italian foundations. However, Article 15, para. 1, sub *i-bis* of TUIR, provides a tax credit for donations to “humanitarian initiatives carried out by... foundations identified by a specific Governmental Decree in countries not belonging to the OECD...”, while Article 15, para. 1, sub *h-bis*, states that a tax deduction is provided to people giving to foundations' historical buildings (or other buildings if used by foundations to carry out historical or cultural activities).

That said in principle, individuals can enjoy tax deductions up to 2% of their income for donations to NGOs (Article 10, para. 1, sub *g* of TUIR) and with no limits for donations to universities and university foundations (Article 10, para. 1, sub *l-quarter*. In this case, all donations are fully deductible from the donor's taxable income).

Tax credits are provided for donations to foundations carrying out activities in the field of culture and historical building restoration (Article 15, para. 1, sub *h* and *h-bis*, see above), for donations to art foundations up to 2% of income, and for donations to ONLUS and other kinds of charities up to €1,032.91 (see the same Art. 15 for all cases). It is important to note that a tax credit does not allow the donor to deduct from taxes due the entire amount of his donations, but only 19% of them. For example, if a donor gives €3,000 to an ONLUS, the tax credit can be calculated only on €1,032.91; moreover, the tax credit will amount to only €196.25 (19% of €1,302.91).

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?

Generally speaking, the same ceilings provided for individuals (see Art. 100 of TUIR, which is quite similar to Art. 15), even though all references to “total income” are substituted by references to “income from the commercial activity”.

b) Which assets qualify for tax deductibility?

The law provides tax deductions for cash donations only. Regarding donations to foreign foundations, Article 100, para. 1, sub *h* of TUIR, provides a tax credit for donations to humanitarian initiatives carried out by foundations identified by a specific Governmental Decree in countries not belonging to OECD.

That said, in principle, corporate donors can enjoy tax deductions of up to 2% of their income for donations to NGOs (Article 100, para. 1, sub *a* of TUIR) and with no limits for donations to universities and university foundations (Article 14, para. 7, of Decree no. 35/2005). They are entitled to other deductions for donations to foundations carrying out activities in the field of culture and historical building restoration (Article 100, para. 1, sub *f* of TUIR), for donations to art foundations up to 2% of income (Article 100, para. 1, sub *g*), for donations to Onlus and other kind of charities up to €1,032.91 (Article 100, see here above), and for donations to cultural and research foundations with no limits (Article 100, para. 1, sub *m* and *o*).

Finally, non-profit organisations as donors have *inter alia* a tax deduction for donations to NGOs up to 2% of their income, and tax credits (as individuals) for donations (cash or in-kind) to foundations

carrying out activities in the field of culture and historical building restoration, to art foundations and to ONLUS. They also enjoy a tax deduction with no limits for donations to universities and university foundations under Article 1, para. 353, of Law no. 266/2005.

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

Donations to non-resident public-benefit foundations are not tax deductible for the donor. On the other hand, donations from non-resident donors to Italian foundations are, if granted for specific purposes, deductible in Italy.

5. Other frameworks such as percentage law systems

Meanwhile, Article 1 of Law no. 266/2005 provided for 2005 that 0.5% of taxes payable by individuals can be designated to foundations or other non-profit organisations enrolled in a registry (the taxpayer can choose a particular non-profit organisation or all organisations in a specific area, or all organisations carrying out a specific activity).

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 donor doesn't have to provide anything. The fiscal authority can however check if: (i) the grant has been paid to an entity entitled to receive it (an ONLUS, an NGO, a foundation which carry out scientific research according with a Decree annually issued by the Ministry of Research, etc.); (ii) the grant has been paid by a traceable system (bank transfer, credit card, etc.); (iii) the donor kept track of the transaction.

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?)?

Donations to non-resident public-benefit foundations are not tax deductible for the donor.

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

Generally speaking, grants are not taxed. Nevertheless, grants for ordinary administration to companies are treated as income and are taxed at the common rate.

1. Individuals

They are not taxed.

2. Legal entities

If granted to companies, they are considered as income. Otherwise, they are not taxed (associations must fill annually a form called EAS).

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

No.

V. Gift and inheritance tax

Italian law is not particularly helpful in this field.

Domestic and foreign foundations with public-benefit purposes and foundations of banking origin are tax exempt with no limits. Other foundations are taxed with a rate of 8% and no thresholds or ceilings are provided for PBOs by law (see Decree 31 October 1990, no. 346 and Art. 1, par. 47-54, of Decree 3 October 2006, no. 262).

Moreover, a share of the inheritance is reserved by law to the children and grandchildren (or other heirs, in specific cases) of the person who made the will.

VI. Trends and developments

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

No changes have been recently approved.

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)?

Decree no. 144/05, converted with modifications in Law no. 155/05 (in our Official Gazette on August, 1st 2005).

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

No.

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

n/a

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

n/a

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

n/a

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

Decree no. 329/2001 created a new independent authority, called the Authority for the Third Sector, which is responsible for checking whether foundations meet the requirements to be registered as ONLUS. The Authority also has some powers to promote and verify draft laws about the non-profit sector, and to monitor all third sector data. At present, some drafts have been submitted to modify the Civil Code, but none has so far been discussed by the parliament; from this point of view it could be interesting to give wider powers to the Authority, for example assigning to it, instead of the Ministry of Economy, the supervision of foundations of banking origin.

4. Public fundraising

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

n/a

Useful contacts

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Selected bibliography

- Albicini, A., in: *International Charitable Giving: Laws and Taxation*, George, C. (editor), Kluwer Law International, loose-leaf, London, 1994-1999
- Barbetta, G. P. and Demarie, M., in: *Foundations in Europe. Society Management and Law*, Schlüter, A., Then, V. and Walkenhorst, P. (editors), London, 2001, pp. 163-178
- Caumont Caimi, C., Franzè, R. and Pandolfini, I., in: *The Tax Treatment of Cross-Border Donations - Including the Tax Status of Charities and Foundations*, Bater, P. (editor), International Bureau of Fiscal Documentation, loose-leaf, Amsterdam, 1994-2001
- De Giorgi, M.V., “*Stiftungen im italienischen Recht*”, in: *Stiftungsrecht in Europa*, Hopt, K.J., Reuter, D. (editors), Carl Heymanns Verlag KG, Köln, Berlin, Bonn, München, 2001, pp. 381-404
- Demarie, M., in: *European Foundation Fundamentals*, Brown, S. (editor), European Foundation Centre, Brussels, 1999, pp. 108-113
- Marchettini, S., “*Stiftungen als Inhaber von Bankunternehmen*”, in: *Deutsche Stiftungen, Bundesverband Deutscher Stiftungen e.V.* (editor), 3. Ausgabe, Berlin, 2001, pp. 60-62
- Propersi, A. and Rossi, G., *Gli Enti non profit*, Il Sole 24 Ore, Milano, 2008
- Frizzera and Gobbi and Postal, *Guida pratica fiscale – Testo Unico delle Imposte sui Redditi (2010)*, Gruppo 24 ore, Milano, 2010

Selected law texts online:

- Italian Civil Code, Book One, Articles 14 to 35
- Decree 10 February 2000, no. 361 (http://www.giustizia.it/cassazione/leggi/dpr361_00.html).
- Decree 17 May 1999, no. 153 (http://www.acri.it/3_fond/3_fond_files/Norm_pr/3_fondNP01.pdf).
- Decree 4 December 1997, no. 460 (<http://www.camera.it/parlam/leggi/deleghe/testi/97460dl.htm>)
- Decree 22 December 1986, no. 917 (TUIR), articles 10, 15, 100, 146, 147, 150.
- for Not-for-Profit Law, 2003

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.