



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

LIECHTENSTEIN – 2014

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The operating environment for foundations

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Contents

II. Tax treatment of the foundation.....	12
III. Tax treatment of donors	21
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation).....	23
V. Trends and developments.....	23
Useful contacts	25
Selected bibliography	25
About the EFC Legal and Fiscal Country profiles	26
www.efc.be	26
About the European Foundation Centre.....	26

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, and enterprise foundations)?

The foundation is legally defined in Art. 552 §1 PGR (*Personen- und Gesellschaftsrecht* - Persons and Companies Act): "A foundation is a legally and economically independent special-purpose fund which is formed as a legal entity (juristic person) through the unilateral declaration of will of the founder".

Similar definitions are contained in the case law of the Liechtenstein Supreme Court (*Oberster Gerichtshof*, OGH 29.01.1990, 2 C 264/87-29, LES 1991, 91; OGH 01.07.1996, 06 C 410/91-20, LES 1998, 7).

There are two types of foundations:

- Public-benefit foundations, that have to be entered in the Public Registry (Art. 552 § 14 PGR) and whose activity – according to the declaration of establishment – is entirely or predominantly (at least 51%) intended to serve public-benefit purposes in accordance with Art. 107, para. 4a PGR.
- Private-benefit foundations, that do not need to be entered in the Public Registry, but of which the notification of formation has to be deposited with the authority.
- Both types of foundations have legal personality (OGH 07.09.2006, 04 CG.2004.252, LES 2007, 302).

2. What purposes can foundations pursue?

Foundations can have public-benefit or private-benefit purposes.

Public-benefit foundations are foundations whose activity is entirely or predominantly intended to serve public-benefit purposes (see above)

Private-benefit foundations are foundations which, according to the declaration of establishment, are entirely or predominantly intended to serve private or personal purposes (Art. 552 § 2 para. 2 PGR).

There are two types of private benefit foundations, pure family foundations and mixed family foundations: Pure family foundations are foundations whose assets exclusively serve the defrayal of costs of upbringing or education, provision for or the support of members of one or more families or similar family interests. Mixed family foundations are foundations which predominantly pursue the purpose of a pure family foundation, but which supplementally also serve public-benefit or other private-benefit purposes (e.g. serving the interests of an underlying company) (Art. 552 § 2 para. 4 PGR).

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 is formed through a declaration of establishment which has to be in written form. The authentication of the signatures of the founders is required. The declaration is a unilateral legal instrument, which has to be interpreted the same way as a testament. The crucial factor for interpretation is the will of the testator, and in the case of the foundation the will of the founder (OGH 10.12.2008, StGH 2008/56, GE 2009, 372).

Public-benefit foundations and private-benefit foundations carrying on business run along commercial lines on the basis of special law need to be entered in the Public Registry and thereby acquire the right of legal personality.

Private-benefit foundations may be entered in the Public Registry, but there is no legal obligation.

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

No

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

For public-benefit foundations and private-benefit foundations carrying on business run along commercial lines on the basis of special law, the registration in the Public Registry is mandatory. The application for registration needs to be submitted in writing together with the original or certified copy of the foundation deed. The board members (members of the foundation council)

shall confirm that the statutory minimum capital is at the free disposal of the foundation. A representative of the board also has authority to make the application (BuA Nr. 13/2008, 85 ff.).

Private-benefit foundations do not have to register, but the foundation board has to deposit within thirty days following the formation a notification of the formation at the Office of Land and Public Registration. The reason for this obligation is to monitor the obligation to register and to prevent foundations with illegal or immoral purposes. A representative of the board has also the authority to make the deposition (BuA Nr. 13/2008, 88 ff.).

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

According to Art. 552 § 19 PGR the entry shall contain the following information:

1. name or corporate name of the foundation;
2. domicile of the foundation;
3. purpose of the foundation;
4. date of formation of the foundation;
5. duration of the foundation, if this is limited;
6. organisation and representation, stating the last name, first name, date of birth, nationality and place of residence or registered office, or the corporate name and domicile of the members of the foundation board as well as the form of the signatory's power;
7. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority;
8. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or corporate name and domicile of the representative.

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

The register is publicly available.

6. Is a minimum capital required?

CHF 30,000; or €30,000; or \$30,000 US.--

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

a) Is it mandatory to have a supervisory board?

No

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 board (*Stiftungsrat*, foundation council) needs to be composed of at least two members. It is responsible to fulfil the purpose of the foundation. Natural persons as well as legal entities can be members of the foundation council. Regulations concerning the appointment or dismissal of the foundation board need to be enclosed in the foundation deed which is set up by the founder (OGH 07.05.2010, 10 Hg.2008.5, LES 2010, 311). Unless otherwise provided in the foundation deed, the appointment of the foundation board is effective for three years. There are no limitations to the reappointment of the foundation board members (Art. 552 § 24 PGR).

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

The members of the foundation board have to fulfil the purpose of the foundation and have to manage the assets (asset management) in compliance with the founder's intention, in conformity with the purpose of the foundation and in accordance with the principles of good management (Art. 552 § 25 PGR). Additionally the foundation board has to maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business and movement of the foundation assets (Art. 552 § 26 PGR). OGH 04.05.2005, 01 CG.2003.32, LES 2006, 191.

The founder may establish special rights of the foundation council, such as the right to adjust the foundation documents. In this case the board is also able to amend the provisions regarding the appointment of beneficiaries (OGH 06.03.2008, 1 CG.2006.71, LES 2008, 279; OGH 05.11.2009, 10 CG.2005.300, LES 2010, 144).

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?

If the founder is a natural person, he/she can reserve for himself in the foundation deed the right to revoke the foundation or to amend the declaration of establishment. But these rights cannot be assigned or bequeathed (OGH 01.07.1996, 06 C 410/91-20, LES 1998, 97).

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

Generally the beneficiary is entitled to inspect the foundation deed, the supplementary foundation deed and possible regulations, insofar as his/her rights are concerned. Anyway beneficiaries of public-benefit and other foundations that are subject to the supervision of the foundation supervisory authority do not have access to information.

The law provides special rights for beneficiaries. According to Art. 552 § 9 PGR the beneficiary is entitled to inspect the foundation documents insofar as his rights are concerned (OGH 05.07.2007, 06 CG.2004.93, LES 2008, 95). In addition the beneficiary is entitled to the disclosure of information, reports and accounts insofar as his rights are concerned. Depending on the type of the purpose of the foundation the right of information is limited to certain categories of beneficiaries,

namely the entitled beneficiaries and the prospective beneficiaries (OGH 06.05.2003, 04 CG 2001.492-29, LES 2004, 67).

The beneficiaries do not have these rights, if the founder has reserved for himself/herself the right to revoke the foundation and he/she is himself/herself the ultimate beneficiary. If the founder has set a controlling body for the foundation, the beneficiaries may only demand disclosure of information concerning the purpose and organisation of the foundation and concerning his own rights vis-à-vis the foundation.

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?*

According to § 1009 ABGB (Civil Code) any sort self-dealing is prohibited and is considered to be a fundamental breach of the fiduciary duties.

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

The foundation documents may transfer some decision competence to the directors or officers.

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

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

The foundation board and its representatives have the power to represent the foundation (Art. 552 § 24 PGR) (OGH 07.01.2009, 01 CG.2006.303, LES 2009, 202).

8. 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?*

According to Art. 182 para. 2 the foundation board has the duty to run the foundation with diligence and is personally liable for the management of the foundation and its representation. Whenever members of the foundation board act without remuneration, the liability for minor negligence may be excluded in the declaration of establishment, unless the creditors of the foundation are adversely affected thereby (Art. 552 § 24 para. 6 PGR).

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?*

The general provisions of the PGR, which are applicable on foundations, clearly state the “business judgment rule” According to this provision (Art. 182 PGR) the foundation board has to

manage and promote the enterprise of the legal entity and shall be liable for observing the principles of diligent management and representation. A member of the administration shall be deemed to act in harmony with these principles if in his commercial decision-making he/she is not governed by irrelevant interests and it must reasonably be assumed that he/she is acting for the good of the legal entity on the basis of appropriate information”

c) What is the liability of directors and officers?

For the liability of the directors and officers the general provisions (Art. 218 et seqq. PGR) are applicable. Therefore the foundation board is liable for the damages they caused intentionally or by neglect.

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

If members of the foundation board act without remuneration, liability for minor negligence may be excluded in the declaration of establishment, unless the creditors of the foundation are adversely affected thereby (Art. 552 § 24 para. 6 PGR).

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			

9. Are economic activities allowed (related/unrelated)?

Economic activities are allowed if they directly serve the achievement of the public-benefit purpose of the foundation or whenever there is a special statutory basis. Insofar as the orderly investment and management of the foundation assets require, the setting-up of a commercial operation is permissible, even for private-benefit foundations (Art. 552 § 1 PGR).

10. Are there any rules/limitations regarding foundations' asset management?

Generally speaking the foundation board has to manage the foundation assets in compliance with the founder's intention and in accordance with the principles of good management (Art. 552 § 25 PGR). The founder can establish specific and binding asset management criteria in the foundations documents.

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

Yes. However, the consequence of the allocation of grant funds might be that the foundation loses its tax privileges. As mentioned previously a foundation might pursue any legal purpose.

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

The founder can amend the statutes/the foundation purpose, if he/she is a natural person, and if he/she has reserved this right for himself/herself in the foundation deed.

An amendment of the purpose of the foundation by the foundation board or another executive body shall only be allowed if the purpose has become unachievable, impermissible or irrational or if circumstances have changed to the extent that the purpose has acquired a quite different significance or effect, so that the foundation is estranged from the intention of the founder (OGH 03.12.2010, 10 Hg 2009.247, LES 2011, 21).

The amendment must comply with the presumed intention of the founder and the power to amend must be expressly reserved to the foundation board or to another executive body of the foundation in the foundation deed (Art. 552 § 31 PGR).

An amendment of other contents of the foundation deed or the supplementary foundation deed, such as in particular the organization of the foundation, is permissible by the foundation board or another executive body if and insofar as the power of amendment is expressly reserved in the foundation deed to the foundation board or to another executive body of the foundation. The foundation board shall, safeguarding the purpose of the foundation, exercise the right to amend if there is a substantially justified reason to do so (Art. 552 § 32 PGR)

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

a) Reporting requirements: Do annual reports and/or accounts of foundations need to be made publicly available?

No

b) What type(s) of report must be submitted (annual report including details of finances and activities, public benefit report, tax report/tax return, other reports e.g. on 1% schemes)?

n/a

c) Who checks (supervisory/tax authorities)?

Only in the case of public-benefit foundations does the supervisory authority as well as the tax authority check if the foundation activities are in line with the purpose and the organisation of the foundation as defined in the foundation documents.

d) Where is the required information publicised?

n/a

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

External audit is only required for public-benefit foundations. The audit authority must be independent of the foundation. The foundation supervisory authority may demand from the audit authority the certification and evidence necessary for the assessment of independence. The following persons in particular shall be excluded from being the audit authority:

1. members of another executive body of the foundation;
2. persons with an employment relationship to the foundation;
3. persons with close family connections with members of executive bodies of the foundation; or
4. persons who are beneficiaries of the foundation (Art. 552 § 27 PGR).

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

See above.

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

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

According to Art. 552 § 29 PGR the supervision role is assigned primarily to the Foundation Supervisory Authority which is allocated as a public administrative body within the Office of Land and Public Registration.

Only public-benefit foundations (as well as private-benefit foundations which are subject to supervision pursuant to a provision in the foundation deed) are subject to the supervision of the Foundation Supervisory Authority.

The Foundation Supervisory Authority ensures ex officio that the foundation assets are managed in accordance with their purposes. Thus it is entitled to demand information from the foundation and, through the audit authority, to inspect the books and documents of the foundation. In addition, it may obtain information from other administrative authorities.

The Foundation Supervisory Authority may through special non contentious civil proceedings apply to the court for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

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

See above.

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

No

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

No

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

As mentioned in the previous questions, the Foundation Supervisory Authority monitors that the management of the assets is in line with the purposes of the foundation. Therefore the Authority is entitled to request information and, through the audit authority, to inspect the books and documents of the foundation. In addition, it may obtain information from other administrative authorities. Furthermore the Foundation Supervisory Authority may through special non contentious civil proceedings apply to the court for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

15. When and how does a foundation dissolve?

According to Art. 552 § 39 PGR the foundation has to be dissolved if bankruptcy proceedings have been initiated in respect of the foundation assets. Furthermore the foundation needs to be suspended if the resolution has achieved legal force (whereby the initiation of bankruptcy proceedings has been rejected due to the probable insufficiency of assets to cover the costs of the bankruptcy proceedings). In addition there is a need to dissolve the foundation if there is a specific court order or if the foundation board has adopted a legally valid resolution (see also OGH 13.06.2001, 10 Hg 2001.00025, LES 2001, 241). The foundation board shall adopt a resolution on dissolution as soon as it has received a legally admissible revocation by the founder. The assets then will go back to the founder, unless the statutes provide that another person (e.g. another public-benefit foundation) should receive the assets; or when the purpose of the foundation has been achieved or is no longer achievable (OGH 07.03.2002, 10 Hg 6/2001-22, LES 2002, 324), or when the duration envisaged in the foundation deed has expired or when other grounds for dissolution are stated in the foundation deed.

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

According to Art. 232 PGR a foundation will be recognised if it was incorporated correctly in its country of origin (incorporation theory).

17. 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?

Activities abroad are allowed without any limitations.

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?)

There are two types of foundations which enjoy tax privileges because they follow non-profit purposes:

According to Art. 4(2) Tax Act like all legal persons foundations are also exempt from all direct taxes (corporate income tax, real estate capital gains tax, formation tax) by the tax authorities upon application, if they exclusively and irrevocably pursue public-benefit purposes as defined in article 107, paragraph 4a of the Law on Persons and Companies (PGR) without the intention of making a profit. Foundations shall be allowed to conduct business operations on a small scale without losing their tax exemption. However, if a net corporate income is generated by economic business operations maintained by such foundations which exceeds CHF 300,000 (approximately €245,000) –the tax exemption is lost. This threshold was introduced to keep the neutrality in terms of competition with economically active and entities which are ordinarily taxed. The tax exemption for public-benefit foundations shall not already be excluded by the fact that the foundation in part allocates its resources, labour, or assets for the use of another, likewise tax-exempt person for tax-privileged purposes. In the same way, the tax exemption is not lost if the foundation assigns resources in whole or in part to a provision, to the extent necessary to fulfil the tax-privileged purposes set out in its articles on a sustained basis. Furthermore, according to a decree by the Tax Administration the foundation must be registered in the Liechtenstein Registrar of Companies as a precondition for the tax exemption (decree from April 2011, 1.1).

According to Art. 45 Tax Act foundations which serve public-benefit purposes to the exclusion of any economic activity are exempt from corporate income tax, if

- They limit the distribution of their profits to the notional income (i.e. 4%) on the capital not received in the form of donations by third parties;
- Their articles rules out the payment of emoluments and
- Upon dissolution, their articles assign the assets remaining after repayment of the capital not received in the form of donations by third parties to similar purposes.

One has to note that the first type concerns a general exemption for all federal taxes whereas the second type is only exempt from the corporate income tax.

2. What are reporting/proof requirements to claim tax exemptions?

The application for tax exemption on grounds of public-benefit purposes shall be submitted to the Fiscal Authority. Public-benefit foundations may submit the application for tax exemption to the Office of Land and Public Registration serving as the Foundation Supervisory Authority; the Office of Land and Public Registration shall forward the application to the Fiscal Authority.

According to Art. 4 Tax Ordinance the Fiscal Authorities shall review each year whether the preconditions for tax exemption continue to be met. Therefore, the following documents shall be submitted to the Fiscal Authority each year:

- In the case of public-benefit foundations with an audit office pursuant to article 552 § 27 PGR the report or confirmation by the audit office pursuant to article 552 § 27 (4) PGR and a confirmation by the audit office concerning compliance with the preconditions for tax exemption must be filed. If these documents are not submitted, or if a review shows that the legal person or the special asset dedication no longer meets the preconditions for tax exemption, then the legal person or special asset dedication shall be excluded from tax exemption.
- Foundations which are not subject to proper accounting rules under the PGR and the financial consequences of whose business activity can be presented simply and clearly without proper bookkeeping shall provide itemisations of assets and liabilities as well as of income and expenses. For determining accrual results, expenses and income shall be itemised on an accrual basis.
- If the foundation`s business activity cannot be presented simply and clearly without proper bookkeeping, they shall be required to keep proper books of account in order to determine taxable net corporate income. The accounting shall be in accordance with the general accounting rules (article 1045 et seqq. PGR; Art. 21 Tax Ordinance and decree by the Tax Administration).

The necessary documentations have to filed with the tax authority within 9 months from the closing date of the financial year at the latest. A change of purpose must be disclosed to the tax administration (decree by the Tax Administration, 1.1.1.c and 2.2.)

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

The Liechtenstein tax law does not contain such a requirement.

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

There is not such an obligation for public-benefit foundations. However, in order to prove the compliance with the tax regime it may be necessary for tax-exempt foundations to disclose the beneficiaries.

5. Are there specific accounting rules for foundations?

According to Art. 552 § 26 PGR foundations carrying on business run along commercial lines are subject to the general rules on accounting. In the case of all other foundations the foundation board shall, in respect of the management and appropriation of the foundation assets and taking into consideration the principles of orderly book-keeping, maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business and movement of the foundation assets. In addition, the foundation board shall maintain a schedule of assets showing the asset position and the asset investments.

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 general provision of Art. 107 para. 4a PGR refers to non-profit making (public-benefit) or charitable purposes. According to this provision a foundation is charitable if the fulfilment of its purposes is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the public good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting or ecological sense, even if only a specific category of persons benefits from the activity.

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.

A very rough definition is given in Art. 4 Federal Tax Law: The foundation must exclusively and irrevocably pursue public-benefit purposes without the intention of making a profit. Moreover, this provision makes a reference to article 107, paragraph 4a of the Law on Persons and Companies (PGR). As a consequence, the public-benefit purpose for tax matters is insofar linked to the civil law. In contrast to this provision Art. 45 Tax Act does not make a reference to the civil law. Therefore, one can argue that the exemption by Art. 45 Tax Act is not linked to the definition of public benefit in the PGR.

Besides, the connection between PGR and Tax Act in terms of public benefit purposes should be viewed critically, as the two legal spheres follow completely different goals. Whereas the tax law tends to a rather narrow interpretation of public benefit in order to restrict the tax exemption, in civil law a public benefit-foundation requires an additional surveillance.

8. Support of “the public at large”

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

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

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

	Yes	Probably yes	Unclear	Probably no	No
For benefit of the inhabitants of a city with 1,000,000 inhabitants	X				
For benefit of the inhabitants of a village with 10,000 inhabitants	X				
For benefit of the employees of a company					X
For benefit of the members of a family					X
For benefit of the students of a university	X				
Award for the best student of a university	X				

1. Non-Distribution Constraint

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 According to Art. 45 (1) Tax Act dividends which are payable to board members are possible, but they are limited to the notional income (4%) on the capital which is not received in the form of donations by third parties.

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

For a foundation to benefit from tax exemption, provision must be made that in case of dissolution the foundation’s remaining assets will be used for public-benefit purposes. For foundations which are exempt from corporate income tax due to Art. 45 Tax Act this requirement is explicitly stated in the law. The remaining property must not fall back to persons who have made donations to the foundation or to third persons (decree of the Tax Administration, 1.1.1.f).

2. “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?

Yes, the remunerations to board members can be paid without losing the tax exemption. However, from the tax point of view, the arm’s length principle has to be observed. If the remunerations exceed an adequate salary these payments are qualified as distributions and can result in losing the tax exemption (see decree of Tax Administration, 1.1.1).

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)

In this respect a discrimination has to be made between foundations under Art. 4(2) and under Art 45 Tax Act. According to Art. 4 benefits to the founder are generally not allowed. According to Art. 45 dividends can be paid to founder or his family up to a certain extent.

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

Special statutory regulations concerning “administration costs” do not exist in tax law. Unreasonably high administration costs will certainly exclude private or public-benefit foundations from tax exemption.

3. 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 favour 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 favour of the	X				

ounder (or another member of her/his family) as tenant.					
A foundation distributes a (small) part of its income to the founder or his family.	X				

c) Are there any other examples from your country (in civil law and/or tax law) regarding such “hybrid structures” (e.g. law provisions, court decisions, etc.)?

n/a

4. Distributions and Timely Disbursement

Are foundations allowed to spend down their capital?

Yes

Are they allowed to be set up for a limited period of time only?

Yes

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?

No, Art. 45 Tax Act allows explicitly that the foundation assigns resources in whole or in part to a provision, the extent necessary to fulfil the tax-privileged purposes.

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

No

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

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

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

	Yes	Probably yes	Unclear	Probably no	No

A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public benefit purpose of the foundation.	X				
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Are there any examples or cases from your country (in civil law and/or tax law) regarding the question of “timely disbursement” (e.g. law provisions, court decisions, etc.)?

n/a

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

No, foundations operating mainly abroad do not lose their tax-exempt status. A non-profit activity in Liechtenstein is not required by the tax law.

6. Income tax treatment

With regards to on-going taxation, Liechtenstein tax law differentiates between revocable and irrevocable foundations.

Revocable foundations: For tax purposes, revocable foundations are not considered as tax subjects, the Liechtenstein legislator considers them as fiscally transparent. Upon revocation the foundation’s assets are reverted back to the founder. However, the transparent taxation of the foundation also taxes place if the foundation is never actually revoked by the founder. The assets, regardless of the civil perspective, will be attributed to and taxed in the hands of the founder. However, the foundation’s governing bodies have the possibility to opt for an independent taxation of the foundation’s assets. In this case, the foundation’s assets are subject to wealth tax. However, in order to determine the tax rate, the assets of the resident founder have to be pooled together with the assets of the foundation. A priori, foreign founders are not subject to Liechtenstein wealth tax except if they own a permanent establishment or real estate in Liechtenstein, thus, the independent taxation option is irrelevant in this case.

Irrevocable foundations: On the contrary, irrevocable foundations are considered as tax subjects based on their domicile in Liechtenstein and are therefore subject to corporate income tax. However, particular tax regimes exist for non-economically active foundations, fiscally qualified as so-called private assets structures (“*Privatvermögensstrukturen*”; PVS). A PVS is not allowed to perform any economic activity. Its purpose is to acquire, hold, administrate and sell financial instruments according to article 4g VVG (assets management law) as well as cash and bank accounts. Participations may only be held if it can be proved that the shareholders or beneficiaries have no influence on the management of the company. The founders of a PVS must be individuals who administrate their own assets, or foundations acting in the interest of individuals. If a foundation is a PVS, the foundation is not subject to ordinary income taxation and will only be imposed a minimum corporate income tax of CHF 1,200 (approximately €975), payable annually in advance.

Conversely, the economically active Liechtenstein foundations cannot be considered as private asset structures and therefore will be subject to a corporate income tax of 12.5% on the taxable net corporate income. For a regularly taxed foundation the effective tax rate, dependent upon the equity return, is substantially reduced by a notional interest deduction of 4% of the foundation’s average equity. Thus, the financing with equity becomes fiscally equivalent to financing with debt, so that the choice of the form of financing can be made exclusively on the basis of business criteria. If the foundation is financed

by equity, the result will be according to the notional interest deduction that only interest yields over 4% will be taxable.

Furthermore, the taxable basis for purposes of corporate income tax is reduced by a favourable holding regime. Consequently, dividends and capital gains deriving from shares in domestic and foreign entities are fully tax-exempt in Liechtenstein. Also this follows that a depreciation of participation allows for fiscal write-downs and value adjustments. Likewise, on a unilateral level, income deriving from foreign permanent establishments and foreign real estate is exonerated. With regards to income from intellectual property rights, 80% of the positive income shall be considered as a commercially justified expense.

Grants and donations

Investment income (asset administration)

Economic activities related/unrelated

Major shareholding - considered as an economic activity and taxed accordingly

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

7. Capital gains tax, where separate from income tax

In Liechtenstein, there is only a separate capital gains tax for domestic real estate. Public-benefit foundations which are tax-privileged according to Art. 4(2) are exempt from this tax too. All other foundations have to subject their capital gains derived from the sale of domestic real estate to the real estate capital gains tax which has progressive rates from 0-21% (Art. 35 seq. Tax Act). There are no special rules for foundations in this respect.

8. Withholding tax on foreign investment income?

Liechtenstein does not levy withholding taxes on foreign investment income in an inbound case.

In an outbound case foreign withholding taxes can be credited by the foundation against the Liechtenstein corporate income tax, based on the relevant Tax Treaty or in the case of reciprocity under the restrictions of a per-item limitation (Art. 26 Tax Act). The tax credit can be applied especially if the foundation obtains interest payments from foreign sources. As foreign dividends and capital gains from shares which are earned by a regularly taxed Liechtenstein foundation are tax exempt, the foreign withholding tax on these dividends cannot be credited against domestic corporate income tax.

9. Gift- and inheritance tax

In Liechtenstein there is no gift- and inheritance tax since 2011.

10. Value added tax (VAT)

There is no special regulation for foundations as regards VAT.

Non-profit organisations that achieve annual revenues of up to CHF 150,000 (approximately €125,000) are exempted from the subjective obligation to pay taxes (Art. 10 (2) lit. c VAT Act). In addition, certain revenues of non-profit organisations are also exempted from the objective obligation to pay taxes (Art. 21 no. 12, no. 13, no. 17 and no. 27 VAT act). However it is possible for a public-benefit foundation to waive this exemption voluntarily and opt to be taxed instead of being exempt (see. decree of the Tax Administration, 3). For the definition of a tax exempted organisation Art. 3 lit. j VAT Act refers to the exemption from the direct taxes.

Donations are so-called non-revenues which are not subject to the value added tax at the recipient's level (Art. 18 (2) lit. a and c VAT Act).

11. Capital taxes on value of assets, where applicable?

n/a

12. Taxes on the transfer of assets?

To establish a foundation in Liechtenstein, only the payment of a formation tax ("Gründungsabgabe") is required. The taxable basis is the capital contribution statutorily imposed on foundations. However, the contribution of assets to the foundation's reserves is not part of the tax basis. Subsequent contributions on behalf of the founder or third party donations will not subject the foundation to the formation tax for as long as they do not substantially modify the original capital contribution. The original capital contribution as well as further donations from the founder or from third persons are not regarded as income for corporate income tax purposes. According to the new tax law, the rate of the formation tax imposed on foundations is 0.2% of the statutorily capital contribution, but a minimum of CHF 200 (approximately €165). Additionally, foundations benefit from a general exemption limiting taxation to a capital of CHF 1,000,000 (approximately €815,000). Therefore, a foundation established with the minimum capital contribution of CHF 30,000 (approximately €24,500) will be imposed the minimum amount of CHF 200 (approximately €165).

The transfer of assets into the foundation does in general not trigger any further tax consequences for a foreign founder except if these assets constitute a Liechtenstein permanent establishment or real estate. In conclusion, no tax consequences will arise in Liechtenstein if only movable assets are transferred to the foundation. If a resident founder transfers movable assets, a Liechtenstein permanent establishment or Liechtenstein real estate to the foundation, a dedication tax ("*Widmungssteuer*") of 2.5% will be levied on the transferred assets. The tax is generally based on the wealth-tax value of the contribution. In the case of real estate transfer, the lower tax assessment value will be taken into account as opposed to the fair market value.

13. Other taxes, where applicable (Real property tax)

In Liechtenstein there is no separate real property tax. Real estate is part of the taxable basis of the general net wealth tax.

14. 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?

According to Art. 16(3)h Tax Act foreign foundations with domicile in another member country of the European Economic Area or in Switzerland which are exempt from tax liability in light of

exclusively and irrevocably public-benefit purposes in the country of domicile meet the conditions for an application for tax exemption under article 4 (2) Tax Act i.e. , Liechtenstein accepts the tax regime and the definition of public-benefit purpose in the domicile country of the foundation.

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

In Liechtenstein there is no gift- and inheritance tax since 2011.

16. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations are protected by the fundamental freedoms of the EC Treaty? Especially: Are the consequences of the Stauffer decision of the European Court of Justice and/or the current infringement procedures of the European Commission discussed by legal scholars or by practitioners? (e.g. publications in law journals) / Have there been any resulting changes to your country's legislation, or are changes being discussed?

n/a

III. Tax treatment of donors

➤ **System of tax credit or tax deduction?**

Tax deduction.

➤ **Tax treatment of individual donors**

Individuals can deduct voluntary monetary payments to tax-exempt foundations which pursue public-benefit purposes in accordance with article 4(2) Tax Act. The deductible amount is limited to 10% of the taxable income prior to the donations (Art. 16(3) h Tax Act). For donations to foundations under Art. 45 Tax Act no deductibility is stated in the tax law.

➤ **Tax treatment of corporate donors**

For corporate donors Art. 47(3)h Tax Act lays down the same rules and thresholds as for individual donors – see above.

➤ **Tax treatment of donations to non-resident public-benefit foundations**

Donations to non-resident public-benefit foundations are deductible in the same way as donations to resident foundations, if the foreign foundation is domiciled in the EEA or in Switzerland and are exempt from tax liability in light of exclusively and irrevocably public-benefit purposes in the country of domicile (Art. 16(3)h Tax Act). Donations to foundations located outside the EEA/Switzerland are not deductible.

➤ **Other frameworks such as percentage law systems**

n/a

What are reporting/proof requirements to claim tax benefits?

Tax deductible donations by individuals exceeding a total amount of CHF 300 (approximately €245) must be substantiated with receipts (Art. 16(3) h Tax Act). For legal entities as donor no such threshold exists (i.e. they have to prove all their donations by receipts).

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

Individuals:

With regards to distributions, a difference is made between revocable and irrevocable foundations:

Revocable foundations: Distributions by a revocable foundation are fiscally considered as direct contributions on behalf of the founder to the beneficiaries since the assets of the foundation are attributed to the founder. As a result of the elimination of the inheritance and gift tax in the 2011 Liechtenstein tax reform, these distributions are no longer subject to such tax. Moreover, distributions made to an individual are not considered as taxable income. As a result, there are no tax consequences for contributions within revocable foundations in Liechtenstein.

Irrevocable foundations: Within an irrevocable foundation, if the value of the beneficiary's privileges can be determined, the beneficial interest will be subject to wealth tax only in cases where the beneficiary is subject to unlimited tax liability. If the value of the beneficiary's privileges cannot be determined or if the beneficiary is a legal entity or a foreigner, then the beneficial interest will not be subject to wealth tax.

Distributions from irrevocable foundations made to Liechtenstein residents are subject to personal income tax, unless the foundation's assets are subject to wealth tax. Frequently, however, the beneficiary of the foundation does not have its domicile or habitual abode in Liechtenstein and therefore is not subject to taxation. In such a case, the taxation of the contribution will be dependent on the beneficiary's resident state. In Liechtenstein, no source taxation is levied on contributions. This applies even if the distributing foundation holds a Liechtenstein permanent establishment or real estate.

Legal entities:

Revocable foundations: Distributions by a revocable foundation are fiscally considered as direct contributions on behalf of the founder to the beneficiaries since the assets of the foundation are attributed to the founder. The tax treatment of the distribution at the level of the beneficiary depends on certain things: If the founder is a shareholder of the recipient and the grant is given *causa societatis* the payment is treated as a capital contribution and therefore is not subject to corporate income tax. However, the contribution may trigger formation tax in Liechtenstein. If the payment is not given *causa societatis*, the distributions are subject to corporate income tax of 12.5% at the level of the beneficiary if it has its domicile or effective place of management in Liechtenstein. Distributions to non-resident legal entities are neither subject to corporate income tax nor to withholding taxes in Liechtenstein.

Irrevocable foundations: Distributions from irrevocable foundations to legal entities are subject to corporate income tax if the recipient has its domicile or effective place of management in Liechtenstein. The holding privilege cannot be applied for grants from foundations. As a consequence, the distributions are subject to corporate income tax of 12.5%. Distributions to non-resident legal entities are neither subject to corporate income tax nor to withholding taxes.

V. Trends and developments

➤ Recent trends or developments affecting the legal and fiscal environment for public benefit foundations

➤ **Impact of anti-terrorist debate**

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

In Liechtenstein there is a zero-tolerance policy as far as money laundering and financing of terrorism is concerned. The legislation has taken various steps in this regard. Being a member of the European Economic Area, Liechtenstein has fully implemented the 3rd EU Money Laundering Directive (2005/60/EC) and Commission Directive 2006/70/EC. Liechtenstein has also taken the necessary measures to enforce Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds.

The Act on Professional Due Diligence to Combat Money Laundering, Organised Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung; Sorgfaltspflichtgesetz, SPG*), entered into force on 1 March 2009.

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

There are no specific rules regarding foundations. The general rules of the SPG regarding the monitoring of the transactions as far as the identity of the involved persons etc. are concerned (Art. 5 ff. SPG) have to be observed by the foundation board and all the other persons involved in the administration of the foundation.

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

No

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

The Financial Market Authority Liechtenstein is responsible for the due diligence supervision of Liechtenstein financial market participants. Information is posted on www.fma-li.li

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?

Yes

➤ **Public fundraising**

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

No

Useful contacts

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Annual conferences on Foundation and Trust Law in Liechtenstein

Annual conference on foundation law in Liechtenstein: www.uni.li/stiftungsrechtstag

Annual conference on trust law in Liechtenstein: www.uni.li/trustlaw

Executive education in the field of Foundation and Trust Law in Liechtenstein and the neighbouring states

Executive Master of Laws (LL.M.) in Company, Foundation and Trust Law: www.uni.li/llm-gesellschaftsrecht

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.