

EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

LITHUANIA – 2014

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The operating environment for foundations

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1. 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)?

The Law on Charity and Sponsorship Funds in Lithuania was adopted in 1996. It stipulates that a fund is an autonomous legal entity. This law does not apply to credit institutions and insurance organisations which carry the name of a fund as well as those funds which are established under separate laws or international treaties with other states and international organisations and which are governed by the terms and conditions of a treaty. Funds in Lithuania may both provide and seek grants as well as carry out economic and commercial activities.

2. What purposes can foundations pursue?

The Funds pursue to provide charity and/or sponsorship and other support to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, and environmental protection, as well as in other fields recognised as selfless and beneficial to society.

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 founders of a fund may be natural and legal persons who have concluded a memorandum of association, prior to the fund's registration in the Legal Entities' Register, an obligation to make monetary or property contributions and provide services to the fund. Where the fund is established by a single person, he has to execute a founding act, instead of a memorandum of association.

Persons who cannot be providers of sponsorship under the Law on Charity and Sponsorship may not be the founders of the fund.

The memorandum of association (founding act) of the fund has to be signed by all of its founders. All founders of the fund become its stakeholders as of the date of the fund's registration in the Legal Entities' Register.

The founders of the fund should draft, prior to the fund's registration in the Legal Entities' Register, its articles of association and convene a founding meeting to adopt the articles of association and set up at least one managing body.

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?)

Both the memorandum and articles of the association have to be approved by a notary, prior to its registration in the Legal Entities' Register. The Centre of Registers is a state enterprise.

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

The fund shall be registered in the Legal Entities' Register. It may be registered only after its memorandum of association (founding act) has been concluded, its founding meeting has been convened, its articles of association have been adopted, at least one of its managing bodies has been set up, and other obligations stipulated in the memorandum of association (founding act) have been fulfilled.

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

The following documents have to be submitted for registration: memorandum of association (founding act) and articles of association. These documents contain the data on the founders, and managing bodies. Annual reports should also be regularly submitted to the Register.

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

Yes

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

No

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

The fund must hold general meetings of stakeholders and set up a managing body (single person and/or collegiate). The fund may also set up other structural bodies.

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 structure of the fund's bodies, the scope of their competence, and the procedure of convening meetings and adopting decisions, are set out in the articles of association. The decisions on the election (appointment) and removal of the members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, and also those of other collegiate bodies, where such bodies are stipulated in the fund's articles of association, are taken by the general meeting of stakeholders. The meeting of stakeholders is entitled to elect (appoint) and remove members of other collegiate bodies, where such bodies are stipulated in the fund's articles of association and where the articles do not provide otherwise.

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

As the setting up of a board is not mandatory, the duties and rights of board members are specified in the articles of association of the fund.

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?

All founders of the fund become its stakeholders as of the date of the fund's registration in the legal Entities' Register.

The general meeting of stakeholders is the supreme governing body of the fund. Where the fund has only one stakeholder, his written decision is equal to the decisions of a general decision of stakeholders.

The general meeting of stakeholders:

- Amends the fund's articles of association
- Makes decisions on the removal of stakeholders from the fund and conferring stakeholder rights to supporters
- Elects (appoints) and removes members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, unless otherwise provided by the articles of association
- Elects (appoints) and removes members of other collegiate bodies, where such bodies are stipulated in the fund's articles of association and where the articles do not provide otherwise
- Approves the annual financial accounts of the fund
- Decides on the restructuring or dissolution (reorganisation or liquidation) of the fund
- Decides on the establishment of other legal persons or regarding becoming a member of other legal persons, unless otherwise provided by the articles of association.

The general meeting of stakeholders may also decide on other issues falling within the scope of its competences as prescribed by the Law and the articles of association, unless they fall within the scope of competence of other bodies of the fund or constitute, in substance, the functions of a managing body

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

The reports of the fund are public. At the request of any legal or natural person, the fund should make the report available at its registered office or in any other manner.

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?

The fund is prohibited to transfer, free of charge, the fund's assets into the ownership of, transfer such assets under trust or loan for use in contracts, or borrow money on interest from the persons related to stakeholders, members of managing and collegiate bodies, persons employed by the fund on the basis of an employment contract or persons, who are:

- The close relative or spouse (co-habitee) of a stakeholder who is a natural person, or a close relative of the stakeholder's spouse (co-habitee)
- A legal person having more than half of the votes in a fund's stakeholder which is a legal person
- A legal person in which the fund's stakeholder has more than half of the votes

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

The managing body may adopt decisions on the establishment of branches and representative offices as well as termination of their activities and approve their regulations, unless otherwise provided by the articles of association.

Members of the managing bodies may attend a general meeting of stakeholders without the right to vote.

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

As stipulated in the Law on Charity and Sponsorship Funds, the managing body acts on behalf of the fund in respect of relations with other persons.

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

Yes

9. Liability of the foundation and its organs

The fund is an autonomous legal entity of limited civil liability having its own name and the objective of providing charity and sponsorship and other support to legal and natural persons in the fields of science, culture, education, arts, religion, sports, health care, social care and assistance, environmental protection as well as in other fields recognised as selfless and beneficial to society. The general meeting of stakeholders is the supreme governing body of the fund. Where the fund has only one stakeholder, the written decisions of that stakeholder are equal to the decisions of a general meeting of stakeholders. The general meeting of stakeholders is entitled to:

- Amend the fund's articles of association
- Make decisions on the removal of stakeholders from the fund and conferring stakeholder rights to supporters
- Elect (appoint) and remove members of a collegiate managing body and single-person managing body, the chairman of a collegiate managing body and the auditor, unless otherwise provided by the articles of association
- Elect (appoint) members of other collegiate bodies, where such bodies are stipulated in the fund's articles of association and where the articles do not provide otherwise
- Approve the annual financial accounts of the fund
- Decide on the restructuring or dissolution (reorganisation or liquidation) of the fund
- Decide on the establishment of other legal persons or on becoming a member of other legal persons, unless otherwise provided by the articles of association

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

Members of the fund's collegiate bodies, which are not its managing bodies, cannot be remunerated for their activities.

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

There are general “business judgement rules” stipulated in the Civil Code. They may be specified in the articles of association.

c) What is the liability of executive staff?

The managing body acts on behalf of the fund in respect to other persons and concludes transactions on behalf of the fund.

The managing body hires and dismisses employees, concludes employment contracts, prepares a report on the fund’s activities and presents it to the general meeting of stakeholders, allocates funds for charity and sponsorship, confirms the valuation of property contributions, analyses the results of the fund’s activities, makes estimates regarding income and expenditures, the findings of audits, stocktaking and other inventory records, publishes or arranges the publication of public information, and organises voluntary work in accordance with the procedure established by the Government as well as dealing with other issues within the scope of its competence. The managing body also adopts decisions on the establishment of branches and representative offices, as well as on the termination of their activities and approves their regulations, unless otherwise provided by the articles of association.

Natural persons who are members of the fund and natural persons nominated by the fund’s stakeholders who are legal persons may be members of a collegiate managing body. The articles of association of the fund may stipulate additional requirements for members of a collegiate managing body.

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

The general meeting of stakeholders may modify the standard of diligence of board members by amending the fund’s articles of association.

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

The general rule is that if the board's decision caused any harm, board members that voted for such a decision could be liable and prosecuted.

	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.					
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).					
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.					
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.					

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

As stipulated in the Law on Charity and Sponsorship Funds, the fund has the right to pursue economic and commercial activities which are not prohibited by the law and which do not contravene its articles of association or the purposes of its activity and which are necessary to attain the fund's objectives.

11. Are foundations permitted to be major shareholders?

12. Are there any rules/limitations in civil and/or in tax law regarding foundations' asset management? What, if any, types of investment are prohibited?

The fund is allowed to transfer the assets and funds managed by the right of ownership and any other right, dispose of them by way of security for its obligations or restrict its right to the

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.

management, use and disposal of such assets and funds only in the event that this is done to attain the funds objectives indicated in the articles of association (including the purposes of charity and sponsorship specified in the articles pursuant to the law on Charity and Sponsorship).

It is prohibited for the fund, even for the above purposes:

- To transfer, free of charge, the fund's assets into the ownership of stakeholders, members of managing and collegiate bodies, persons employed by the fund on the basis of an employment contract or persons related to the said persons, or third persons, or to transfer such assets to the above mentioned persons under trust or loan for use under contracts, except for the purposes of charity and sponsorship specified in the articles of association pursuant to the Law on Charity and Sponsorship
- To pay benefits to the founders or stakeholders of the fund in the form of profit participation or to transfer to them a share of assets of the fund under liquidation where such a share exceeds the stakeholder's contributions
- To distribute in any manner, except as charity and sponsorship pursuant to the Law on Charity and Sponsorship, the fund's assets and funds, including profits, among the founders of the fund and/or members of its managing bodies, or persons employed by the fund on the basis of an employment contract, excluding the payment of wages and salaries, other payments relating to an employment relationship, payments made under copyright contracts and remuneration for services rendered or goods sold
- To grant loans, mortgage the fund's assets (except for cases where such assets are mortgaged by way of security for the obligations of the fund), or guarantee, warrant or secure in any other manner the fulfilment of obligations of other persons. This provision does not apply where loans are borrowed from credit institutions and where international treaties, laws and legal acts based on the said treaties provide otherwise
- To sell the fund's assets for a manifestly low price, except for cases where charity is provided in this manner to a person who is a charity recipient pursuant to the Law on Charity and Sponsorship

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

The fund is allowed to transfer the assets and funds managed by the right of ownership and any other right, to dispose of them by way of security for its obligations or restrict its right to the management, to use and dispose of such assets and funds, only in the event that this is done to attain the funds objectives indicated in the articles of association (including the purposes of charity and sponsorship specified in the articles pursuant to the law on Charity and Sponsorship).

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

The general meeting of stakeholders is entitled to amend the articles of association of the fund with a majority of at least 2/3 of the votes cast by the stakeholders present at the meeting.

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)

The report on the fund's activities should include information about the fund's activities aimed at attaining the objectives specified in the articles of association; the number of stakeholders at the end of the financial year; the annual financial accounts of the fund; and the number of the fund's employees at the end of the financial year.

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

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

No institution checks the reports of the fund.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)

The managing body prepares an annual report on the fund's activities for the previous financial year and presents it to the general meeting of stakeholders within the term set down in the articles of association. The report is public. At the request of any legal or natural person, the fund makes the report available at the registry office or in any other manner.

Usually the reports are publicised on the website of the fund.

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

The fund shall inspect its financial activities at the intervals prescribed by its articles of association. The inspections are conducted by an examiner or auditor elected by the general meeting of stakeholders for a term set down in the articles. The examiner (auditor) inspects the annual accounts of the fund and other accounting records; conducts inspection of the financial activities of the fund, if instructed by the meeting of stakeholders or the managing body; and reports about the violations identified during inspections at the next scheduled general meeting of stakeholders or the next scheduled meeting of the managing body.

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

Legal or natural persons, except for the founders or stakeholders and except for members of a managing body or employees of the fund may be examiners (auditors).

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

There are no specific regulations for supervision of the fund. The provisions valid for any legal persons apply to the fund: The State Tax Inspectorate inspects the payment of taxes, the State Social Insurance Fund checks the payment of social benefits. The Centre of Registers grants and removes the status of support recipient; the National Audit Office may audit the use of public funds.

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?

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

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

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

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

17. When and how does a foundation dissolve?

The fund can be dissolved at the decision of the general meeting of stakeholders by a majority of at least 2/3 of the votes cast by the stakeholders present at the meeting. The fund's assets and funds remaining after all the claims by creditors and claims by stakeholders, in respect of a specific share of the fund's assets which does not exceed a stakeholder's contributions to the fund, have been satisfied is transferred, before the fund is removed from the Legal Entities' Register, to another public legal person or other public legal persons, as determined by the meeting of stakeholders or the court which has passed the decision to liquidate the fund. The fund has to publish a notice about the liquidation of the fund in a daily newspaper specified in the fund's articles of association and submit to the Legal Entities' Register the documents attesting to the decision to liquidate the fund, as well as the data concerning the liquidator; to draw up an opening balance sheet for the liquidation; to transfer the remainder of the fund's assets in accordance with the procedure laid down in the law; to draw up the fund's liquidation act; to deposit the documents for safekeeping; and to submit to the manager of the Legal Entities' Register the act of liquidation and other documents necessary to remove the fund from the register.

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

Under separate laws or international treaties with other states and international organisations and which are governed by the terms and conditions of a treaty. A foreign foundation will also be recognised, upon its registering its office (branch office) in Lithuania.

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

There are no restrictions as to the place of activities conducted by the fund.

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?

Funds are not subject to tax exemptions.

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?)

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

The fund may receive state funds exclusively under grant tenders or public procurement procedures. Activity and financial reports are submitted to the institutions with which agreements were made, following the provisions specified therein. The State Audit Office may inspect the use of public funds

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

No. The donors themselves report to state institutions to attain reduction of taxes.

5. Are there specific accounting rules for foundations?

No specific accounting rules are applied for the fund.

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 Law on Charity and Sponsorship defines the purposes of charity and sponsorship as follows.

Charity is a voluntary and gratuitous provision of charity items by the providers of charity to the recipients of charity. Charity items are provided to charity recipients for the purposes of satisfying their minimal socially acceptable needs, ensuring health care, and/or assisting in the alleviation of the consequences of war, natural disasters, fires, ecological catastrophes, outbreaks of contagious diseases and epidemics.

Sponsorship is a voluntary and gratuitous provision of sponsorship items by the providers of sponsorship to the recipients of sponsorship, including cases where sponsorship items are transferred anonymously or in any other manner in the event that a specific provider of sponsorship cannot be identified. Sponsorship items are provided to sponsorship recipients for the purposes of public benefit (activities for the purpose of international cooperation, protection of human rights, integration of minorities, promotion of cultural, religious and ethical values, educational, scientific and vocational development, non-formal and civic education, sports, social security and labour, health care, national security and defence, law and order, crime prevention, adjustment of living

environment and development of housing, protection of copyright and related rights, environmental protection as well as any activities in other fields recognised as selfless and beneficial to society).

7. Is there a statutory definition in the tax law of your country of what a public benefit purpose is? If yes, please give us the definition.

No

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

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

* **Note:** Lithuanian laws does not have a clear concept of public benefits, therefore public benefits may be interpreted quite widely. However, according to Lithuanian charity laws (article 2.1) science,

education, culture, art, religion, sport, health care, social care, environmental and other purposes that are not related to personal benefit are included in the concept of public benefit.

9. Support of “the public at large”

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

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

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

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

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.?

Yes

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?

The fund's assets and funds remaining after all the claims by creditors and claims by stakeholders, in respect of a specific share of the fund's assets which does not exceed a stakeholder's contributions to the fund, have been satisfied are transferred, before the fund is removed from the Legal Entities' Register, to another public legal person or other public legal persons as determined by the meeting of stakeholders or the court which has passed the decision to liquidate the fund.

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**?

Members of the fund's collegiate bodies stipulated in the articles of association, which are not its managing bodies, cannot be remunerated for their activities.

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)

Only advertising not exceeding 20% of the value of the donation.

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

No

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

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

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

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

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

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

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

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

Yes

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

Yes

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

No

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

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?

The Law on Charity and Sponsorship does not specify the place of provision of charity, but confines the recipients of sponsorship to entities registered in Lithuania.

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

16. Income tax treatment

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

Grants and donations

Non-taxable

Investment income (asset administration)

- Interest from fixed rate bonds

Investments are not allowed for non-profit organisations.

- Equities
- Income from leasing of a property that belongs to the foundation

As income, may be subject to the corporation tax. However, no non-governmental organisations pay income tax as long as their annual profit does not exceed 1 million Lithuanian litas (LTL) (approx. €300,000).

Economic activities related/unrelated)

- Income from running a hospital/museum/opera

Non-profit entity shall mean an entity which is established for other than profit-making purposes and which cannot distribute the profits generated under the legal acts regulating its activities among its founders and/or members. But it means non-profit institutions may have income from economic activity.

That part of taxable profits of non-profit entities, whose income from economic and commercial activity over the tax period does not exceed LTL 1 000 000, which amounts to LTL 25 000 shall be taxed at a rate of 0% and the remaining part of taxable profits shall be taxed at a rate of 15%.

- 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)

As for investment income.

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

As for investment income.

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

As for investment income.

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

None

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

A foundation may register itself as a VAT payer if its income from economic activities is more than 10,000 LTL (approx. €2,900). If the income exceeds 100,000 LTL (approx. €29,000), the foundation becomes a VAT payer automatically.

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

None

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

None (if such activities were allowable).

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

None

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

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

No

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?

None.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

Tax deduction for legal persons only.

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?

b) Which assets qualify for tax deductibility?

No tax incentives in place for individual donors. They can, however, allocate 2% of their income tax to an approved public benefit entity - All taxpayers residing in Lithuania can transfer up to 2% of their income tax to an organisation having the status of a support recipient with their annual tax return. The 2% may be distributed among several organisations entitled to receive tax-deductible donations under the Charity and Sponsorship Law.

3. Tax treatment of corporate donors

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

b) Which assets qualify for tax deductibility?

The taxpayers who are entitled to provide charity and sponsorship under the Law of the Republic of Lithuania on Charity and Sponsorship may deduct from their income all of the payments made (except for cash payments which exceed the amount of 250 MLS in respect of a single recipient of sponsorship or charity during the tax period), including the assets transferred and services supplied, which are intended for charity and sponsorship in accordance with the procedure laid down in the Law on Charity and Sponsorship, unless this Article provides otherwise.

The taxpayers who are entitled to provide only sponsorship under the Law of the Republic of Lithuania on Charity and Sponsorship, may deduct twice from their income the payments made (except for cash payments which exceed the amount of 250 MLS in respect of a single recipient of sponsorship during the tax period), including the assets transferred and services supplied, which are intended for sponsorship in accordance with the procedure laid down in the Law on Charity and Sponsorship, but not in excess of 40% of the taxpayer's income calculated by deducting non-taxable income, allowable deductions and deductions of limited amounts, except for sponsorship, from income.

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)

The taxpayers who are entitled to provide only sponsorship under the Law of the Republic of Lithuania on Charity and Sponsorship, may deduct twice from their income the payments made (except for cash payments which exceed the amount of 250 MLS in respect of a single recipient of sponsorship during the tax period), including the assets transferred and services supplied, which are intended for sponsorship in accordance with the procedure laid down in the Law on Charity and Sponsorship, but not in excess of 40% of the taxpayer's income calculated by deducting non-taxable income, allowable deductions and deductions of limited amounts, except for sponsorship, from income and the losses for the previous tax periods.

Where sponsorship is provided in the form of tangible fixed assets, the amount of sponsorship shall be equal to the residual value of such assets. Where sponsorship is provided in the form of other assets, the amount of sponsorship shall be equal to the acquisition value of such assets. Where sponsorship is provided in the form of services, the amount of sponsorship shall be equal to the cost price of such services. Where sponsorship is provided in the form of tangible fixed assets lent for use, the amount of sponsorship shall be equal to the calculated amount of depreciation of such assets over the period during which they were used by the recipient of sponsorship.

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

Not deductible.

5. Other frameworks such as percentage law systems

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?)?

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?)?

Such donations are not deductible.

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

1. Individuals

Individuals are subject to tax on grants received from foundations, except for the persons excluded from taxation under the Charity and Sponsorship Law.

2. Legal entities

No

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

V. Gift and inheritance tax

Applied only for the donor of a gift or legacy.

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

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

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

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

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

VI. Trends and developments

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

Yes. This is currently being discussed.

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)?

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

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

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

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?

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

The Law on Endowments has been drafted and has been submitted to the Parliament.

4. Public fundraising

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

Useful contacts

www.nisc.lt

Selected bibliography

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

Selected law texts online:

www.lrs.lt (Official website of the Lithuanian Parliament)

www.vmi.lt (State Tax Inspectorate)

www.registrucentras.lt (State Enterprise Centre of Registers)

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.