



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

MACEDONIA – 2014

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The operating environment for foundations

Drafted by Emina Nuredinoska, Macedonian Center for International Cooperation

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I. Legal framework for foundations

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

Foundations are regulated by the Law on Associations and Foundations. The legal definition is as follows: *"A foundation shall be a legal entity, established for the purpose of acquiring and governing of property and assets, in accordance with this Law."*(article 27, LAF). There is no other law in which other legal types of foundations are prescribed.

2. What purposes can foundations pursue?

Foundations can pursue a variety of purposes. There are just a few limitations defined in the LAF. First, according to the article 4, paragraph 2 establishment of the organisations (foundations and associations) shall be forbidden if the programme and its actions are directed towards the violent destruction of the constitutional order of the Republic of Macedonia; encouragement and incitement to military aggression or stirring ethnic, racial or religious hatred or intolerance; undertaking terrorism-related activities; undertaking activities that are against the Constitution or the law; or violating the freedoms and rights of other people. The second limitation is related to the not-for-profit principle. This means that foundations cannot be established for the purpose of profit generation, with exception of activities that are related to the goals determined by the statute. The limitation is related to non-partisan activity. Namely, foundations cannot perform activities of a political party, i.e. they cannot provide direct or indirect financing to a specific political party to influence elections.

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 shall be established with a pool of assets amounting to at least €10,000 in Denar equivalent amount according to the middle exchange rates of the National Bank of the Republic of Macedonia, in the form of money, securities or other assets on the day of filing the act for entry in the Registry. A foundation shall be established with a founding act or via a last will expressed in a testament or legacy. Foundations should be registered in the Central Register of Macedonia. The entry in the registry shall be done by filing an application, within 30 days after passing the founding act. The application shall be filed by the representative of the foundation. For the entry in the Registry the foundation shall file: The founding act; the statute; the programme of activities; the decision on election of governing bodies and data about the members of the bodies; the decision on the election of a legal representative along with personal data; report from the establishment; and a statement verified by a notary public and signed by the legal representative, which confirms that the activities pursued are in accordance with the law and the conditions for entry have been met.

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. There is no need for additional approval by a state authority.

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

As stated above, foundations shall be registered in the Central Register of Macedonia. There is a separate Registry for foundations, in the frame of the Registry of other legal entities.

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

The registry shall include: Full name of the foundation and its abbreviated name, if such name exists; Seat; Founding Act; Date of establishment; Name, surname and unique identification number of the citizen and the unique identification number of the founders; Date of adoption, i.e. amendment and supplement of the statute; Foreseen time for which the organization is established; Goals and activities; Name, surname and unique identification number of the representative by law; Data on foundation units (affiliates, offices, etc.); Data on the status of public benefit organization; Data on statutory changes; Data pertaining to bankruptcy and liquidation; Note on initiation of procedure for ban of operations; Termination of operations; The initial pool of assets; and Number and date of the decision for entry, change of data and decision for deleting the records from the registry.

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

Yes. All information are available on the web site of the Central Register of Macedonia.

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

Yes, a minimum founding capital is required. The amount is 10.000 Euro. There is no requirement for maintaining the founding capital or other specific asset level.

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

The foundation shall have a Board and Director. The statute of the foundation may also stipulate other bodies.

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?

There is no limitation regarding the number of board members. The founder shall appoint the Board of the foundation during the process of establishment, unless otherwise stated in the founding act or the statute. All other issues should be prescribed in the statute.

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

The Board of the foundation shall: Adopt, the statute, program and other acts; Adopt annual working report and financial report and publish them on its web site; Submit a financial report to the competent body of the state administration i.e. the body of the municipalities, of the municipalities in the City of

Skopje and the City of Skopje, in cases when it utilizes funds from the Budget of the Republic of Macedonia i.e. the budgets of the local self-government units; Decide on changing the goal of the foundation; Decide on the internal organization and organizational forms of the foundation; Elect and dismiss members of the bodies; Decide on the statutory changes of the foundation; Decide on the termination of foundation; and Perform other matters in accordance with the statute and the acts of the foundation.

The Board of the foundation shall have all above stipulated rights unless the founder has retained these rights with the founding act or the statute of the foundation.

As well, the members of the bodies of the organizations (including board members of foundation) may be held responsible personally and in unlimited way for their obligations towards the organization (foundation), for abusing the funds of the organization (foundation) for achieving goals that are forbidden for them as individuals or for abusing the organization (organisation) as a legal entity to inflict harm to their creditors. They also shall be jointly liable for any damage inflicted to the foundation caused by their work, if it is caused as a result of serious negligence or with an intention of causing damage, except in the cases when they have stated their opinion during the decision making process and this is recorded in the minutes or they did not participate in the decision making.

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?

The founder has the right to make decision on amending of the goal, the name, the manner of amending and supplementing of the statute and termination of the foundation. Also, as it is presented above, the founder with the founding act or the statute of the foundation can retain the rights that usually are perceive as competences of the board.

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

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?

- Mandatory obligations that regulate conflict of interest are not prescribed in the law. Foundations on a voluntary base can regulate conflict of interest in their statutes.

Law on prevention of conflict of interest provides the following definition: *“conflict of interests” means a conflict between the public authorizations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorization and duties.*

The official who is a member of a foundation must not abuse the information and the data at his/her disposal while performing his/her duties, nor gain advantage for himself/herself or for the closely affiliated persons while performing his/her activities within the framework of the foundation. The official can be a member of governing or supervisory bodies of foundations that perform scientific, cultural, sports, humanitarian and other similar activities, without the right to receive compensation except for traveling costs related to the activity of these organizations, associations and foundations. (Article 20, Law on prevention of conflict of interests)

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

There are no specific provisions for this issue, with the exception of article 78 from LAF which regulates non-compatibility of functions in public benefit organizations. According to this article the members of the supervisory body shall not be members of other bodies, whose work is subject to their supervision. Employees of the organization (including foundation) shall not be members of the supervisory body. But it should be clear that this rule refers only to the organizations (foundations) with public benefit statute.

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

The director of foundation is authorized for its representation. It is specified in the LAF, article 36, paragraph 2: *“The foundation may have one or several directors, authorized for representation of the foundation, elected in a manner determined by the statute”.*

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

Yes, explained above.

9. Liability of the foundation and its organs

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

The work in the bodies of the foundation, as by rule, shall be voluntary, while the members of the bodies may receive compensation for travel costs and daily allowances, as well as compensation for the activities in the bodies of the organization in accordance with law.

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?

c) What is the liability of executive staff?

There are no special provisions in the LAF for the liability of executive staff. It is just prescribe that director shall fulfil its rights, obligations and responsibilities in accordance with the LAF, statute and acts of the foundation. Accordingly this is applicable on all executive staff.

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

There are no clear provisions on this issue. Since, the founder has rights to retain for himself all competences of the board, probably the answer is yes.

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	

Comment: The results of most of the above mentioned cases will depend on the internal procedure in foundation. In LAF is just prescribe that the request for compensation of damages shall be filed by the body defined by the statute or the highest ranking body, if the statute has not designated a body.

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

Yes, foundations may perform profit generating activities, if the activity is related to the goals determined by the statute. If profit has been generated from the operations of organizations, it has to be used for fulfilment of the goals determined by the statute. The generated profit cannot be allocated among the founders, members, members of bodies, directors, employees, or any other person associated with them. There is no limit on the level of gained amount through economic activities. Hypothetically, the annual incomes of the foundation could be gained 100% through economic activities.

11. Are foundations permitted to be major shareholders?

Yes.

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

No. According to the LAF, foundations shall obtain the sources of financing from membership fees, founding deposits, charitable contributions, donations, gifts (in the form of money, goods, property rights), wills, legates, income generating activities, rents and leases, as well as income from investments, dividends, interests, loans and other incomes in accordance with the law and the statute.

All regulation in terms of investment for profit entities is applicable as well to the foundations.

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

Yes

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

The manner of adoption, amendments and supplements to the statute shall be regulated by the statute of the foundation.

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

Foundations shall be obligated to publish the annual reports of their work on their web site or in a different manner. Foundations shall be obligated to compile annual financial report, to submit it to the competent body in accordance with law and to publish it on the web site or to make it available

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.

to the public in another appropriate manner. Foundations shall be obligated to publish the reports (narrative and financial) no later than April 30 for the preceding year.

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

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

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

Annual narrative and financial reports shall be approved by the foundation board. With exception of public benefit organisations (foundations) there is no obligation for submission of the reports to some state bodies. Exception is the annual balance that shall be provided to Public Revenue Office and Central Register of Macedonia.

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

Only the annual balance shall be submitted to the Public Revenue Office.

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)

It is described above.

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

Foundation with public benefit status whose annual budget is above 20,000 Euro shall be obligated to conduct an independent annual auditing of its financial operations, while if their budget is above 100, 000 Euro it is necessary to perform auditing in accordance with the international accounting standards.

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding

international and national auditing agencies and standards?

It should be independent auditing agency, both national and international that have licence for auditing.

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

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

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?

No.

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 foundation shall cease to exist if: Decision is adopted on termination of the foundation in accordance with the statute; Twice as long time has passed from the time stipulated for holding a session of the highest body determined by the statute, and a session did not take place; Annual balance sheet has not been submitted for two consecutive years, in accordance with the Law; Expiration of the time determined by the statute, when the foundation was established for a definite period of time; Statutory change stipulating a termination; Decision adopted by competent court; Bankruptcy and Enforced liquidation.

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

Foreign foundations are regulated with the Law on Associations and foundations. Foreign foundations (or organisational type of foreign organisation as common name for all foreign entities regulated by the LAF) may be active in the Republic of Macedonia through an affiliation, office or another organizational type of foreign organizations that have their seat on the territory of the Republic of Macedonia.

Foreign foundation shall be established with a founding act of the foreign organization in the Republic of Macedonia. The act shall contain: Name and seat of the foreign foundation establishing an organisational type; Goal of the foreign foundation and the goal of the organizational type of the foreign organisation; Name and seat of the organizational type of the foreign organization; The founding act shall be signed by an authorized person of the foreign foundation and verified by a notary public.

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

Yes, all foundations are allowed to conduct activities abroad. There is no limitation.

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?

Foundations (including all CSOs-organisations registered according to the LAF) do not receive greater tax benefits or exemptions than other legal (profit) entities. The Law on Profit Tax equates foundations (CSOs) with other legal entities. Also, Foundations (all CSOs) are obliged to pay personal income tax for travel and material costs. There is some benefits according to the Law on Donations and Sponsorships. Dominantly tax benefits are related to the corporate and individual donations and sponsorships for the public benefit project implemented by Foundations (CSOs). As well as VAT exemption is possible. There is special procedure for receiving confirmation (from the Ministry of Justice) that certain project is for public benefit, and it should be repeated for each project.

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?)

According to the Law on Donations and Sponsorships, the giver and beneficiary of donation and sponsorship shall be obliged to prepare a report for the given and accepted donation and sponsorship, containing the following data: name and shortened name of the giver and beneficiary; name and shortened name of the end user; description of the subject of the donation and sponsorship enabling their identification by indicating the amount, value and other features; final use of the subject of the donation and sponsorship and other data. It is compulsory to submit the donation and sponsorship agreement and the report to the Public Revenue Office within 30 days after fulfilment of the agreement at latest. The donation and sponsorship agreement, as well as any other documentation related to the donation and sponsorship have to be preserved for at least five years after the calendar year when the agreement has been fulfilled.

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

In general no. Each Ministry or other relevant institution that provide funds for CSOs (including foundations) can prescribe their own reporting requirement. On the other hand, according to the LAF, the public benefit organization (associations and foundations) shall be obligated once a year to

submit business and financial report, approved by the body determined by the statute, for adoption to the Government of them Republic of Macedonia, no later than April 30 of the current year for its work in the preceding year. The form and content of the reports is prescribed by the Minister of Finance. But, since public benefit statute is not functional yet, there is no cases that can confirm practising of this regulation.

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

5. Are there specific accounting rules for foundations?

Generally, the basic rules for accounting are applicable for the foundations as well. But also, there is a Law on accountancy of non-profit organisations which includes foundations as well.

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.

Yes, the public benefit statute or organizations with public benefit statute are define in the Law on Associations and Foundations. The definition is as follow: *“The organizations may obtain the status of public benefit organizations if they perform public benefit activities, implement programs and projects on central and/or local level, independently or in cooperation with state administration bodies and municipal bodies, the bodies of the municipalities in the City of Skopje and the City of Skopje, as well as if they use the financial resources for realization of activities. (article 73, LAF)”*. Several different public benefit activities are mentioned in the LAF, such as: Development of democracy, civil society, and human rights; Help and protection of the persons with physical or mental handicap, persons with developmental disabilities and persons with special need, Protection of children and youth; Protection of marginalized persons and their social inclusion; Protection from drug abuse, sexually transmitted diseases, juvenile delinquency; alcoholism, prostitution and human trafficking; Health, health promotion and medical care; Art, culture, and protection of cultural heritage; Amateur sport; etc.

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 in the main tax laws, but there is definition in the Law on Donations and sponsorships in public activities. The definition is as follow: *“Public interest (benefit) means support or promotion of activities in the field of human and citizen’s right protection, cultural promotion, ethics, education, science, development of information society and transfer of electronic data, sport, environmental protection, social and humanitarian activities, civil society development, promotion of blood donation, promotion of international cooperation and other activities determined by law”*

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
(1) Science and research	X			
(2) Religion				X

(3) Furtherance of health (in particular the prevention of and the fight against contagious illnesses) and public health care	X			
(4) Support of youths and older people	X			
(5) Arts and culture	X			
(6) Preservation of historical sites and monuments	X			
(7) Education	X			
(8) Environmental protection	X			
(9) Public welfare including support to organisations providing e.g. social services, social care etc.	X			
(10) Support to victims (of crime, war, persecution because of political, racial or religious reasons, and discrimination), refugees and disabled people	X			
(11) Emergency rescue	X			
(12) Public safety and accident prevention (including fire and work safety and disaster response)	X			
(13) International understanding and tolerance				X
(14) Animal protection	X			
(15) Development aid and development co-operation				X
(16) Consumer protection	X			
(17) Offender rehabilitation				X
(18) Gender equality	X			
(19) Protection of marriage and family				X
(20) Crime prevention				X
(21) Amateur sports (including chess)	X			
(22) Local history and local geography				X
(23) Traditional customs (including Carnival)				X
(24) The national democratic political system	X			
(25) Civic commitment for public benefit purposes and public benefit organisations.				
(26) Protection of and support for disadvantaged individuals (in particular support of people in need because of their physical, intellectual or mental condition).	X			
(27) Relief of poverty	X			
(28) Protection/promotion of Human Rights	X			
Other – please add other purposes listed in your country's legislation	Volunteering; ethics and moral; development of civil society;			

	sustainable development.			
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Comment: all marked purposes in the table are already prescribed in the Law on Associations and Foundations. Problem is non-functionality of public benefit statute, yet.

9. Support of “the public at large”

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

If we have in mind the organisations (foundations) with public benefit statute there is some provision in the LAF related to “the public at large”. According to the LAF, activities and actions of the PBOs should be directed at the general public and the interests of the community. But after four years of enacting of the new LAF in which is prescribed that the public benefit organizations (foundations) shall have additional tax and customs benefits in accordance with law, these additional tax benefits have not been enacted so far. Also, it was explained above, all CSOs (with or without public benefit statute) do not receive greater tax benefits or exemptions than other legal entities. Above of all this, the PBO statute is not functional yet. There is no single registered organisations as PBO.

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

It is not clear in the law. My personal opinion is yes.

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			

Comment: Since the Law does not prescribe anything of above mentioned situation, above filled table is just according to my opinion.

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.?

There is general rule that the funds of the foundations cannot be paid to its members, founders, members of bodies, representatives, employees or persons associated with them, except in cases when a member of the foundation is a beneficiary of the services provided by the foundations in accordance with goals determined by the statute and program of the foundation.

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

In case of dissolution/termination of the operations of the foundation, the remaining assets after the obligations are settled shall be used in the manner determined by the statute. In case when the statute does not determine the receiver of assets, which remain after settling the obligations, these assets shall be transferred to the municipality, the municipalities in the City of Skopje and the City of Skopje, in which the seat of the foundation is located. In case of dissolution of operations of the public benefit foundation, the assets shall be transferred to another public benefit organization with a same or similar goal or to the municipality, in which the seat of the organization is located, which should be decided by the provider of the funds.

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?

There is just provision in the LAF which says that the work in the bodies of the foundation, as by rule, shall be voluntary, while the members of the bodies of the organizations may receive compensation for travel costs and daily allowances, as well as compensation for the activities in the bodies of the organization in accordance with law.

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

There is no specific provision on this issue, but probably yes (since there is no misdemeanour provision is donor/founder receive some benefit in return for a donation).

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

No.

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.

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. There is no minimum length of time.

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	

Comment: The answer is probably “No”, just because of one provision in the LAF, which says that the public benefit status (among the other things) shall be terminated if the foundation with its operations failed to reflect the public benefit for which the status was granted. Thus, if for five year there is no public benefit activities, and at the same time the organisation is oblige to provide annual reports, probably the Commission for public benefit statute can pass a decision on termination of the public benefit status. But I am emphasis again that since there is no examples for practising public benefit statute, this is just my conclusion based on the provisions in the LAF.

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				

Comment: There is no single provision in the tax law that prohibits such activity.

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

No

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

No

16. Income tax treatment

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

Grants and donations – there is no taxation on grants and donations.

Investment income (asset administration)

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

The income and surplus of income over expenses are not subject to income tax except for distribution of dividends out of the country or to the physical persons.

Only the direct transfer of the amounts of revaluation of assets and liabilities to funds may be taxable with 10% income tax as understated income.

Economic activities related/unrelated

CSOs (including foundations) are not obliged to pay (profit/income) tax on their income from economic activities because of newly introduced “Estonian” model which provides taxation of all legal entities (profit and non-profit) at the time of distribution of dividends and other distributions of profits. Since, CSOs are non-profit organizations they cannot distribute their “profit”. Accordingly they have to use their profit for organizational purposes (define in their statutes), which means they will never be in position to distribute it as dividends and to pay tax after that distribution. CSOs (including foundations) just have to pay tax on unrecognized expenditures and withholding tax.

- Income from running a hospital/museum/opera
- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling T-shirts (activity not related to the pursuance of the public benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

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

There is no income tax on this kind of income.

However, the whole amount of loans may be taxable if not returned by the end of the year. This change is stipulated recently and it is still not fully clear on which types of transactions this will be applied.

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

To have shares in a company is considered as investing activity, not as direct economic activity of the foundation. Thus, the foundation is not obliged to pay any kind of tax on such incomes. But, the company in which the foundation has shares shall pay income tax of 10% of the gross amount of dividends earmarked for the foundation (any CSO).

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

There is no tax on capital gains for legal persons. For physical persons there is a personal tax on capital gains.

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

Yes. There is procedure for VAT refund. It is applicable for the projects that have received confirmation for public benefit according to the Law on Donations and Sponsorships in Public Activities, as well as project funded by international (governmental or intergovernmental) institutions that have agreements with the Government (such institutions are: all EU instruments for funding; funds for development agencies such USAID, SDC, SIDA, etc.).

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

There is no capital tax.

There is a property tax payable to municipalities where the property is located.

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

There is no special treatment for the transfer of assets by foundations stipulated in corporate tax law.

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

In general foundation shall pay real property tax. But according to the Law on Donations and Sponsorships, donation that is given for the purposes of public benefit shall be exempted from property tax in the following five years, after the year it has been donated. Also, donation shall be exempted from the inheritance and gift tax in case when the giver transfers the right to usufruct and use to the beneficiary.

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:

Yes, foreign foundations registered in the country according to the LAF, can get the same tax benefits as national foundations. On the other hand, according to the Law on donations and sponsorships, donation beneficiary may also be a foreign non-profitable legal entity (including foundation) directed towards satisfying the public interest of another country in case of natural disasters and humanitarian catastrophes. This means that some foundations which operate in foreign country could be beneficiary even when they are not registered in Macedonia as foreign organisation according to the LAF.

- Statutes (translation required?) - NO
- Last annual financial report (translation required?) - NO
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought? - NO
- Other?

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?

Yes. Foundations (as any other legal entity which is the subject of the Profit Law) are required to withhold and pay tax on the profits / income paid to a foreign entity.

The withholding of tax shall apply to the following incomes, regardless of whether the income is paid in the Republic of Macedonia or abroad: Income from interest paid by a resident; Income from interest paid by a non-resident with a permanent business unit in the Republic of Macedonia, if the permanent business unit pays the interest; Income from a royalties paid by a resident; Income from a royalties paid by a non-resident with a permanent business unit in the Republic of Macedonia, if the permanent business unit pays the royalties; Income from entertainment or sports activities carried out in the Republic of Macedonia; Income from rendering management, consulting, financial services, and services related to research and development, if the income is paid by a resident or by a permanent business unit in the Republic of Macedonia; etc.

As an exception to above mentioned incomes, the tax shall not be withheld for the following incomes: Transfer of part of the profit of a permanent business unit of a foreign legal entity in the Republic of Macedonia, for which profit tax has been previously paid; Income from interest from debt instruments issued and/or guaranteed by the Government of the Republic of Macedonia, the National Bank of the Republic of Macedonia, and banks or other financial institutions acting as representative of the Government of the Republic of Macedonia; Income from interest on deposits of a bank located in the Republic of Macedonia, and Income generated from intermediation or consulting with government securities on international financial market.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit³ or tax deduction⁴?

It is difficult to be explained. In general there is no tax credit or tax deduction related to donations except that the expenses are recognized for tax purposes up to the stipulated limits if made in accordance with the Law on Donations and Sponsorships. Thus, probably tax credit model is closer to our system.

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?

Individual who donates funds to a legal entity in accordance with the provisions of the Law on donations and sponsorships, and based on a donation agreement, shall be entitled to decrease of the determined, but not paid personal income tax or return of the paid personal income tax determined on the basis of its annual tax return (Form "PDD – GDP") in the amount of the donation, but not more than 20% of donor's annual tax debt, and 24.000 Denars (390 euro) the most.

b) Which assets qualify for tax deductibility?

Any financial donation.

3. Tax treatment of corporate donors

a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to

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)

a contribution on which tax incentives can be claimed?

There is a Law on Donations and Sponsorships on which Corporate Tax Law refers limiting the donations to 5% of gross income and sponsorship to 3% of the gross income. Amounts over this limit are taxable as unrecognised expenses. All the donations and sponsorships which are not given in accordance with the Law on Donations and Sponsorships are taxable.

b) Which assets qualify for tax deductibility?

Any financial donation.

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

Yes.

5. Other frameworks such as percentage law systems

No.

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?)?

Individuals: For the purpose of exercising the tax incentive, individual - donation donor shall attach a copy of the donation agreement, a copy of the decision adopted by the Ministry of Justice confirming the public interest of the donation, a written certificate for the donation received, as well as a proof for the payment of the funds, to the annual tax return.

Companies: For the purpose of exercising the tax incentive the legal entity (for example, companies, corporations, etc.) - donation donor shall attach a copy of the donation agreement, a copy of the decision adopted by the Ministry of Justice confirming the public interest of the donation, a written certificate for the donation received, as well as a proof of the funds paid, to the tax balance.

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?)?

If the foreign-based foundation is registered as foreign organization in Macedonia according to the Law on associations and foundations then the same rules and incentives apply as for any other Macedonian organisation.

In a case of a foreign based foundation operating abroad, the Law on donations and sponsorships in public activities allows tax incentives for not-for-profit organizations that work in public interest in cases of natural and humanitarian disasters and catastrophes. In that case, the donor needs to undergo the same procedure as for domestic donations. This includes requesting a written decision from the Ministry of Justice that the particular donation is of public interest, signing a donation agreement, confirmation from the recipient that they have received the donation (the form prescribed with a law). Even though, the law doesn't require it, the designated ministry usually requires a document of registration and possibly the statute. It is not clear whether translation is needed; in practice translation in English would probably be sufficient. No additional documents are requested.

The changes in the law from February 2014 allow that in certain cases when the donation agreement cannot be signed that the document of payment of the donation would be considered as a document of prove. The law doesn't exclude foreign-based foundations from these provisions, however, it is not clear yet whether in practice this would be applied for them as well.

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

1. Individuals

According to the Law on Donations and Sponsorships the individuals cannot be beneficiary of donations. On the other hand, according to the Law on Personal Income Tax, the income tax shall not be payable on income generated on grounds of scholarships and credits granted to pupils and students given by foundations.

2. Legal entities

No taxation on grants for legal entities (for example CSOs)

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

No.

V. Gift and inheritance tax

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)?

Inheritance/transfer tax is regulated with the Property Tax Law. In case of donation it stipulates an obligation for the recipient to pay the tax. However, such obligation could be exempted if donation is provided according to the Law on donations and sponsorships in public activities.

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?

Tax rates ranges from 4% - 5%. Liability is determined by the municipalities. There is no other preferential system for PBO's unless the exemption provided in the Law on donations and sponsorships in public activities (already mentioned). Donation should be primarily related to the public interest. There are no limitations in terms of region or legal status of the PBO.

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

There is no threshold in general for anyone.

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

No there are no protected heirs. Donor decides for his ownership.

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

Non-resident PBO is also liable to inheritance/gift tax for the real estate inherited or received as a gift on the territory of Macedonia.

VI. Trends and developments

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

No

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)?

Yes.

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

No.

4. Public fundraising

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

There are no specific laws that regulate fundraising. Same legal requirements apply for associations and foundations. Challenges are experienced by the companies - founders of their (corporate) foundations in using the tax incentives when they make their annual contribution for the operational programme of the foundation.

Useful contacts

Please add names and contact details of persons who may be contacted for queries regarding the information in this profile or for further details of the legal and fiscal environment for foundations in your country.

Nikica Kusenikova, association Konekt
e-mail: nikicak@konekt.org.mk

Borce Smilevski, association Center of Tax Policy
e-mail: borce.smilevski@gmail.com

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

Borce Smilevski, Fiscal environment for CSOs in Macedonia, MCIC, 2012
<http://www.mcms.mk/images/docs/2012/danocnoto-opkruzuvanje-na-go-vo-mk.pdf>

Nikolaki Miov, Economic activities, MCIC, 2013
<http://www.mcms.mk/images/docs/2013/2013-ekonomski-aktivnosti.pdf>

Selected law texts online:

Please list here the links to relevant national laws where these are available online

Law on Associations and Foundations
<http://www.tacso.org/doc/mk0020.pdf> (English)

Law on Donations and Sponsorships in Public Activities
http://www.ujp.gov.mk/files/attachment/0000/0604/Zakon_za_donacii_i_sponzorstva_vo_javnite_d_ejnosti_28_2014.pdf (Macedonian)

Law on Personal Income Tax
http://www.ujp.gov.mk/files/attachment/0000/0601/Zakon_za_personalniot_danok_na_gohod_13_2_3.01.2014.pdf (Macedonian)

Law on Profit Tax
http://www.ujp.gov.mk/files/attachment/0000/0599/Zakon_za_danokot_na_dobivka_13_2014_od_2_1_01_2014.pdf (Macedonian)

Law on Property Tax
http://www.ujp.gov.mk/files/attachment/0000/0020/Zakon_za_danocite_na_imot_84_2012_od_04.07.2012.pdf (Macedonian)

Law on Value Added Tax
http://www.ujp.gov.mk/files/attachment/0000/0603/Zakon_za_DDV_Sl_vesnik_na_RM_br_12_20_14_god.pdf (Macedonian)

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