



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

PORTUGAL – 2014

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The operating environment for foundations

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I. Legal framework for foundations

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

According to Article 3.1 of the Framework Law for Foundations - FLF, approved by Law 24/2012, 9 July, a foundation is a non-profit legal person, endowed with assets which are sufficient and which are irrevocably assigned to the pursuit of a social interest purpose.

Regarding the different legal types of foundations (Article 4.1, FLF):

- Private foundations – foundations created by one or more persons in private law, whether or not in conjunction with public legal persons, provided that the latter, either individually or collectively, do not have a dominant influence over the foundation. Private law foundations can be recognised as being of public benefit if their purpose is of general interest and they cooperate with the public administration (Art. 1.1, Decree-Law 460/77, 7 November – amended by Law 40/2007, 24 August, and Decree-Law 391/2007, 13 December). There are three types of public benefit foundations: Legal entities of administrative public utility, legal entities of simple public utility, and private social welfare institutions. The latter are governed by a specific legal regime (Decree-Law 519-G2/79, 29 December, and Decree-Law 119/83, 25 February, with later amendments);
- Public law public foundations – foundations created exclusively by public legal persons;
- Private law public foundations – foundations created by one or more public legal persons, whether or not in conjunction with persons in private law, provided that the former, either individually or collectively, have a dominant influence over the foundation.

For the purposes of distinguishing between private and public foundations, dominant influence is deemed to exist whenever initial assets are exclusively or predominantly of public origin or whenever public legal entities have the right to nominate or remove the majority of the members of the foundation's governing bodies (Article 4.2, FLF). The law subjects the two types of public foundations to public law rules (Article 48 et seq. FLF), establishing, in Article 57 FLF, that public legal persons are prohibited from creating or participating in new private law public foundations (1). The regulation of this category seeks, therefore, to subject the private law public foundations to the limitations which the application of the public law rules imposes.

The following should also be considered:

- An international agreement between Portugal and the Holy See governs Catholic church foundations;
- Arts. 33 to 51 of Law 16/2001, 22 June, on the freedom of religion govern foundations with a religious purpose;
- Private foundations for social solidarity, for cooperation for development and for the creation of private higher education establishments are subject to special rules (Arts. 39 to 47 FLF);
- The identification of additional types of foundations according to their purpose or other criteria is without further legal consequences (for instance, regarding corporate foundations or enterprise foundations).

2. What purposes can foundations pursue?

Private benefit foundations are not provided for in law. The FLF (Art. 3) and the Civil Code require a foundation to pursue a social interest purpose (Art. 188.1). According to the FLF, social interest purposes are deemed to be those which produce benefits for one or more categories of persons other than the founder, his relatives and kin, or persons or entities connected to him by friendship or business ties, namely: Assistance to people with disabilities; Assistance to refugees and immigrants; Assistance to victims of violence; Cooperation for development; Education and training of citizens; Preservation of the artistic, cultural and historical heritage; Prevention and eradication of poverty; Promotion of citizenship and protection of human rights; Promotion of culture; Promotion of social and community integration; Promotion of scientific research and technological development; Promotion of the arts; Promotion of humanitarian relief; Promotion of sport and physical well-being; Promotion of European and international understanding; Promotion of entrepreneurialism, innovation, and economic, social and cultural development; Promotion of employment; Promotion and protection of health and prevention and control of disease; Protection of the environment and the natural heritage; Protection of the elderly and of individuals with disabilities and of all disadvantaged citizens with a lack of or reduced means of subsistence or of the capacity to work; Protection of consumers; Protection of, and support for, the family; Protection of, and support for, children and young people; Resolution of housing problems; Fight against any type of illegal discrimination. This concept of social interest differs from that of a public benefit purpose, the recognition of which requires a specific procedure (Art. 3.2).

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?

Private law foundations are set up by the founder through a notarial deed of gift or by will (Art. 185.1 CC). They acquire legal personality following recognition by the competent administrative authority (Art. 6 FLF and Art. 158.2 CC). Recognition of private foundations is the responsibility of the Prime Minister, with the possibility of delegation (Art. 20.1 FLF). The procedure for recognition begins with the presentation of the respective request which is exclusively via completion of an electronic form (Art. 22.1 FLF). The form asks the applicant to provide a wide range of information, in particular, regarding the applicant himself, the establishment of the foundation and its statutes, the foundation's activity and its assets, and the names of the members of its bodies (Art. 22 FLF). The sufficiency of the assets is assessed, the assumption being that a foundation with at least 250,000 Euros has sufficient assets (Art. 22.3 FLF and Art. 2 of Implementing Order 75/2013, 18 February).

The foundation should then be registered.

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?)

Yes. The request for recognition may be refused on the following grounds (Art. 23.1 FLF and Art. 188.3 CC): Information required by law is lacking; the foundation's purpose is not considered to be of social interest, namely if it benefits the founder or his family or a limited group of beneficiaries related to them; the funds assigned to the pursuit of the envisaged purpose or purposes are insufficient and there are no justified expectations of making up the shortfall; the statutes do not comply with the law; there are omissions, defects or deficiencies which affect the formation and manifestation of the will of those intervening in the act of establishment or in the documents which are required to initiate such act; the founding act is void, voidable or ineffective; there are doubts or disputes, all be they potential, regarding the property assigned to the foundation.

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

Foundations will be registered on a single database, to be created by law (Art. 8 FLF). For the moment, foundations are registered in the national register of legal entities or, where applicable, in the register of private social welfare institutions.

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

This is dependent on the creation of the new system of registration. For the moment, the founding documents and, if applicable, information on change of name or purpose, transfer of registered office, or dissolution.

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. That said, the law requires the administrative authority to refuse a request for recognition if the assets are deemed insufficient for the pursuit of the foundation's purpose (Art. 23.1 FLF and Art. 188.2 CC). A foundation with at least 250,000 Euros is presumed to have sufficient assets (Art. 22.3 FLF and Art. 2 of Implementing Order 75/2013, 18 February).

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

According to Art. 26.1 FLF, private foundations are required to have a governing board, which is responsible for managing the foundation's assets and taking decisions regarding proposals to amend its statutes, or to modify or dissolve the foundation, a management or executive board, responsible for the day-to-day management, and a supervisory board, which supervises the foundation's management and accounts. Art. 26.2 FLF sets out that foundations may also have a board of founders or curators, the mission of which is to ensure compliance with the foundation's statutes and respect for the will of the founder(s). Art. 26.3 FLF establishes that the mandates of the members of the foundation's bodies may not be for life, with the exception of positions of that nature expressly created by the founder(s) in the act of founding. Art 7.1 FLF is also of importance, and states: Foundations shall approve and publicise codes of conduct with self-regulation of good practices, namely regarding conflicts of interest, incompatibilities and limitations to the renewal of foundation bodies, among others. A special reference should be made to private social welfare foundations (Decree-Law 119/83, 25 February). This Decree deals with the governing board and supervisory board responsibilities, the eligibility, remuneration and liability of their members, conflicts of interests and self-dealing, quorum and voting, and management (Arts. 12 to 25).

a) Is it mandatory to have a supervisory board?

A supervisory board is provided for in the legislation (Art. 26 FLF, Art. 162 CC and Decree-Law 119/83, Art. 12.1).

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?

An uneven number of governing board members is required (Art. 26 FLF, Art. 162 CC and Decree-Law 119/83, 25 February, Art. 12.1). According to Art. 27.2 FLF, the president is one of the members of the governing board, and this board may also include the executive board.

No rules concerning governing board composition (who can become a board member and how, expulsion, resignation, term of office) are set out in general terms in the law.

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

Rights and duties of board members are left to the statutes of the foundation (Art. 29.1 FLF and Art. 164.1 CC). However, one may read in Decree-Law 119/83, 25 February, on private social welfare institutions, in Art. 13.1 on the responsibilities of the governing board and in Art. 14 on the responsibilities of the supervisory board, that the governing board is responsible for managing the institution and representing it, and is charged, namely, with: a) Guaranteeing that the rights of the beneficiaries are given effect; b) Annually drawing up and submitting to the supervisory board the management report and accounts, and also the budget and action plan for the following year; c) Ensuring the organisation and operation of the services, and bookkeeping, according to the law; d) Organising the permanent staff and hiring and managing the institution's employees; e) Representing the institution in and out of court; f) Encouraging compliance with the law, the statutes and the resolutions of the institution's bodies (Art. 13.1); and that the supervisory board is responsible for monitoring compliance with the law and the statutes, and is charged, namely, with: a) Supervising the institution's bookkeeping and documents, whenever it deems it necessary; b) Attending or being represented by one of its members at meetings of the executive board, whenever it deems it necessary; c) Giving its opinion on the report and accounts and the budget and all issues that the executive board submits to it for assessment (Art. 14). In general terms, Art. 29.2 FLF lays down that members of the foundation's bodies may not cease to exercise their right to vote on resolutions taken in meetings in which they are present, and that they are responsible for any damage arising out of these resolutions, unless their dissent has been recorded in the minutes.

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?

Concerning the rights of the founder, the most inclusive provision seems to be found in Decree-Law 119/83, 25 February, dealing with private social welfare institutions. Art. 6 states that the will of the founder shall always be respected. It is unclear, nonetheless, what the scope of this commitment is with regard to foundation governance. According to the Framework Law for Foundations and the Civil Code, once a foundation is created, the will of the founder, both actual and presumed, serves as a criterion, namely, when drafting or amending the statutes, or when changing the purpose of the foundation, or when merging the foundation with another foundation (Arts. 19.3, 31, 32 and 33 FLF and Arts. 187.3, 189, 190 and 190-A CC).

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

According to Art. 7.1 FLF, foundations shall approve and publicise codes of conduct with self-regulation of good practices, namely regarding the strategic participation of those for whom their activity is intended. More detailed provisions on this subject are set out in Art. 5 of Decree-Law 119/83, 25 February, on private social welfare institutions: The rights and interests of the beneficiaries take precedence over those of the institutions themselves, the members and the founders (1); The beneficiaries' dignity and private life must be respected and they may not be discriminated against on the basis of ideological, political, religious or racial criteria (2); Limits to the scope of action in order to meet specific needs of particular groups or categories of people shall not be considered to be discrimination which constitutes non-compliance with the provisions of the previous paragraph (3).

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 law gives prevalence to self-regulation by means of approving codes of conduct (Art. 7 FLF). Having said this, the following provisions of Decree-Law 119/83, 25 February, on private social welfare institutions, may be mentioned: Voting on issues related to the personal affairs of its members is by secret ballot (Art. 16.2); Members of the management bodies may not vote on issues

which relate to them directly, or on those in which their spouses, ascendants or descendants or equivalent have an interest (Art. 21.3); Members of the management bodies may not enter into contracts with the institution, either directly or indirectly, unless such contracts represent an obvious benefit to the institution (Art. 21.4).

g) Can staff (director and/or officers) participate in decision making? How and to what extent? Do the director and officers have powers of representation?

The law contains no provisions on this issue.

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

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

Arts. 28 FLF and 163 CC state that representation of a legal person, in and out of court, is the responsibility of whoever is designated by the statute or, in the absence of statutory provisions, of the administration or whoever is designated by it. According to Art. 13.3 of Decree-Law 119/83, 25 February, on private social welfare institutions, if the statutes allow it, the governing board may delegate some of its powers to qualified persons in the service of the institution, or to representatives, under the terms set out in the statutes, and may also revoke such mandates.

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?

Private law foundations are liable to injured third parties for the damage caused by acts or omissions of their bodies, although they may seek redress from the members of the bodies (Art. 30 FLF and Art. 165 CC). According to Art. 29.1 FLF, the obligations and liability of the members of a foundation's bodies towards the foundation are defined in the respective statutes, and where there is no such provision in the statutes, the rules of mandate shall be applied, with the necessary adaptations. This means that where there are no rules in the statutes and when the injured party is a third party, the general rules of civil liability apply. Board members are submitted to the general standard of the *bonus paterfamilias* (reasonable person standard), applicable to both torts and contracts (Arts. 487.2 and 799.2 of the Civil Code). Our law does not differentiate between unpaid and paid board members.

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 no specific rules on the conduct of board members, and nor does this result from the application of the rules of mandate. Therefore, the liability is gauged according to the criterion of *bonus paterfamilias*.

c) What is the liability of executive staff?

There is no specific provision on the subject. General rules of civil and criminal liability apply.

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

This possibility is recognised in Art. 29.1 FLF on the liability of members of foundations' bodies to the foundations. It naturally excludes limitation or exclusion of liability towards third parties.

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 - civil liability				X - criminal liability
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).	X - civil liability		X - criminal liability: Malice is required		
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.					X - criminal and civil liability
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.			X - civil Liability: Should he/she be aware?		X - criminal liability
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.			X - civil liability: Should he/she be aware?		X - criminal liability

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

Foundations are allowed to have economic activities provided they are useful to the pursuit of their purpose (Art. 160.1 CC). However, it is considered that for the acquisition of the status of public utility, which confers tax benefits, the foundation may not carry on, as its principal activity, an economic activity in competition with other entities which may not benefit from the status of public utility (Art. 24.1 c) FLF).

11. Are foundations permitted to be major shareholders?

Yes.

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

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

According to Art. 11 FLF, in the case of private foundations with public utility status and public foundations, the sale of assets of the foundation which have been allocated by the founder(s), and specified as such in the act of founding, and which have a special significance for the foundation's purpose, requires authorisation by the competent authority for recognition, or will otherwise be void.

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)

There are no rules/limitations regarding this matter.

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

Statutes can be amended, at any time, by the competent authority, upon the request of the foundation's board, as long as the purpose of the institution is not substantially changed and the will of the founder is respected (Arts. 31 FLF and 189 CC). Arts 32 FLF and 190 CC state that after hearing the board of the foundation and the living founder, the competent authority for recognition can extend the foundation's purpose, whenever the profitability to society of the available means so dictates, and can change the purpose of the institution when the initial aim has been fulfilled or has become impossible to achieve, when it no longer has social interest, or when assets have become insufficient to fulfil the purpose. The new purpose should, as far as is possible, be similar to the purpose established by the founder. No change of purpose is allowed if the act of founding prohibits it or if it dictates the dissolution of the foundation.

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

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

An annual financial report, an annual activity report, and an annual external audit report, when such an audit is required by law. The annual report of activities and accounts must contain clear and sufficient information on the types and global amounts of benefits granted to third parties and on donations or subsidies received, as well as information on the management of the foundation's assets (Art. 9.4 FLF).

- annual financial report
- annual activity report
- public benefit/activity report,
- tax report/tax return,
- 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)?

The annual financial report and the annual activity report must be submitted to the Secretary-General of the Presidency of the Council of Ministers.

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

In general, the law does not provide for the checking/review of the reports submitted.

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)

According to Art. 9.1 d FLF, Portuguese foundations and foreign foundations which carry on their activity in Portugal are required to provide the following information on their website, at all times: i) A copy of the acts of establishment and recognition of the foundation; ii) An up-to-date version of the statutes; iii) A copy of the act granting the status of public utility, when applicable; iv) The identity of the founders; v) The current composition of the governing bodies and the start and end date of the respective mandate; vi) An annual list identifying the number of foundation staff and the type of contract they have; vii) The reports and accounts and the official opinions of the supervisory bodies relating to the last three years; viii) The activity reports for the same period; ix) The annual external audit report, when required. In the case of private foundations with public utility status and public foundations, the following information is also provided, at all times, on the website: i) A description of the initial assets and, if applicable, the assets originating from allocations from public legal persons; ii) An itemised list of the financial support received in the last three years from public legal persons (Art. 9.3 FLF). Information which is annual must be made available to the public from 30 April of the year following that to which it refers (Art. 9.5 FLF). Failure to comply with the duty of transparency prevents access to any financial support during the financial year following that in which the non-compliance is detected and while this continues (Art. 9.8 FLF).

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

Portuguese foundations and foreign foundations which carry on their activity in Portugal are required to submit their accounts to external audit if their annual income is equal to or greater than two million Euros (Art. 9.1 c FLF and Art. 1 of Implementing Order 75/2013, 18 February).

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

The law on foundations does not provide for such requirements/guidelines.

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?

Supervision is closely connected with the status of public utility. The Prime Minister is responsible, with the possibility of delegation, for granting and withdrawing this status. If a foundation fails to meet the criteria of public utility, the competent authority will remove its public utility status (Art. 25.6 FLF and Art. 13.1b, 2 to 4, of Decree-Law 460/77 7 November). In addition, one ground for dissolution of a foundation by a court decision in a case brought by the Public Prosecutor's Office or by a competent authority for recognition is the systematic pursuit of the purpose by illicit and immoral means. The law does not provide for a general regime of supervision, but, besides the application of the rules of public law to foundations of that nature, several private foundations are subject to supervision and control of their activity by the Ministries which oversee the respective area of intervention and by the Inspectorate General for Taxes (Arts. 41, 44, 47 and 55 FLF). These are social solidarity foundations, cooperation for development foundations and foundations for the creation of private higher education establishments. Lastly, in the 2012 reform, the legislator created a Foundations Advisory Board, within the scope of the Presidency of the Council of Ministers. The Advisory Board is responsible for issuing official opinions on administrative acts related to foundations (a)), commenting on the results of actions involving supervision of foundations (b)), issuing official opinions on any subject related to foundations, at the request of the competent authority for recognition (c)), taking a position, on its

own initiative, on any subject related to foundations which is the responsibility of the competent authority for recognition (Art. 13.5 FLF).

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

Regarding private foundations subject to the regime of supervision and control, the law allows the competent authorities to order the conducting of surveys, inquiries, inspections and audits (Arts. 41, 44 and 47 FLF). Government supervision and related sanctions are extensive for private social welfare institutions. Accounts have to be approved by the competent public authorities, who are able to enquire into the affairs of the foundation. They may also act in court requesting the dismissal of any member of the board. The court shall then appoint an independent receiver and manager to act in place of the governing board. The same procedure is available when the interests of the institution, the state or the beneficiaries are urgently at stake. When there is evidence that the foundation is acting against the law or is creating a severe risk to either the physical or mental health of its beneficiaries, the competent authority has the right to dissolve the institution. In the event that the foundation's activities have been suspended or ceased, the competent authority may allocate its assets to another institution with similar purposes, provided the decision is based on the interests of the beneficiaries (Decree-Law 119/83, 25 February, Arts. 32 to 39).

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

According to Art. 11 FLF, in the case of private foundations with public utility status and public foundations, the sale of assets of the foundation which have been allocated by the founder(s), and specified as such in the act of founding, and which have a special significance for the foundation's purpose, requires authorisation by the competent authority for recognition, or will otherwise be void. Also, according to Art. 32 of Decree-Law 119/83, 25 February, ruling on private social welfare institutions, the following actions require the authorisation of the competent services: a) Acquisition of immovable property for consideration; b) Sale of immovable property in any form; c) Contracting of loans (1). Authorisation is not required in each of the following situations: a) When the sum of the actions is within the limits established by an order from the Minister with responsibility; c) When the resolution is made by the governing board of a foundation and when the supervisory board has unanimously ruled positively on it (2).

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

No.

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

Failure to comply with the duty of transparency (Art. 9.8 FLF), repeated failure to comply with the limits on staff and administrative costs (Art 10.2) and, in general, cessation of the prerequisites for granting the public utility status and serious or repeated breach of the duties imposed on the foundation by the law, will lead to the withdrawal of that status (Art. 25.6 c) and d)). In more serious situations, the foundation may be dissolved.

17. When and how does a foundation dissolve?

According to Arts. 35 FLF and 192.1 and 193 CC, the competent authority, informed by the board, must declare the dissolution of the foundation when the term for which the foundation was set up is

over, when a situation defined as a cause for dissolution by the statutes has occurred, or when a court has declared the foundation insolvent, if it is not admissible to maintain the foundation. The same authority may dissolve the foundation when the purpose has been reached or has become impossible to fulfil, when the actual aim does not match the purpose as defined in the statutes, or when the foundation has not had any relevant activity for the past three years. The court may dissolve the foundation when the aim is pursued through the use of illicit or immoral means, or when the existence of the foundation has become detrimental to public order.

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

Our country is bound by the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (Strasbourg, 24 April 1986). According to Art. 1 of the Convention, it shall apply "(...) to associations, foundations and other private institutions (hereinafter referred to as "NGOs") which satisfy the following conditions: Have a non-profit-making aim of international utility; have been established by an instrument governed by the internal law of a Party; carry on their activities with effect in at least two States; and have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party". Art. 2 states that "The legal personality and capacity, as acquired by an NGO in the Party in which it has its statutory office, shall be recognised as of right in the other Parties. When they are required by essential public interest, restrictions, limitations or special procedures governing the exercise of the rights arising out of the legal capacity and provided for by the legislation of the Party where recognition takes place shall be applicable to NGOs established in another Party". Art. 4 should also be mentioned: "In each Party the application of this Convention may only be excluded if the NGO invoking this Convention, by its objective, its purpose or the activity which it actually exercises: a) Contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or b) Jeopardises relations with another State or the maintenance of international peace and security". With the exception of these foundations governed by the European Convention, a foundation created under a law other than Portuguese law which seeks to pursue its purposes in Portugal, in a sustained manner, must have a permanent office in Portuguese territory. The opening of this office is dependent on prior authorisation from the competent authority for recognition and presupposes provision of the information required by law for any process for recognition of a Portuguese foundation (Arts. 2 and 5 FLF).

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 limitations.

II. Tax treatment of the foundation

1. What are the requirements to receive tax exemptions (pursuing public benefit purposes, non-distribution constraint, being resident in the country?). Is there a special approval process for receiving tax exemption? If so does the process have to be repeated every year?

According to Art. 10 CITC (Corporate Income Tax Code), legal entities of administrative public utility, social welfare institutions and legal entities of simple public utility whose main purposes are in the area of science, culture, charity, assistance, benevolence, social solidarity or environmental protection, are exempt from corporate income tax. The exemption of the latter must be recognised, at the request of the foundation, by the Ministry of Finance, which, through a dispatch published in

the Official Gazette, will define its scope. The law demands compliance with certain requirements in order for the exemption status to be kept. The foundation must spend, in the following four financial years, 50% of its net income in the fulfilment of its purpose. Otherwise this tax benefit will be withdrawn. The process does not have to be repeated every year.

If they do not qualify for tax exemption, private law foundations fall under the general corporate income tax regime applicable to entities that do not have as their main object commercial, industrial or agricultural activities. They are, then, taxed at the rate of 21.5% (Arts. 2.1a, 3.1b, 53, 54, 87.5 and 108 CITC).

Foreign foundations are subject to the general non-resident income tax of 25% (Art. 87.4 CITC).

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?)

Tax exemptions are dependent on the granting of the public utility status or similar. Public utility status is requested via the filling in of an appropriate electronic form in line with the indications set out on the Presidency of the Council of Ministers' website (Art. 25.2 FLF). The requirements for this status to be granted are: The pursuit of certain aims as listed in the law, correct setting up of the foundation and regulation of its activity by statutes drawn up in accordance with the law, the impossibility of carrying on, as its main activity, economic activities in competition with other entities which do not have the benefit of the public utility status, and the existence of sufficient human and material resources to achieve the objectives set out in the statutes (Art. 24.1 FLF). Private foundations may only request public utility status after they have been operating in a relevant manner for three years, unless the majority founder(s) already hold the status of public utility, in which case this status may be requested immediately (Art. 24.2 FLF). Public utility status is granted for a period of five years. This may be successively renewed for equal periods, on presentation of a request for renewal (Art. 25.5 FLF). In addition to the above requirements and the condition that 50% of the income be used, as described above, the tax law states that the pursuit of the aims which justify the tax benefits must be exclusive and predominant and that there may not be any direct or indirect interest of the members of the statutory bodies, by themselves or through an intermediary, in the results of the economic activities pursued by the foundation (Art. 10.3 a) and c) CITC).

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

No.

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

Art. 9.4 FLF merely provides that the annual report on activities and accounts must contain clear and sufficient information on the types and global amounts of benefits granted to third parties and on donations or subsidies received, as well as information on the management of the foundation's assets.

5. Are there specific accounting rules for foundations?

Portuguese foundations and foreign foundations which carry on their activity in Portugal are required to submit their accounts to external audit if their annual income is equal to or greater than two million Euros (Art. 9.1 c FLF and Art. 1 of Implementing Order 75/2013, 18 February).

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.

According to Art. 1.1 of Decree-Law 460/77, 7 November, legal entities of public utility are associations or foundations that pursue aims of a general interest or pursue the interest of the national community or of any region or district, cooperating with the central or local administration. Art. 2.1 a) of the above mentioned Decree-Law (as amended by Decree-Law 391/2007, 13 December) and Art. 24.1 a) FLF stipulate that private foundations may only be declared of public utility when they carry out their action in relevant favour of the community, with non-profit-making aims, in areas of social importance such as the promotion of citizenship and human rights, education, culture, science, sport, social interaction of young persons, protection of children, young persons, the elderly, disadvantaged individuals, and citizens with special needs, the consumer protection, the protection of the environment and the natural heritage, the fight against discrimination on the grounds of gender, race, ethnic background, religion or any other form of discrimination prohibited by law, the prevention and eradication of poverty, the promotion of health and physical well-being, the protection of health, the prevention and control of disease, entrepreneurialism, innovation and economic development and the preservation of the cultural heritage.

For private social welfare institutions, which is another type of public utility entity, Art. 1.1 of Decree-Law 119/83, 25 February, provides a definition: Private social welfare institutions are those which are constituted for non-profit-making purposes, on the initiative of individuals, with the purpose of giving organised expression to the moral duty of solidarity and justice between individuals and are neither administered by the State nor by a local authority, in order to pursue, among other things, the following aims, by means of the concession of property and the provision of services: Support for children and young persons, family support, support for social and community integration, protection of citizens in old age and with disabilities and in all situations of a lack of or reduction in the means of subsistence or capacity to work, promotion and protection of health, namely by means of the provision of preventive, curative or rehabilitative medical care, education and professional training of citizens, resolution of housing problems. Art. 1.2 adds that besides those listed in the previous paragraph, institutions may pursue on a secondary basis other non-profit aims which are compatible with the former.

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>				

9. Support of “the public at large”

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

Yes.

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

Yes, according to Art. 2.1 f) of Decree-Law 460/77, 7 November, as amended by Decree-Law 391/2007, 13 December.

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

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

For benefit of the students of a university					X
Award for the best student of a university					X

10. Non-Distribution Constraint

a) Does a tax-exempt foundation generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc?

Art. 10.3 c) CITC states that the exemption requires a lack of any direct or indirect interest of the members of the statutory bodies, by themselves or through an intermediary, in the results of the economic activities pursued by the concerned institutions. Regarding private social welfare institutions, which are tax-exempt, Art.18.1 of Decree-Law 119/83, 25 February, states that the exercise of any position within the managing bodies of the institutions is gratuitous, although the payment of expenses resulting from such a position may be justified.

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

Where no express provision has been made by the founder in the act of founding, the assets which remain after liquidation are handed over to an association or foundation with similar purposes, designated in line with a precedence criterion fixed by the foundation’s bodies or by the competent authority for recognition, in that order. If the designated entities successively reject the donation, the assets revert to the State (Art.12 FLF).

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**?

Only Decree-Law 119/83, 25 February, on private social welfare institutions, deals with this issue: When the volume of financial transactions or the complexity of the administration of the institutions requires the extended presence of one or more members of the managing bodies, these may be remunerated, provided that the statutes so permit (Art. 18.2).

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 legal provision on the subject.

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

According to Art. 10 FLF, in the case of private foundations with public utility status and public foundations, staff and administrative costs may not exceed the following limits: (i) For foundations whose activity mainly consists of granting financial benefits or support to the community, one tenth of their annual income, with at least two thirds of this being spent on directly pursuing the aims set out in the statutes; (ii) for foundations whose activity mainly consists of sustaining the provision of their own services to the community, two thirds of their annual income (1). Repeated failure to comply with the provisions of the previous paragraph leads to withdrawal of the status of public utility which has been granted (2).

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) – would be considered;
- Board remuneration – would be considered;
- Costs of external audit – would be considered;
- Other legal/accounting costs – would be considered;
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage) – would be considered;
- Insurance – would be considered;
- Publicity and promotion of the foundation (e.g. website, printed promotional materials) – would be considered;
- Asset administration costs – would be considered;
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation – would not be considered;
- Costs related to fundraising – would not be considered.

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?

The possibility of a hybrid structure seems to be provided for in Art. 2.1 of Decree-Law 460/77, 7 November (as amended by Decree-Law 391/2007, 13 December): The granting of public utility status requires that the interested institutions do not perform their activity exclusively for the benefit of private interests, whether of their own members or of the founders.

	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?

No restrictions apply, except for Art. 11 FLF: In the case of private foundations with public utility status and public foundations, the sale of assets of the foundation which have been allocated by the founder(s), and specified as such in the act of founding, and which have a special significance for the foundation's purpose, requires authorisation by the competent authority for recognition, or will otherwise be void.

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

Yes, pursuant to Art. 35.1 a) FLF and Art. 192.1 a) CC. No minimum length of time is required by law.

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)?

Following Art. 10.3 b) CITC, the foundation must allocate to the purposes which have justified its tax exemption at least 50% of the overall net income subject to taxation, by the end of the 4th year of activity after that in which it was obtained, except in the case of just impediment to compliance with the period of allocation. Failure to comply with this requirement is penalised by paragraph 5 of the same article: In the 4th year of activity after that in which the overall net income is obtained, the part of that income which should have been allocated to the respective aims is subject to taxation.

Donations or contributions that qualify for tax deductibility according to the Tax Benefits Statute and the Stamp Tax Code are excluded from the income to be spent. Administration costs seem to be excluded from the disbursement of income.

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

No.

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

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

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

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

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

The notion of a legal entity of public utility means that the tax-exempt status is dependent on the requirement that the entity pursues aims of general interest for domestic benefit of national or local scope (Decree-Law 460/77, 7 November Art. 1.1).

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

Pursuant to Art. 10.3 CITC, with the amendments of Law 60-A/2005, 30 December, tax exemption does not apply to income from bearer securities and unrelated economic activities.

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

Grants and donations

Investment income (asset administration)

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

Economic activities related/unrelated)

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

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

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

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

Capital gains are subject to the applicable regime on income tax.

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

The sale of goods and services related to social security and assistance by private social welfare institutions is exempt from VAT (VAT Code, Art. 9.6).

The sale of goods and services in the fields of childhood and youth education and protection, disabled protection, and elderly protection by public organisations and private social welfare institutions is also exempt from VAT (Art. 9.7).

There are several other VAT exemptions applicable to non-profit organisations (Art. 10) for the sale of goods and services in areas such as sport, culture or education (Arts. 9.8, 9.12, 9.13 and 9.14).

There is also a VAT exemption for the sale of goods and the performance of services by the above-mentioned organisations with the aim of raising funds for their sole benefit (Art. 9.20).

Depending on the amount, a private social welfare institution may recover VAT paid on goods and services to build up or maintain real estate that is totally or mainly used in pursuit of its purpose. The same applies to VAT paid on goods and services related to assets likely to depreciate when solely and exclusively used to achieve the foundation's purpose; also to VAT paid on the acquisition and repair of vehicles that are solely and exclusively used to achieve its purpose (Decree-Law 20/90, 13 January).

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

Income tax exemption on the value of assets is provided (Art 10.1 to 3 CITC).

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

Private law foundations of public utility are exempt from property sale and purchase tax related to the acquisition of real estate when directly and immediately intended for the fulfilment of their purposes (Code on Property Sale and Purchase Tax (CPSPT) – Art. 6.d) and e). The beneficiaries have to request the competent tax authority to recognise the exemption (Art. 10). If property is subsequently transferred, or another purpose is given to it, without the consent of the Ministry of Finance, the foundation has to pay the tax from which it was previously exempt (Art. 11.1).

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

Private law foundations of public utility are exempt from real estate tax concerning property when directly used for the pursuit of their purpose (Tax Benefits Statute – Art. 44.1 e) and f). The exemption has to be recognised by the competent tax authority (Art. 44.8).

Private law foundations of public utility are also exempt from vehicle tax.

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?

The foreign foundation has to apply for public utility status, under the general terms of the law (Arts. 24 and 25 FLF). To do so, it must have a permanent office in Portuguese territory, and must request the respective recognition (Art. 5. 1 and 2 FLF). The rules contained in the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations apply to foundations covered by that Convention (Art. 5.3 FLF).

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?

Withholding tax is applied to foreign based-foundations, pursuant to Arts. 94.3 b), 94.5 and 87.4 CITC. No reclaim is available. Foundations that have been granted a tax exempt status are exempt from the taxes that fall under the scope of their exemption. Therefore, either there is no withholding due, or the foundation can ask for a refund of the mounts subject to undue withholding.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit² or tax deduction³?

Individual donors: System of tax credit.

Corporate donors: System of tax deduction.

² For the purposes of this profile tax credit can be defined as an amount that can be deducted from the actual tax to be paid (reduction in amount of tax paid)

³ For the purposes of this profile tax deduction can be defined as a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base)

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?

The Tax Benefits Statute, which was approved by Decree-Law 215/89, 1 July, with later amendments, grants tax incentives to individual donors in accordance with the regime applicable to corporate donors. Individual donors can subtract 25% of the amount donated from their total income tax in the respective year in cases where there is no limit on deduction for corporate donors. Also, individual donors can subtract 25% of the amount donated, as long as the amount does not exceed 15% of their total income tax in the respective year, in cases where there is a limit on deduction for corporate donors (Art. 63.1).

b) Which assets qualify for tax deductibility?

Donations in cash only.

3. Tax treatment of corporate donors

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

Corporate donors are not subject to limits on tax deduction when donations benefit foundations to whose initial assets the state, autonomous regions or local councils have contributed. Similarly, subject to recognition by a joint decision of the Ministry of Finance and the ministry relevant to the activities of the concerned entity, no limits apply when donations represent the endowment of private origin foundations that pursue predominantly social or cultural aims (Tax Benefits Statute, Art. 62.1 c) and d) and 9. See, also, regarding science patronage, Law 26/2004, 8 July, Art. 8.1). Art. 62.3 sets out certain limits: Donations made to support private welfare institutions and legal entities of administrative and simple public utility whose main purposes are in the area of charity, assistance, benevolence and social solidarity are regarded as operational costs or losses up to a maximum of 8/1000 of the revenues from sales or services. The same limit is valid regarding family patronage and in the field of information technology (Arts. 62.5 and 65). It is also applied to science patronage (Law 26/2004, Art. 8.2). Donations to support foundations working in the field of culture, environment, sport or education are regarded as operational costs or losses up to a limit of 6/1000 of the revenues from sales or services (Art. 62.6). In this case, some tax privileges depend on the previous recognition of the status of the beneficiary by the ministry relevant to the activities of the concerned entity (Art. 62.10). Aggregate tax deductions are subject to a global ceiling of 8/1000 of the revenues from sales and services (Art. 62.12). In any case, beneficiaries must provide the tax authority with thorough information regarding all donors (Art. 66. See also, regarding science patronage, Law 26/2004, as amended by Law 67-A/2007, 31 December, Article 11-A).

Calculation of the tax incentive: Donations are regarded as a cost for the donor. The calculation of this cost varies depending on the status and purpose of the organisation to which the donation is granted. It ranges from 120% of the monetary value of the donation (when made to a foundation working in the field of culture, environment, sport or education, according to Art. 62.2 and 7) to 150% (family patronage – Art. 62.5).

b) Which assets qualify for tax deductibility?

Any kind of donation qualifies for tax relief.

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

Though not clearly stated, the public benefit status seems to be available only to domestic operating foundations. Even so, some references made by the Tax Benefits Statute to NGOs and other entities in general as beneficiaries (Art. 62.3 d), e) and f)) may serve as a legal basis to grant tax incentives to corporate and individual donors when donating to non-resident public benefit foundations.

5. Other frameworks such as percentage law systems

Art. 32.4 and 6 of Law 16/2001, 22 June, on freedom of religion provides for a percentage system: 0.5% of tax due can be devoted to a public utility institution of benevolence, assistance or humanitarian purposes or a private social welfare institution.

6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?

What information do donors have to provide to their tax authority in order receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

The donor benefits from compliance by the entities receiving the donations with obligations to declare. These entities must: Issue a document of proof of the amounts received from their patrons, with the due legal framework; Keep an up-to-date register of patron entities, which contains, in particular, the name and tax number and the date and amount of each donation that has been given; By the end of February of each year, provide the Directorate-General for Taxes with an official declaration of the donations received in the previous year (Art. 66.1 Tax Benefits Statute). The document of proof must contain the legal status of the beneficiary entity, the legal grounds for that status, namely identification of the order necessary for the recognition, the amount of the donation in cash, when it is of a monetary nature, identification of the goods, when the donation is in kind (Art. 66.2 Tax Benefits Statute). Donations in cash which are greater than two hundred euros must be made via a payment method which allows the donors to be identified, namely by bank transfer, nominative bank cheque or direct debit (Art. 66.3 Tax Benefits Statute).

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?)?

There are no different or additional requirements.

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

1. Individuals

Tax exempt (Art. 1.5 c) Stamp Duty Code).

2. Legal entities

Tax exempt (Art. 1.5 c) Stamp Duty Code).

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

There are no different or additional requirements.

V. Gift and inheritance tax

After the 2000 reform, the Stamp Duty Code has governed the gratuitous transfer of property. According to the applicable law, public utility foundations are exempt from stamp duty (Art. 6c and d).

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?

Yes, according to Arts. 2156 to 2178 CC. The law reserves a part of the estate for the spouse, and descendants and ascendants.

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

Though not clearly stated, the public benefit status seems to be available only to domestically operating foundations. Even so, some references made by the Tax Benefits Statute to NGOs and other entities in general as beneficiaries (Art. 62.3 d), e) and f)) may serve as a legal basis to grant tax incentives to non-resident public benefit foundations. That is the case of the stamp duty, since donations made pursuant to the Tax Benefits Statute are not subject to this tax.

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)?

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

Law 52/2003, 22 August, in compliance with Council Framework Decision no. 2002/475/JHA, of 13 June, on combating terrorism. Meanwhile, Law 25/2008, of 5 June, established preventative and repressive measures to combat the laundering of benefits of illicit origin and the financing of terrorism, transposing into national law Directive 2005/60/EC, of the European Parliament and the Council, 26 October, and Directive 2006/70/EC, of the Commission, 1 August.

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

No.

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

No.

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

No.

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?

No.

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

The main objectives of the new law on foundations were: To subject all public origin foundations to compliance with the constitutional and legal principles of administrative law; To improve governance rules and the transparency of foundations; To limit the participation of public entities in private foundations; To limit administration costs; To create an advisory body; To produce more detailed rules on the request for recognition and respective rejection; To allow the possibility for foundations to merge.

An effort still needs to be made to harmonise this new regime with the special regimes that remain in force and to coordinate it with the tax legislation. These are the challenges which, in my opinion, the 2012 reform has brought.

4. Public fundraising

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

No.

Useful contacts

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About the EFC Legal and Fiscal Country profiles

This profile is part of a series of profiles of the legal and fiscal environments for foundations in 42 different countries across the wider Europe, as well as some countries in other world regions. The aim of these profiles is to paint a picture of the current operating environment for foundations in these countries to better understand the legislative landscape foundations inhabit. The profiles are produced in collaboration with foundations, legal experts, and associations in each country. Each profile is written by the national-level expert. A comparative overview of the country profiles from wider Europe can be downloaded from the EFC website: “Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe.”

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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.