



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

ROMANIA – 2014

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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)?

A foundation is a legal entity created by one or more persons who, on the basis of an act of will *inter vivos* or upon a death, establish a patrimony designed permanently and irrevocably for achieving an objective of general interest or, if such be the case, of collective interest¹ (according to Ordinance no. 26 of 30 January 2000 on associations and foundations). According to the law, there is no difference between different types of foundation. The common legal framework is Ordinance 26/2000 and Law 246/2005 on associations and foundations.

2. What purposes can foundations pursue?

According to the definition, the purpose is “achieving an objective of general interest or, if such be the case, of collective interest”. A foundation may not be setup for a personal non-patrimonial interest.

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?

In order to set up a foundation, the founder or founders, draw up the constitutive act and the statutes of the foundation in authentic form, otherwise they are subject to annulment.

Then the foundation acquires legal status upon registration in the Registry of Associations and Foundations at the clerk’s office at the court in whose territorial jurisdiction it has its headquarters.

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, at the court.

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

It is a National Register of Associations and Foundations.

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

Name of the organisation, contacts (phone and address), aim and the founders, members of board of directors, and branches. All modifications are mentioned in the register.

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

Yes

¹ Law 554/2005 changed the terminology of “community interest” to “collective interest”. No definition for collective interest is provided.

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. The initial capital of the foundation must include in-kind or cash assets whose total value should be at least 100 times the minimum gross salary in the national economy,² on the date the organisation is created.

By derogation from the provisions requiring that assets have to be at least 100 times the minimum gross salary, foundations whose exclusive goal, under penalty of dissolution by court decision, is fundraising for other associations or foundations, in order to assure that the latter carry out their own programmes, may have an initial capital with a total value of at least 20 times the minimum gross salary in the national economy.

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

The bodies of the foundation are:

- The board of directors. The board of directors consists of at least 3 members appointed by the founder or, if such be the case, the founders upon establishing the foundation
- In the event that, during the foundations' operation, the composition of the board of directors cannot be modified according to the terms provided by the statutes, the court shall appoint persons to become members of the board of directors, by presidential ordinance,³ upon the request of any interested party.

The censor or, if such be the case, the committee of censors. The committee of censors consists of an odd number of members. The requirement for nominating one censor is for organisations with a minimum of 15 founders. In the case of more than 100 founders, it is compulsory to nominate a committee of censors.

The general rules regarding the organisation and operation of the board of directors are established in the statutes. The board of directors may draft its own internal rules.

a) Is it mandatory to have a supervisory board?

No. The board of directors represents the management body of the foundation having full rights to manage the entire organisation, including the right to change the statutes, but excluding the right to change the aim of foundation - that is the power of the founder(s).

b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? What are the rules concerning appointment of board members? And their resignation/removal?

The board of directors must consist of a minimum of 3 members. The only rules would be those outlined in the statutes.

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

Regarding the rights and duties of the board: The board of directors of the foundation is the leadership and administrative body of the organisation.

The board of directors ensures the pursuit of the purpose and goals of the foundation and has the following rights:

- To establish the general strategy and the programmes of the foundation

² The minimum salary in the national economy is regulated by Government decisions, unless specified in the national budget law. For 2013, minimum salary is 800 lei (approx. 180 Euro)

³ This is a court order issued by the president of that court.

- To approve the budget and the (financial) accounting balance sheet
- To elect and revoke the censor or the members of the committee of censors
- To establish branches
- To draw up legal acts in the name and on behalf of the foundation
- To execute the budget of revenues and expenditures
- To approve the organisational chart and strategy of the foundation
- To modify the statutes of the foundation
- To perform any other duties stipulated in the law or in the statutes

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?

Changing the purpose of the foundation can only be done by the founder or the majority of the founders alive. If none of the founders is still alive, changing the purpose of the foundation can be done only by a 4/5 vote of the board of directors.

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

n/a

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 member of the board personally interested in an issue on the agenda of the discussions, either through his wife, descendants or ascendants, collateral relatives, including relatives of the fourth degree, cannot take part in either the discussions / debate or the vote.

Any persons serving in a leadership position with any public institution, if the foundation has as goal to support the activity of that institution cannot be a member of the board.

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

This situation is not dealt with by the national legislation. The individual statutes of the foundation are the document that governs this matter i.e. it depends on the organisation concerned.

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 board of directors has the right to sign legal contracts and represent foundation towards third parties. According to the law this capacity could be delegated to one member of the board (usually Chairman/President) or outside of the board (Executive director)

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

The executive director / the president.

9. Liability of the foundation and its organs

Legal representation of the foundation is a duty of the board, in accordance with the statutes.

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

No distinction is made between voluntary 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?

n/a

c) What is the liability of executive staff?

The executive director along with the president is responsible before the law.

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

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-civilly			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		X-civilly			

10. Are economic activities⁴ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

Yes, if the activities have an accessory character and are closely connected to the main purpose of the organisation, up to an annual limit of €15,000 profit.

11. Are foundations permitted to be major shareholders?

Yes

⁴ 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

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. Regarding alternative investments, hedge funds, private equity, the regulations are similar to those governing the business sector.

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?

Modifying the constitutive act and/or the statutes of the foundation is done by registering the modification in the Registry of Associations and Foundations at the clerks' office at the court in whose territorial jurisdiction the organisation has its headquarters.

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

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

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

The compulsory requirements are related to financial and accountability aspects, the annual balance sheet, taxes and fees to the state. If the foundation has obtained public utility status, it is obliged to publish a special technical and financial report.

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)?

Only the financial data: The balance sheet, once per year. Foundations having public utility status need to submit the report to the court and publish in the Official Journal.

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

The financial authority.

administration by foundations (including investment in bonds, shares, real estate) would not be considered as economic activity.

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)

Only the accounts, and only by the fiscal authority.

Information is publicised in the data base of the Ministry of Public Finance.

Foundations with public-benefit status are obliged to publish their financial and technical reports about the current activity.

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

All the foundations that use public money are obliged to have an external audit report.

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

Registered auditors.

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

With regard to public benefit foundations, the Minister of Justice and /or government will ask for a financial report, i.e. balance sheet and activities report.

With regard to foundations, the supervision on dissolution shall be done by a decision of the court in whose territorial jurisdiction the organisation has its headquarters, upon the request of any interested party.

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

The supervisory authority is a public administrative body: The Financial Administration.

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

The regulation on supervision only requires that the financial documents are submitted on time.

Public benefit organisations may be subject to inspection, especially if they have contracts with public institutions.

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

No

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

No

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

17. When and how does a foundation dissolve?

A foundation dissolves:

- Lawfully
- If the period the organisation has been established for has come to an end
- if the purpose for which it has been established has been accomplished or can no longer be accomplished, if within 3 months of reaching such a conclusion the purpose is not modified
- If it is impossible to constitute the board of directors according to the statutes of the foundation, if this situation lasts for more than a year from the date when the board of directors should have been constituted, according to the statutes
- By decision of the court in whose territorial jurisdiction the foundation has its headquarters, by ex-officio upon the request of any interested party.

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

A foreign foundation is recognised by the court of justice (Bucharest Tribunal – the only one for entire country) and with pre-approval of the Romanian Government. Foreign foundations could act in Romania through representative or branch. In this case, the new entity keeps the foreign nationality.

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 is no limitation and there are no incentives.

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?

All Romanian NPOs are exempt from profit tax on certain types of revenue, including:

- Donations, money, or goods obtained through sponsorship;
- Sports taxes, visas and penalties (these are income sources that sports associations acquire as a result of participation in different sport competitions);
- Dividends and interest;
- Income on which tax already is paid, including income from entertainment (concerts, shows, etc.),
- Cash or in-kind contributions from members or supporters;
- Membership fees;
- Registration fees as established under effective legislation,
- Resources from the public budget or from non-reimbursable financing;
- Income obtained from occasional activities – such as fundraising events with admission fees, festivals, raffles and conferences – used for social or professional purposes, according to the organisation's statute;
- Exceptional income resulting from certain assignments of the organisation's assets; and

- Income obtained from advertising and publicity, realised by public-benefit organisations (PBOs), according to the law of organisation and operation, in the fields of culture, scientific research, education, sports, and health.

In general, foundations are liable for profit tax on all of their business activities beyond a certain threshold.

Foundations established as a result of a legacy are an exception and are exempt from all profit tax.

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?)

n/a

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

Yes. According to the grant contract.

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

There is no obligation in national legislation, only in the contract with the donor.

5. Are there specific accounting rules for foundations?

No

6. Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition.

The public benefit purpose definition is:

- The activity of the NGO is for public benefit
- The NGO is active for more than 3 years
- The NGO must have an activity report, including balance sheets (income and expenditure) for the last three years
- The organisation must maintain the value of its founding assets each year

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.

n/a

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”?

Romanian legislation does not make any reference to the issue of “the public at large”.

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

n/a

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”⁵ which forbids any financial support of the foundation board, staff, etc.?

n/a

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

Remaining patrimony is transferred to a foundation with similar purpose. In the case of a public utility status foundation, patrimony is transferred through Governmental Decision to similar NGOs or to public institutions.

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**?

The Fiscal Code permits remuneration of the members of the board for their activity in the foundation. At the same time, members of the board could have contractual relations with the organisation (consultancy, project management, etc.).

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)

According to the civil law a donation or sponsorship is an act of gratuity, which does not represent an exchange of good or services for a donation.

⁵ 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.

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

No. Usually grant contracts signed with different donors or public institutions make references to 7% of total costs to be spent for administration (indirect costs or core costs)

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

Type of costs	Considered administration cost	Are not considered administration costs
Personnel costs (staff salaries/payroll costs) excepting the	Costs related with the administration of the foundation (e.g. accountant, office administrator, etc.)	X
Board remuneration		X
Costs of external audit	X	
Other legal/accounting costs	X	
General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)	X	
Insurance	X	
Publicity and promotion of the foundation (e.g. website, printed promotional materials)		X
Asset administration costs	X	
In the case of an operating foundation – costs related to programmes/institutions run by the foundation		X
Costs related to fundraising		X

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

Romanian legislation does not make any special references to this type of structure.

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?

A foundation could be setup for a definite or indefinite period of time. There are not any provisions regarding the minimum or maximum duration.

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?)?

n/a

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”?

n/a

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?

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

Nongovernmental organisations may obtain non-taxable incomes as well as taxable incomes. The incomes obtained from occasional activities (the law does not give a definition of the character of the occasional activity, still it is generally accepted in practice as being such an activity the one performed 2 to 3 times per year), also the events as fund raising, conferences charged tickets which are exempted from the payment of the tax, regardless of the amount of the sum. These occasional activities must be performed for social purposes or professional ones and must be expressly mentioned in the statutory act.

Nongovernmental organisations may perform activities with economic character only if the actions in case have a subsidiary character and they are closely linked with to the purpose of the organisation in the absence of a definition or a detailed structure of these two conditions. Also, there is no sanction imposed to the organisation which performs economic activities which are not closely linked to the purpose of the organisations.

In case of incomes obtained from economic activities, the organisations are exempted from the payment of the tax for sums up to 15,000 Euro and not more than 10% of the incomes exempted from tax.

They are considered to be non-taxable the incomes obtained from the interest for the deposits or the dividend obtained from the companies where they are partners or associates.

Only the testamentary foundations (constituted by a cause of death and based on the patrimony of the deceased) are exempted from the payment of all types of income taxes and no matter of the amount of these.

The organisations are not exempted from the income tax obtained from the rental of immobile assets but for those incomes obtained after the sale of these immobile assets.

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

Grants and donations

Grants and donations are not taxed.

Investment income (asset administration)

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

Investment income (asset administration) is treated like any other economic activity.

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)

Foundations may carry out direct economic activities, if they have an ancillary character and are closely connected to the main purpose of the organisation. But if they make a profit of €15,000 or more, the tax liability will be similar to that applicable to a commercial business.

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?

Dividends obtained by a foundation from a company shared entirely or partially are tax exempt.

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

16% of income.

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

24%

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

16%

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

16%

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

16%

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?

Only foreign NGOs registered and recognised in Romania through a governmental decision could be a subject of deductible sponsorships.

Also, all fiscal benefits provided in the fiscal Code are entitled for NGOs registered in Romania: Romanian like associations, foundations and federations or for foreign NGOs recognized that is acting by a branch, subsidiarity or representation.

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?

III. Tax treatment of donors of public benefit foundations

1. System of tax credit⁶ or tax deduction⁷?

Tax credit: 2% of total taxable income for individual donors. Tax deduction: 5% from total income for independent activities (lawyers, notary, juridical experts, etc.)

0.3% of the turnover, but no more than 20% of the profit tax, for companies.

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 contributors, individuals, have the possibility to have the benefit of a fiscal deduction only in the two following situations:

- Directing 2% of the income tax (salary) to a nongovernmental organisations (also to unions, religious cults, political parties, etc.) only once when submitting the fiscal annual declaration.
- Deducing the amount of sponsorship in the case of contributors who obtain incomes from independent activities (liberal professions), within the limit of 5% from the tax base amount.

The fiscal facilities are mentioned in the Civil Code and they do not establish a low limit of the amounts granted but the 2% limit and the 5 % limit.

The contributors, individuals, who direct 2% of the income tax, cannot pay this sum by giving goods or services, only the money corresponding the 2%. The allocation is performed by the fiscal authority into the account of the organisation mentioned in the fiscal declaration, usually in the last trimester of the next year for which the tax is being calculated.

The contributors obtaining incomes from independent activities may deduct from the taxation base sums of money but also goods and services based on a sponsorship contract within the limit of the 5% from the taxation base.

b) Which assets qualify for tax deductibility?

Donations of cash, shares, securities, real-estate and in-kind-donations are deductible.

3. Tax treatment of corporate donors

⁶ 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)

⁷ 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) 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?

Legislation (Law 32/1994 on sponsorship) limits the maximum amount of donations and sponsorship.

Companies have only one single instrument for supporting nongovernmental organisations, meaning the deduction of the sponsorships from the income tax within the limit of 20% from the income tax, but not more than 0.3% from the annual turnover.

The sponsorship may be done in cash (money), goods or services regardless of the existence of a low limit.

The membership fee (subscription) for the nongovernmental organisations and professional associations linked to the activity of the company are eligible of being deducted from the taxation base within the limit of €4000.

b) Which assets qualify for tax deductibility?

Donations of cash, shares, securities, real-estate and in-kind-donations are deductible.

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

Donations to non-resident public benefit foundations are not deductible.

The sponsorship and the fiscal deductions of individual contributors to foreign organisations are not ruled in Romania. The law on sponsorships defines as beneficiary of the sponsorships only the Romanian nongovernmental organisations or which are about to perform such activities in Romania.

The fiscal deductions stated by the Fiscal Code are to be applied only to the sponsorships of non-profit entities which are constituted and functional according to the Romanian law (G.O no. 26/2000). According to the provisions of this law, a foreign organisation may perform such activities in Romania just in case it is being recognized by the Romanian Government and after that it must be registered at the Tribunal of Bucharest. After being recognized it possess the capacity to perform activities on the territory of Romania and it will be given a fiscal registration number, similar to the one given to the branches of commercial societies.

Foreign legal entities may be a beneficiary of a sponsorship contract and may also benefit from the 2% given by the individual contributors. The recognizing process of the activity of a foreign organisation in Romania is a very long procedure and the number of such organisation is very low. This procedure was applicable during 1989 – 2000. Nowadays, the provisions of this law are aligned to the statute of E.U. Member State and the decision of the ECJ in the Persche case was not transposed in the Romanian legislation.

5. Other frameworks such as percentage law systems

n/a

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?)?

All foundations are eligible to benefit from tax exemption by default. There are no limitations in terms of procedure or documents to be submitted to the fiscal authority.

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?)?

n/a

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

1. Individuals

No taxes are levied.

2. Legal entities

No taxes are levied. Sponsorship for private companies is forbidden excluding audio/TV broadcasts.

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

V. Gift and inheritance tax

There are no such taxes in Romania.

Gifts or the transfer of property deriving from a testament are not regulated in Romania as being an exception from taxes.

Each individual may give goods/money or transmit such goods/money through a testament to a nongovernmental organisation but in such cases the individual does not have any fiscal facility.

The donations granted by a company are not regulated as being eligible deductions but only the sponsorships done within the deductible limits as mentioned above.

Meanwhile, the nongovernmental organisations that receive such financial resources/materials these are exceptions from the payment of any kind of taxes for these incomes.

Furthermore, the foundations constituted through a testament have a special fiscal regime, meaning that they are exempted from the payment of any type of tax for the incomes obtained during the performance of activities, the economic incomes included.

In the case of money or goods transfer through a testament these are limited meaning that the successors own a percentage (the percentage differs based on the number of successors), that cannot be given away.

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)?

Gifts are not taxed. In the case of property, legislation provides for a 3% or 1% tax that is paid by the owner of the land or building.

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?

n/a

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

n/a

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?

n/a

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

n/a

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?

n/a

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)?

Since 2004 we have specific national antiterrorism legislation (http://www.clr.ro/rep_dil_2002/rep.aspx). The subject is also part of the National Security Strategy (2007):<http://www.presidency.ro/static/ordine/SSNR/SSNR.pdf>.

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

No new requirements for foundations.

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

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

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?

4. Public fundraising

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

No

Useful contacts

www.forumuldonatorilor.ro

Selected bibliography

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

Selected law texts online:

Government Ordinance no. 26/2000 on associations and foundations
Law 246/2005 on associations and foundations.
The Romanian Fiscal Code

Law 32/1994 on sponsorship

www.cdep.ro

www.presidency.ro

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.