



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

TURKEY – 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)?

Turkey has a long foundation history dating back over 1,000 years. In the Ottoman times many foundations were established through the free will and private property of donors. Today all those that were established before the establishment of the Republic are administered by the General Directorate of Foundations (GDF), an autonomous public body affiliated to the Prime Ministry and those foundations are known as “old foundations”. Foundations established after the founding of the Republic are called “new foundations” and the contents of this report relates to the 4,500 private “new foundations” that have been established according to the Civil Code of the Republic.

New foundations in Turkey are established according to the provisions of Civil Code. Article 101 of the Civil Code defines a foundation as a legal entity formed by natural persons or legal entities dedicating their private assets and rights for the foundation’s purpose.

2. What purposes can foundations pursue?

The purpose of a foundation must be written down in its statutes. In this sense there are no restrictions on the purposes foundations can pursue, as long as they are legal. However, if a foundation is seeking Tax Exempt Public Benefit Foundation status, the purpose must be one or a combination of health, social aid, education, scientific research and development, culture, environmental protection and/or forestation purposes.

The only restrictions concern the formation of a foundation contrary to the characteristics of the Republic as they are defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or the formation of a foundation with the aim of supporting a particular race or community.

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 founders need to prepare the foundation statutes which must outline the foundation’s mission, activities, organs and other procedures, such as the terms for dissolution. The statutes then need to be taken to the courts for registration.

Application to the court is made by the founder if statutes are constituted; if the dedication is made by a will after death, then the application is made *ex officio* upon notification of the concerned persons, or the judge of the common court who opens the testament, or by the GDF.

The court, to which the applications are made, is entitled to take *ex officio* all necessary measures for the protection of the property and rights.

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. All foundations require state approval from the GDF, a separate organ affiliated to the Prime Ministry, before the court decision regarding the registration is taken.

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

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

Yes. Where a decision is given for the registration of a foundation, the foundation is registered in the records kept by the competent court local to the foundation. It is also registered in the central register of the GDF.

In the event that the registration decision is given by another court, the documents required for registration are transferred to the competent court local to the foundation to complete the registration process.

Upon notification of the local court, the foundation is registered in the central register of the GDF and registration is announced in the Official Gazette.

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

No it is not.

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

Yes. A yearly minimum amount is determined annually by The Council of Foundations, the highest decision making organ of GDF. For 2013, the minimum amount of endowment at establishment is 50,000TL (approx. €20,000). For Tax Exempt Public Benefit status the required endowment and annual income requirements at the time of the application for the tax exempt status are approximately €252,700 and €24,500 respectively. A qualifying public benefit Foundation can apply for the Tax Exempt Status after 2 years of operations.

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

a) Is it mandatory to have a supervisory board?

Yes it is mandatory to have a supervisory board. Often named the Board of Trustees, the ultimate decision making power lies with this organ. The formations of a secretariat, general or executive board is also possible but not required.

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

There is no limitation on the number of board members in the law but it is encouraged to have more than 3 members for the sake of effective decision making procedures. Board members' appointment and resignation procedures are defined in the foundation's statutes.

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

Board members are obliged to comply with the applicable law and the conditions laid down in the law and the statutes of the foundation.

d) What are the rights of founders? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

The rights of the founders are not mentioned in the legislation. All changes to the statutes of a foundation require a court decision. However courts always take into account the adherence to the will of the founder(s) and allow very few changes. By and large fundamental changes to the statutes of a foundation are not permitted.

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

The rights of the beneficiaries are not mentioned in the legislation. It is not mandatory but rather encouraged to be accountable to the beneficiaries.

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?

There is no clear definition of conflict of interest under the Law on Foundations. However some articles include regulations related to conflict of interest. A good example is Article 45 of the Law on Foundations which concerns the Council of Foundations: "The Council members shall not be entitled to attend meetings and cast votes on issues that concern themselves and their relations up to third degree in affinity and consanguinity as well as their and adopted children." The Council of Foundations is the highest decision making organ of General Directorate of Foundations. It has 15 members of which 5 are elected by private foundations. The Council has the mandate: i) To make decisions for public benefit on expropriations and dispositions for the allotments, sales and barter of rental-yielding real estates and charity immovable owned by the Directorate General, and Ottoman Foundations administered by the Directorate; ii) to approve the budgets of the Directorate General and Operational Directorates; iii) to decide on the draft regulations and by-laws concerning the Directorate General and foundations; iv) to make decisions on issues, as deemed necessary by the Directorate General.

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

No. They can only act with a limited authorisation given to them by the statutes of the foundation and the Board of Foundation to execute the daily business of the foundation.

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 governing body is responsible for the representation.

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

The director and officers can represent the foundation according to the foundation's statutes. However, the board of the foundation will be personally liable for the results of their acts.

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?

According to the law, foundation managers are obliged to comply with the applicable law and the conditions laid down in the statutes of the foundation, and to act as prudent managers. There is no differentiation between voluntary or paid board members in terms of responsibility or standards of diligence.

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?

"Safe harbour" circumstances are not defined. However the board members as a general rule should act as prudent managers.

c) What is the liability of executive staff?

Any person involved in the foundation's management, as well as foundation employees, shall be liable for any loss or damage to the foundation due to their respective gross negligence and/or willful abuses.

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

Yes, as long as it is compatible with the laws.

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		X			

a company which unexpectedly went bankrupt.					
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.	X				
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		X			

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

A foundation may establish and incorporate economic enterprises or firms so as to promote its goals and to generate revenues, provided that it gives the GDF a notification within first month of these entities' establishment. The revenue generated from economic enterprises, including companies, cannot be allotted for any purpose other than the objectives of the foundation.

11. Are foundations permitted to be major shareholders?

Yes

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

Yes. As a general rule foundations may acquire goods, and have any disposition thereon. Goods and rights allocated to the foundation at its establishment may be replaced with more useful ones or converted to cash with a court decision if there are justified reasons, following the application by the foundation's management body and consultation with the Supervision Authority; whereas goods and rights acquired at a later stage may be replaced with more useful ones or converted to cash upon the decision of the responsible body of the foundation and on the basis of a report to be prepared by independent expert institutions. Foundations cannot allocate grant funds as low interest loans or recoverable grants. However they can donate to other foundations if their statutes allow it.

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)

Foundations are allowed to allocate grant funds if it is clearly mentioned in the By-laws. However establishing a pure grant making foundation is not possible according to the legislation. If a public benefit purpose/program conducted by a foundation as its own project and provided that it is not considered as a taxable economic activity, foundations can allocate some funds to the project and funds can be returned to the foundation if the project generates funds/income from other sources. If

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

the activities require establishment of an economic entity, the foundation can provide loan with interest but interest should be at arm's length.

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

If the fulfillment of a certain part of the statutes becomes – *de jure* or *de facto* - impossible, the foundation applies to the court to make the necessary changes.

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)

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)?

An annual report is submitted to the GDF including information about the foundation's governing bodies, its activities and financial statements. In addition to that, if the foundation has public benefit status (tax exempt status) it has to submit another report to the Ministry of Finance, which contains information on the financial situation and activities of the foundation.

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

The GDF is the major supervision authority for foundations. However foundations with tax exempt status are also subject to the supervision of the Ministry of Finance.

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)

No. Information submitted is not public therefore it is not published by the authorities. However, some foundations share their information on their web pages to promote transparency.

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

Each year, foundations submit the operational results and their activities as an annual report to the GDF. The Annual report includes the internal audit report which can be performed by independent audit firms as well as foundations' statutory auditors. Internal auditing is a requirement for all foundations. Although it is called internal audit it includes the requirement that financial information be submitted to the GDF in the form of a report within two months of the audit date. The GDF is the major external supervisory body and audits foundations and their affiliates to ascertain whether they are consistent with the law and to check the appropriateness of their purpose. Foundations with tax exempt status are required to submit a Sworn-in-Certified Public Accountant's Tax Exempt Compliance Report to the Ministry of Finance.

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

Internal auditing is mandatory for all foundations. Auditing of foundations is undertaken by the organs of foundations or by independent auditing firms. There are no specific requirements/guidelines for the independent audits. However independent auditing firms may perform the audits of foundations' accounts prepared in accordance with the International Financial Accounting Standards in addition to local accounting standards at the request of the foundation.

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?

The supervisory body is the GDF. It is a Governmental entity that has certain autonomy in its activities. Its employees are civil servants. The Ministry of Finance only supervises Tax Exempt Foundations for tax exempt status compliance and with regard to taxation issues

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

In general, the GDF reviews the annual reports and makes inquiries. The GDF inspectors examine selected foundations and their affiliates to ascertain whether they are consistent with the law and to check the appropriateness of their purpose. The Ministry of Finance may also review the Sworn-in CPAs' Tax Exemption Reports and make inquiries. Ministry of Finance Tax Inspectors have right to audit foundations for tax purposes.

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

Yes. The decision to replace or dispose of real estates and rights allocated to the foundation at its establishment requires a court decision, as do all changes to the statutes. Also, in order to open branches/liason offices or establish economic enterprises, the foundation board must notify the GDF after the execution of the decision if it has not sought a prior permission.

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

No

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

17. When and how does a foundation dissolve?

The foundation may dissolve *ipso facto* if the realisation of its mission or objectives becomes impossible to achieve or to amend, or the object of the foundation becomes contrary to the legislation. A foundation is dissolved upon a request of the foundation board, the GDF, or the Public Prosecutor.

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

Foreign foundations may operate, open branches, or incorporate high-level organisations with the permission of the Ministry of the Interior and advice of the Ministry of Foreign Affairs.

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?

Foundations may establish branches and representative offices abroad, or carry out international business operations and cooperation, and set up governing councils, or they may be members of foreign organisations/councils provided that such will be allowed in their statutes.

Foundations can receive in-kind and cash endowments and grants from natural or legal persons abroad. Foundations may make donations to those foundations and organisations based abroad that are established with similar purposes. It is mandatory that cash donations or grants shall be sent and received through bank transfer.

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?

Tax exemption may be granted to foundations established with the purpose of performing a public service or services by the Council of Ministers upon the proposal of the Ministry of Finance.

Although there is a special regulation on tax exempt foundations in the tax laws, these only confer a general exemption from corporate tax. Foundations, tax-exempt or not, are subject to all other taxes. Those taxes include income tax are applicable to their earnings including rent, interest and dividends. The tax exempt status grants donors the opportunity to deduct their donations to tax exempt foundations, to an extent, from their taxable income.

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?)

Foundations applying for tax exemption according to Article 20 of Law number 4962 are required to meet all of the following conditions as of the date of their application.

- **Subject of Activity:** The activity's purpose must fall within the areas of health, social aid, education, scientific research and development, culture and environmental protection and/or forestation. Foundations serving a specific region or group cannot get tax exemptions. In other words, tax exemptions are only given to those foundations that cover the whole country.
- **Activity Period:** Before making an application for tax exemption, foundations are required to be active for at least one year from the date of their establishment. They should also provide evidence that their activities have reduced the public service undertakings of the State during this period.
- **Bookkeeping:** It is required that tax exempt foundations keep legal accounting books and prepare financial statements.
- **Property and Annual Income:** Foundations applying for tax exemption must have a minimum of TL. 505,000 (approx. €252,700) of income generating property and a minimum annual income of TL. 49,000 (approx. €24,500).
- **Manner of Spending Income:** At least two thirds of the foundation's annual income needs to be spent for its purpose which must fall within one or more of the following areas: Health, social aid, education, scientific research and development, protection of culture and environment, and/or forestation. These purposes are declared in Article 20 of Law number 4962 and need to be written into the foundation statutes.
- **Obtaining Opinions of Related Government Agencies:** After the first assessment of tax exemption request by the Ministry of Finance, the opinions of GDF and other related government agencies that

work in an area related to the purposes listed above are obtained. These opinions need to be based on an audit which measures the contributions of the foundation towards sharing the government's burden of public service undertakings. For example if a foundation is working in the field of education, the opinion of the Ministry of Education may also be required. Opinions that are not based on any audit shall not be taken into consideration in recognising the qualification for tax exemption of a foundation working in a related area.

- Inspection That Will Be Performed by the Tax Inspectors of the Ministry of Finance: The activities and work of the foundation that has requested tax exemption from its establishment until the date of inspection are reviewed by the Tax Inspectors of the Ministry of Finance.

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

As a general rule, the use of state properties and economic resources related to the foundation's purpose is forbidden by the law no. 5072. However many foundations do receive state funding or conduct joint projects with state institutions which are not related to their purpose. Since there is no general regulation on state funding, special reporting is not mentioned in any regulation.

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

No

5. Are there specific accounting rules for foundations?

Foundations must keep and maintain their accounting records in accordance with rules and regulations determined by the GDF.

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.

See section I of this profile.

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.

Foundations established with the purpose of performing a service or services that involve sharing the government's burden of public service undertakings could be recognised as having public benefit purposes, however this definition is not very clear.

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,				X

disability, sexual orientation or any other legally prescribed form of discrimination				
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- Foundations established strictly as “food banks”</i>	X			

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

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?

There is no regulation concerning a non-distribution constraint with regard to board members. Distributions can be made to board members according to the provisions of the foundation’s statutes, however it is not a common practice. Some foundations distribute “honorariums” on an irregular basis.

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

Any estate and rights remaining after the settlement of the debts of a dissolved or terminated foundation shall be reverted to the entity that is designated in the foundation statutes. If there is no such entity, the court shall make a decision and allocate the foundation’s assets to another foundation with a similar purpose.

11. “Altruistic” Element

a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

There is no regulation regarding remuneration of board members. Board members can be remunerated according to the provisions of the foundation’s statutes. It is a wide spread practice that the Board Members of Foundations receive either no remuneration or considerably lower remuneration than their peers in the private sector.

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

There is no specific regulation in the laws.

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

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

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit

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

It is required that all foundations spend at least two thirds of their annual income for their purpose and maximum one third on office/administration costs.

Amounts that have been allocated to be spent for purposes of a foundation cannot be used for any other purpose. However, the expenditures allocated for administration and overheads, as well as reserves and investments that increase the property of foundation can be spent wholly or partially on services related to the purposes of the foundation.

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

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

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

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

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

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

13. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their capital?

There are no specific regulations on this in the laws, but it is not encouraged for foundations to spend their capital. On the contrary, the general expectation is to increase the amount of capital annually.

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

There is no specific regulation in the laws concerning establishment for a limited time period.

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?)?

The general requirement is to spend two thirds of the yearly income within the same year for the foundation's purpose. Surplus funds can be deferred to be spent within a maximum of three years for tax exempt foundations, with the approval of the Ministry of Finance.

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 "payout rule"?

No

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

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

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

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

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.

Foundations can receive or give cross-border grants as long as it complies with their by-laws. In both cases notification of the General Directorate of Foundations is necessary

16. Income tax treatment

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

Grants and donations

All foundations are exempt from corporate tax. Only grants and donations to Tax Exempt Public Benefit Foundations are exempt from corporate tax.

Investment income (asset administration)

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

Foundations may obtain rental income from their real properties, dividends from their shares and stocks, and interest income from their bills and investments in Turkish Lira and foreign currencies. In accordance with the Income Tax Law, income tax should be withheld by the ones paying this income. The after tax amount of income is paid to the foundation and tax withhold is paid to the tax office by the payee. Foundations and associations make their own income tax stoppage for the profit share they obtain from their commercial enterprises.

Economic activities (related/unrelated)

No tax exemption.

- 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)?

No tax exemption.

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

Yes

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

No

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

There is no exemption on VAT.

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

n/a

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

No exemption.

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

Only foundations with Tax Exempt Status are exempt from Real Property Tax limited to the immovable property directly used by the foundation.

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?

Foreign foundations may get tax exemptions only if they are established as a Foundation in Turkey.

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?

There is no Turkish withholding tax on foreign investment income.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit² or tax deduction³?

Tax deduction via deducting the donation from the taxable income. Deductions can be made up to 5% (10% for the development priority regions) of the donor's income for donors who donate to Tax Exempt Foundations. This is not applicable for donors who donate to non-tax exempt foundations.

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?

There are exemptions on the donations made by natural persons to foundations with tax exempt status. The value of donations that can be deducted as expenditure is limited to 5% (10% for the development priority regions) of the donor's taxable income within that fiscal year. In reality this is not the case for those individuals who do not submit annual tax returns. If individuals' incomes are in the form of interest, dividend and other financial income and rent from properties rented to corporations those incomes are subject to withholding tax. This is final tax and such incomes are not reported with annual income tax returns. There are no exemptions on donations made to foundations which do not have tax exemption.

b) Which assets qualify for tax deductibility?

Any kind of assets can qualify for donors who can contribute tax exempt donations to tax exempt foundations. The value of the non-cash assets have to be valued.

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?

There is tax exemption on donations and gifts made by legal entities to foundations with tax exempt status. Donations can be up to 5% (10% for the development priority regions) of the corporate's taxable income. There are no exemptions on donations and gifts made to foundations that do not have tax exemption. The same rules apply to both individual and corporate donors.

b) Which assets qualify for tax deductibility?

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)

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

Non-resident public-benefit foundations are not accepted as public-benefit foundations, therefore there are no exemptions.

5. Other frameworks such as percentage law systems

No

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

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

Copies of the balance sheet, the income statement, and final budget indicating the results of the foundation's activities during that fiscal year and an annual report together with a tax exemption compliance report issued by a sworn-in-certified public accountant are sent, within the first three months of the year, to the Ministry by those foundations to which tax exemptions have been granted by the decision of the Council of Ministers.

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?)?

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

1. Individuals

No exemption.

2. Legal entities

No exemption.

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

V. Gift and inheritance tax

Immovable and movable properties endowed to a foundation upon its establishment or after shall be exempted from Inheritance and Succession Tax.

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

There is no gift and inheritance tax of donations after establishment

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?

No inheritance and gift tax imposed on the payee in this situation, the payer is also not subject to tax. However, there is no tax exemption for the donor.

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 No.5549 on Prevention of Laundering Proceeds of Crime](#) dated 11 October 2006 is the major legislation on this subject and also concerns foundations in Turkey. The secondary legislation entitled, General Communique on Suspicious Transaction Reporting Regarding Terrorist Financing, dated 07 November 2007 clarifies and explains the regulations in more detail.

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

The General Communique, Article 2, entitled Sources Acquired through Ostensibly Legal Activities states that:

"Terrorist organisations acquire a considerable amount of their funds through ostensibly legal activities. The following are the major ostensibly legal activities:

a- Use of Non-profit Organisations: Non-profit organisations such as associations and foundations are very often used in acquiring ostensibly legal sources for terrorist organisations. Funds raised under titles of dues, donations or aid for these organisations are funnelled to terrorist organisations or to terrorists through various methods. People usually do not know that the money they give will be transferred to terrorist organisations, but donate believing that it will be used for the legal purpose stated by the non-profit organisation. On the other hand, some people finance terrorist organisations intentionally and willingly in ostensibly legal ways, for example by seemingly donating for a charity association, so as not attract the attention of public authorities."

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?

n/a

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

No

4. Public fundraising

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

Yes. All foundations are subject to the Law on the Collection of Aid for their fundraising campaigns. However donations and membership dues are not subject to this law. This law is very restrictive and burdensome for foundations. However, recently it is in the process of revision by the Ministry of the Interior.

Useful contacts

For Legal Matters:

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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.”

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.