



EFC LEGAL AND FISCAL COUNTRY PROFILE

*The operating environment for
foundations*

RUSSIA – 2015

**EFC LEGAL AND FISCAL COUNTRY PROFILE
RUSSIA – 2015**

The operating environment for foundations

Drafted by Anastasia A. Kumaritova, the Russian Branch of Evolution and Philanthropy Company (UK) and Pavel P. Kumaritov, Tax consultant.

Contents

I. Legal framework for foundations.....	3
II. Tax treatment of the foundation	16
III. Tax treatment of donors of public benefit foundations	27
IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)	29
VI. Trends and developments	32
Useful contacts.....	33
Selected bibliography	34
Selected law texts online:.....	34
About the EFC Legal and Fiscal Country profiles	35
About the European Foundation Centre	35

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)?

Forming non-profit organisations in the legal form of a foundation became possible due to the adoption of the Civil Code of the Russian Federation¹. The mentioned act and the Federal Law on Non-profit Organisations² adopted after that provide a legal definition of a “Foundation” and provide the features of its legal status.

The foundation is a unitary non-profit organisation with no membership, established by citizens and (or) legal entities on the basis of voluntary property contributions and having charitable, cultural, educational and other social, socially valuable objectives (p. 1, Art. 123.17 of the Civil Code of the RUSSIAN FEDERATION).

Based on the objectives of its activity and other criteria, the foundations may be private, corporate, government, socially oriented and other.

In accordance with p. 4, Art. 7 of the Federal Law on Non-profit Organisations, features of establishment and functioning of certain types of foundations may be set by federal laws. For example, a charitable foundation shall be established and functions subject to the provisions of the Federal Law on Charitable Activities³, public foundation – subject to the provisions of the Federal Law on Public organisations⁴, and foundation of endowment – subject to the provisions of the Federal Law dated 30.12.2006 No. 275-FZ “On the Order of Formation and Use of Endowment of Non-profit Organisations” (hereinafter – the “Federal Law on Endowments”).

Particularly, the legislation highlights socially oriented non-profit organisations, which may include foundations (p. 2.1 Art. 2 and 31.1 of the Federal Law on Non-profit Organisations).

The foundations established through public and private property, the so-called social-public foundations (Art. 10 of the Federal Law on Non-profit Organisations) have the specific status. An example of such a foundation is the Federal Social-Public Foundation to protect the rights of depositors and shareholders, established in accordance with Presidential Decree dated November 18, 1995 No. 1157 “On some measures to protect the rights of depositors and shareholders”.

Specific types of foundations are mutual crediting foundations and lease foundations established by horticulturists, gardeners and summer residents in accordance with Art. 11 of the Federal Law dated 15.04.1998 N 66-FZ “On horticultural, gardening and dacha non-profit associations of citizens”.

Sometimes the term “foundation” is used to name the organisation that is actually established in legal forms other than the foundation, which often leads to their unjustified identification. For example, the Pension Foundation of the Russian Federation, the Social Insurance Foundation of the Russian

¹See the Civil Code of the Russian Federation (part one) dated 30.11.1994 N 51-FZ (hereinafter – “the Civil Code of the Russian Federation”).

²See the Federal Law dated 12.01.1996 N 7-FZ “On Non-profit Organisations” (hereinafter – the “Federal Law on Non-profit Organisations”).

³See the Federal Law dated 11.08.1995 N 135-FZ “On Charitable Activities and Charitable Organisations” (hereinafter – the “Federal Law on Charitable Activities”).

⁴See the Federal Law dated 19.05.1995 N 82-FZ “On Non-governmental Organisations”

Federation, and the Mandatory Health Insurance Foundation of the Russian Federation are not foundations, although they contain the word “foundation” in their name.

2. What purposes can foundations pursue?

General objectives of foundations are included in the Civil Code of the Russian Federation (in a special article about the foundations, cited above) and the Federal Law on Non-profit Organisations. Thus, in accordance with p. 2, Art. 2 of the Federal Law on Non-profit Organisations, non-profit organisations including foundations are established to “achieve social, charitable, cultural, educational, scientific and management objectives, in order to protect public health, to develop physical culture and sport, meet the spiritual and other non-material needs of citizens, to protect the rights and lawful interests of citizens and organisations, to resolve disputes and conflicts, to provide legal assistance, as well as for other objectives aimed at achieving public goods”.

Specific objectives of foundations may be provided in special federal laws. For example, charitable foundations are established to achieve the objectives listed in Art. 2 of the Federal Law on charitable activity. Such objectives are:

- Social support and protection of citizens, including improvement of the material conditions of the poor, social rehabilitation of the unemployed, the disabled persons and other persons who, because of their physical or mental abilities or other circumstances can not independently implement their rights and legitimate interests;
- Preparing the population to overcome the consequences of natural disasters, ecological, industrial and other catastrophes, to prevent accidents;
- Providing assistance to victims of natural disasters, ecological, industrial and other catastrophes, social, ethnic, religious conflicts, victims of repressions, refugees and internally displaced persons;
- Promoting consolidation of peace, friendship and harmony between nations, preventing social, ethnic and religious conflicts;
- Contributing to strengthening the prestige and the role of the family in society;
- Contributing to protection of motherhood, childhood and fatherhood;
- Promoting activities in the field of education, science, culture, art, enlightenment, spiritual development of the individual;
- Promoting activities in the field of preventive treatment and health protection of the citizens, and promotion of healthy lifestyle, improving moral and psychological condition of the citizens;
- Promoting activities in the field of physical culture and sports (except professional sports);
- Environmental and animal protection;
- Protection and proper maintenance of buildings, facilities and areas of historical, religious, cultural or environmental significance, and burial places;
- Preparing the population in the field of protection from emergency situations, promotion of knowledge in the field of protection of the population and territories from emergency situations and providing fire safety;
- Social rehabilitation of orphans and children left without parental care, street children, children in difficult situation;
- Providing free legal aid and legal education of the population;
- Promoting volunteerism;

- Participating in prevention of child neglect and juvenile delinquency;
- Promoting scientific and technical, artistic creativity of children and youth;
- Promoting patriotic, spiritual and moral education of children and youth;
- Supporting socially significant youth initiatives, projects, children's and youth movements, children's and youth organisations;
- Promoting production and (or) distribution of social advertising;
- Promoting prevention of socially dangerous behaviour of the citizens.

Art. 31.1 of the Federal Law on Non-profit Organisations lists the objectives of establishing socially-oriented non-profit organisations, which can be represented by foundations as well.

Another example of determining the specific objectives of foundations is the Federal law on Endowments. This law contains objectives of endowment establishment and the use of the income from it. Thus, a specialised organisation, established in the legal form of the foundation shall be entitled to form an endowment and use the income from it solely for the following purposes, namely: for use in the field of education, science, health, culture, physical culture and sports (except professional sports), art, archive-keeping, social assistance (support), environmental protection, providing citizens with free legal assistance and their legal education, as well as for operation of the All-Russian compulsory popular public television channel (p. 1, Art. 3 of the Federal law on Endowments).

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?

As all non-profit organisations, foundations are subject to state registration in accordance with the Federal Law dated August 8, 2001 N 129-FZ "On State Registration of Legal Entities and Individual Entrepreneurs" (hereinafter – the "Federal Law on Registration of Legal Entities").

The procedure for registration of foundations as well as all non-profit organisations is permissive in nature and is in adoption of a decision on state registration or refusal of it by the authorised federal authority. Such a federal authority today is the Ministry of Justice of the Russian Federation (hereinafter – the "Ministry of Justice").

For state registration of the foundation, the following documents shall be submitted to the Ministry of Justice or its territorial body:

- 1) The application signed by the authorised person, with last name, first name, patronymic, place of residence and contact phone numbers;
- 2) Constituent documents of the foundation in triplicate;
- 3) Decision on foundation establishment and approval of its constituent documents specifying the composition of elected (appointed) officials in duplicate;
- 4) Information about founders in duplicate;
- 5) A document confirming payment of state duty;
- 6) Information about the address (location) of continuing body of the foundation to contact it;
- 7) When a name of the citizen, symbols protected by the legislation of the Russian Federation on the protection of intellectual property is used in the name of the foundation, as well as the full name of another legal entity as part of proprietary name – the documents confirming the legitimacy of their use;

- 8) The extract from the register of foreign legal entities of the corresponding country of origin or another equivalent legal document confirming legal status of the founder – the foreign entity;
- 9) The application for inclusion of the foundation in the register of non-profit organisations acting as a foreign agent (if the newly established foundation performs the functions of a foreign agent).

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?)

The procedure of foundation establishment begins with a general meeting of its founders, who decide on establishment of the organisation, approve constituent documents and appoint a responsible person – the applicant for further state registration of the foundation.

The applicant shall further prepare the documents necessary for state registration (these are listed above) and, together with the application, submit them in the Ministry of Justice or its territorial body. Signature of the applicant on his application shall be notarised.

The documents required for state registration of the foundation shall be submitted to the Ministry of Justice or its territorial body not later than three (3) months from the date of the decision to establish the foundation.

The Ministry of Justice or its territorial body in the absence of statutory grounds for refusal of registration and not later than fourteen (14) working days from receipt of the required documents shall decide on state registration of the foundation.

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

Information on registration of the foundations is recorded in the Unified State Register of Legal Entities. Responsibilities for maintaining the register are assigned to the Federal Tax Service.

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

In accordance with Art. 5 of the Federal Law on Registration of Legal Entities, the Unified State Register of Legal Entities contains the following information and documents about the foundations:

- a) Full and (if available) abbreviated name. If the foundation name is stated in the statute of the foundation in one of the languages of the peoples of the Russian Federation and (or) in a foreign language, the name of the foundation in these languages shall also be stated in the Unified State Register of Legal Entities;
- b) Form of incorporation;
- c) The address (location) of the permanent executive body of the foundation, including e-mail of the foundation (if specifying such information in the application for state registration);
- d) Method of foundation establishment (creation or reorganisation);
- e) Information about the founders of the foundation;
- f) Originals or copies of the constituent documents of the foundation certified by a notary;
- g) Information about legal succession;
- h) Date of registration of changes in the constituent documents of the foundation;
- i) Method of liquidation of the foundation, including information about the foundation in the process of liquidation;

- j) Last name, first name and title of the person entitled to act without power of attorney on behalf of the foundation, as well as passport details of such person or data of other identity documents in accordance with the legislation of the Russian Federation, and taxpayer identification number, if any;
- k) Information on licenses obtained by the foundation;
- l) Information on branches and representative offices of the foundation;
- m) Taxpayer identification number, code of the reason and date of registration of the legal entity in the tax authority;
- n) Codes according to the All-Russian Classifier of Economic Activities;
- o) Number and date of registration of the foundation as an insurer:
 - in the Pension Fund of the Russian Federation;
 - in the Social Insurance Fund of the Russian Federation;
- m) Information about the fact that the foundation is in the process of reorganisation.

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

Yes, the information contained in the Unified State Register of Legal Entities is available for public disclosure. The information on any registered foundation is posted at the official website of the Federal Tax Service. When you enter the registration number of the foundation or its TIN at the website, as well as the name, a separately formed document is loaded with the above information about the foundation, except passport data of the individuals contained in the register.

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

As such, no founding capital of the foundation for its activity is provided by law. However, if the foundation is going to carry out income-generating activities, it shall have property sufficient for this, with market value of not less than authorised capital provided for limited liability companies (p. 5, Art. 50 of the Civil Code of the Russian Federation). To date, the minimum authorised capital requirement for limited liability companies is set in the amount of 10,000 rubles, which is approximately a little less than 150 euros.

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

Structure, competence, order of formation and the term of office of the foundation management, and their decision-making procedure is established by the statute of the foundation in accordance with the Civil Code of the Russian Federation the Federal Law on Non-profit Organisations.

c) *Is it mandatory to have a supervisory board?*

Yes, supervisory board is a mandatory authority in the management of the foundation.

Supervisory board of the foundation supervises the activities of the foundation, the adoption of decisions by other authorities of the foundation and their enforcement, the use of funds of the foundation, compliance of the foundation with legislation.

Supervisory board of the foundation acts on a voluntary basis (p. 3 of Art. 7 of the Federal Law on Non-profit Organisations).

d) 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 Civil Code of the Russian Federation contains specific requirements for the management of the foundation. In accordance with Art. 123.19 of this Act, the structure of managerial bodies of the foundations shall include such a body as the supreme collegial body of the foundation, which may have different names, such as the Board of Directors or the Board of Founders. The exclusive competence of such body of the foundation must include the following:

- Determining priority fields of activity of the foundation, principles of formation and use of its property;
- Establishing the other foundation bodies and early termination of their powers;
- Approval of annual reports and annual accounting (financial) statements of the foundation;
- Making decisions on the establishment by the foundation of business entities and (or) participation of the foundation in them;
- Making decisions on establishing branches and (or) opening of representative offices of the foundation;
- Amendments to the statute of the foundation, if this opportunity is provided by the statute;
- Approval of transactions committed by the foundation in cases provided by law.

Law or the statute of the foundation can attribute making decisions on other issues to the exclusive competence of the supreme collegial body of the foundation.

The Civil Code of the Russian Federation and the Federal Law on Non-profit Organisations do not contain requirements to the personnel of the supreme collegial body of the foundation. As a rule, the statutes of the foundations provide for an odd number of members of the supreme collegial body of the foundation to avoid possible stalemates.

As with the number of the supreme collegial body of the foundation, the law also does not contain any requirements to the procedure of appointment and dismissal of the members of the supreme collegial body of the foundation.

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

In this regard, the Civil Code of the Russian Federation and the Federal Law on Non-profit Organisations provides the freedom for the founders to choose to set or not set the rights and duties of the members of the supreme collegial body of the foundation.

f) 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 foundation refers to unitary, organisations without membership, that's why the founders' participation in its activities and management is not mandatory.

However, the founders of the foundation shall be entitled to provide in the statute of their established foundation that only by their decision the foundation's statute may be amended, and objectives of the foundation may be changed only by their decision (Art. 123.20 of the Civil Code of the Russian Federation).

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

The right of citizens to be informed of activities of the foundations corresponds to the responsibility of the foundations, established in Art. 123.17 of the Civil Code of the RUSSIAN FEDERATION , to annually publish reports on the use of their property.

h) 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?

In accordance with Art. 27 of the Federal Law on Non-profit Organisations, the persons interested in certain actions by non-profit organisation, including transactions with other organisations or citizens (hereinafter – the stakeholders) are the head (deputy head) of non-profit organisation, as well as the person entering managerial bodies of non-profit organisation or bodies supervising its activities, if such persons have labor relations with these organisations or citizens, are participants or creditors of these organisations, or have close personal relationship with these citizens or are creditors of these citizens. At the same time these organisations or citizens are suppliers of goods (services) for non-profit organisation, large consumers of goods (services) produced by non-profit organisation, own property which is fully or partially formed by non-profit organisation, or may benefit from the use or disposal of the property of non-profit organisation.

Interest in committing certain actions by non-profit organisation, including transactions entail a conflict of interests of stakeholders and non-profit organisation.

If the stakeholder has an interest in the transaction, a party to which non-profit organisation is or intends to be, as well as in case of other conflict of interests between the said person and non-profit organisation in respect of existing or proposed transaction

- It shall indicate its interest to managerial body of non-profit organisation or its supervisory authority until a decision on conclusion of the transaction;
- The transaction shall be approved by the managerial body of non-profit organisation or its supervisory authority.

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

The supreme collegial body of the foundation elects the sole executive body of the foundation (Chairman, General Director, etc.) and may appoint a collegial executive body of the foundation (board).

The competence of the sole and (or) collegial executive bodies of the foundation includes addressing the issues not in exclusive jurisdiction of the supreme collegial body of the foundation.

As a rule, the responsibility of the sole and (or) collegial executive bodies of the foundation include the following issues: operational management of the foundation, hiring and firing employees, committing civil transactions and other activities

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

Imposition of the authorities to represent the interests of the foundation towards third parties is provided by the founders of the foundation in its statute. As a rule, such person is the sole executive body of the foundation, for example, its director, chairman or etc.

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

Yes, the director as the sole executive body of the foundation has powers to represent the interests of the foundation towards third parties without the power of attorney, if it is stipulated in the statute of the foundation.

Employees of the foundation may also represent the interests of the foundation, if required by their job responsibilities and supported by the power of attorney issued to them.

9. Liability of the foundation and its organs

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

The foundation as non-profit organisation is not entitled to remuneration to the members of its supreme collegial body for performance of their assigned functions, except for reimbursement of expenses directly related to participation in this body (p. 5 of Art. 29 of the Federal Law on Non-profit Organisations).

c) 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?

This rule applies to all legal entities, including foundations.

According to p. 3 of Art. 53 of the Civil Code of the Russian Federation, a person who, by law, other legal act or constituent documents of the legal entity is authorised to act on its behalf, shall act in the interests of the legal person represented by him in good faith and reasonably. The same obligation shall apply to the members of collegial bodies of the legal entity (supervisory or other board, management board, etc.).

A person who, by law, other legal act or constituent documents of the legal entity is authorised to act on its behalf, shall be liable if it is proven that in the exercise of its rights and Russian Federation performing its duties it acted in bad faith or unreasonably, including if its actions (omissions) did not correspond to the common conditions of civil turnover or common entrepreneurial risk (part 1, Art. 53.1. of the Civil code of the Russian Federation).

d) What is the liability of executive staff?

Persons authorised to act on behalf of the foundation, at the request of the members of its supreme collegial body acting on behalf of the foundation, shall compensate losses caused by them to the foundation (p. 3, Art. 123.9 of the Civil Code of the Russian Federation).

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

Yes, the founders of the foundation have the right to specify in its statute the standards of proper behaviour of the members of the supreme collegial body of the foundation.

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

	Yes	Probably yes	Unclear	Probably no	No
The foundation distributes money for a purpose which is a public benefit purpose but not accepted in the foundation's statutes.		X			
The foundation loses its status of a tax benefit foundation (because one requirement in tax law was not fulfilled).					X
The foundation loses money because a board member has acquired some stocks in a company which unexpectedly went bankrupt.				X	
The foundation sells immovable property to the spouse of a board member. The board member was unaware that the price was too low.		X			
The foundation sells immovable property to a third person. The board member was unaware that the price was too low.		X			

10. Are economic activities⁵ allowed (related/unrelated)? If so, is there a ceiling/limit on economic activities (related/unrelated)?

The foundation as non-profit organisation can perform income-generating activities, if it is provided in its statute, only insofar as it serves the purposes for which it was established, and if it is consistent with such purposes (part 4, Art. 50 of the Civil Code of the Russian Federation).

11. Are foundations permitted to be major shareholders?

Yes, the Russian civil law allows foundations to be major shareholders of the companies.

For some types of foundations it is specifically provided for in the laws on them, for example, for charity foundations. To create material conditions of implementation of the charitable objectives, the charity foundation has the right to establish a business entity. Charity foundation is not permitted to participate in business entities together with other persons (Art. 12 of the Federal Law on Charitable Activity).

⁵For 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.

12. Are there any rules/limitations regarding foundations' asset management?

Yes, such limitations are set for the management company regarding management of property constituting endowment (Art. 15 of the Federal Law on Endowment). Thus, endowment is placed only in investment instruments provided by law. The management company is not entitled to perform any number of transactions with endowment. For example, it is not entitled to grant loans from endowment or use endowment to ensure fulfilment of its obligations.

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)

Russian legislation does not prohibit the foundations to perform the so-called passive income-generating activities in the form of depositing free cash in the bank, etc. However, the income from such activities will be taxed.

Exceptions are the endowment foundations. Organisation tax profits are not imposed on the interests of money on deposit accounts received for formation or replenishment of endowment of such foundations (p. 43, Art. 251 of the Tax Code of the Russian Federation).

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

As a general rule, the foundation's statute may be amended by the supreme collegial body of the foundation, unless the statute provides an opportunity to amend by the founder's decision.

The law also provides the case where keeping the foundation's statute unchanged entails consequences that could not be foreseen in establishment of the foundation, and the supreme collegial body of the foundation or the founder of the foundation does not amend its statute. In this case, the law allows amending the statute of the foundation upon court order, issued at the request of the bodies of the foundation or at the request of the Ministry of Justice (Art. 123.20 of the Civil Code of the Russian Federation).

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

The foundation provides information on its activities to the state statistics and tax authorities, the founders and other persons in accordance with the legislation of the Russian Federation and constituent documents of the foundation.

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

- annual financial report – yes, if the foundation meets certain criteria stated in the law;
- annual activity report – yes, if the foundation meets certain criteria stated in the law;
- public benefit/activity report – yes, if the foundation meets certain criteria stated in the law;
- tax report/tax return, – yes, all foundations;
- other reports e.g. on 1% schemes)

All foundations shall annually make **a report** on its activities, on staff composition of the managerial bodies, documents on the expenditure of funds and use of other assets, including those obtained from foreign sources.

The law allows some foundations to provide **information in free form** on continuation of their activities. This right is granted to those foundations, 1) that are not founded by foreign nationals and

2) that did not have income in the form of property and money from foreign sources during the year, and 3) which incomes in the form of property and money during the year amounted up to 3 million Roubles, approximately about 45,000 euros.

h) 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)?

Yes, the report of the foundation or the information on continuation of its activity shall be submitted to the Ministry of Justice or its territorial offices before April 15 of the year following the reporting period.

In addition, depending on the applicable tax system, the foundation shall submit tax and accounting reporting to the tax authority. The foundation shall also quarterly submit calculations to the state non-budgetary funds where it is registered.

When in sampling, the foundations shall submit the appropriate forms of statistical monitoring to state statistics authorities.

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

Yes, reports submitted by the foundations to the Ministry of Justice or its territorial body, tax authorities and other bodies are carefully checked by the employees of these bodies.

j) 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)

Without exception, all foundations shall annually place in the Internet or provide a report for publication to the media on its activities/message on continuation of its activities in the amount of data provided to the Ministry of Justice or its territorial body (Art. 32 of the Federal Law on Non-profit Organisations).

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

According to Art. 5 of the Federal Law dated 30.12.2008 N 307-FZ "On Auditing", the foundation is subject to annual statutory audit.

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

The audit activities are carried out according to the international auditing standards that are mandatory for audit companies, auditors, self-regulating organisations of auditors and their employees, as well as to the auditing standards of self-regulating organisations of auditors. In the territory of the Russian Federation, international auditing standards shall apply, adopted by the International Federation of Accountants and recognized in accordance with the procedure established by the Government of the Russian Federation.

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

The Ministry of Justice shall control compliance of non-profit organisations, including foundations, with the requirements of the Russian legislation and the goals of their constituent documents.

As part of the statutory powers, the Ministry of Justice and its officials are entitled to:

- 1) Request order documents from managerial bodies of non-profit organisation;
- 2) Request and receive information on financial and economic activity of non-profit organisations;
- 3) Send its representatives to participate in ongoing activities of non-profit organisation;
- 4) Review the compliance of non-profit organisations, including expenditure of funds and other property with objectives set by its constituent documents.
- 5) In case of detecting violations of the legislation of the Russian Federation or committing by a non-profit organisation of the acts contrary to the objectives set by its constitutive documents, make a written warning to it indicating the violation and its elimination period of not less than 1 month.

Regarding timely payment of taxes, submitting accounting and tax reporting, control measures for non-profit organisations, including foundations, are executed by the tax authorities.

In addition, the Federal Financial Monitoring Service (hereinafter – “Rosfinmonitoring”) shall carry out a mandatory control over operations to receive the funds and (or) other property by non-profit organisation, including foundations, from foreign states, international and foreign organisations, foreign citizens and stateless persons, as well as over expenditures of their finances and (or) other property, if the amount of such transaction is equal to or exceeds 100,000 rubles; it is about 1,500 euros (Art. 6 of the Federal Law dated 07.08.2001 N 115-FZ “On counteracting to legalization (laundering) of incomes obtained by criminal means and terrorism financing”).

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 Ministry of Justice is a federal body of executive power (Presidential Decree dated 13.10.2004 “Affairs of the Ministry of Justice of the Russian Federation”).

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

Government supervision is implemented by the Ministry of Justice and its territorial bodies by means of scheduled and unscheduled documentary and field inspections of all, without exception, non-profit organisations, including foundations.

Scheduled inspections are carried out according to the annual inspection plans.

Unscheduled inspections are carried out on the grounds and in accordance with the procedure established by Article 32 of the Federal Law on Non-profit Organisations.

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

No, the supreme collegial body of the foundation is not required to obtain approval of their decisions from the Ministry of Justice or its territorial body.

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

No, the law does not contain such a requirement. On the contrary, the law even prohibits state or municipal employees from participating in managerial bodies, guardianship or supervisory boards, but only of foreign non-profit non-governmental organisations.

These persons are not entitled to be engaged in payable activities financed exclusively by foreign states, international and foreign organisations, foreign citizens and stateless persons.

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

The Ministry of Justice or its territorial body may issue a written warning to the foundation, indicating the violation and its elimination period of not less than one month in case of violation of the legislation of the Russian Federation or the actions committed by the foundation contrary to the purposes provided by its statute. The warning to the foundation may be appealed to a higher authority or court.

Repeated failure of the foundation to submit reports (information) about its activities to the Ministry of Justice or its territorial body is the basis the Ministry of Justice to send a court action to liquidate the foundation.

In addition to this, untimely submission of reports (information) is the basis for bringing the foundations or their managers to administrative liability pursuant to Art. 19.7 of the Code of Administrative Offences of the Russian Federation. The amount of penalty is from 3,000 to 5,000 roubles, which is approximately a little less than 100 euros.

17. When and how does a foundation dissolve?

According to p. 2, Art. 123.20 of the Civil Code of the Russian Federation, the foundation can be dissolved only by a court decision, adopted at the request of interested parties, if:

- 1) The foundation's assets are insufficient to carry out its objectives and probability of obtaining the necessary assets is unreal;
- 2) The foundation's objectives cannot be achieved, and the required changes in the foundation's objectives cannot be made;
- 3) The foundation in its activities deviates from the objectives provided by the Statute;
- 4) In other cases stipulated by law.

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

In Russia, foreign foundations, as well as all foreign non-profit non-governmental organisations are provided with national regime (Art. 2 of the Civil Code of the Russian Federation).

According to p. 4, Art. 2 of the Federal Law on Non-profit Organisations, the foreign non-profit non-governmental organisation is defined as "an organisation which does not have profit as the main objective of the activity and does not distribute the profit received among the participants, established outside the territory of the Russian Federation according to the laws of a foreign country, which founders (participants) are not public authorities".

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

Yes, Russian civil law allows the foundations to conduct their activities abroad without any limitations.

II. Tax treatment of the foundation

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

Russian legislation does not contain any special procedures for receiving tax exemption by the foundation. By registering as a non-profit organisation the foundation automatically gives the newly created foundation tax advantages provided by tax legislation for non-profit organisations.

The very definition of “non-profit organisation” is defined in Art. 50 of the Civil Code of the Russian Federation, as follows: “legal entities can be organisations pursuing profit as the main purpose of their activity (commercial organisations) or not having profit as a purpose and not distributing profits among the participants (non-profit organisations)”.

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?)

Adopting the decision by the Ministry of Justice or its territorial body of the foundation registration as non-profit organisation is a confirmation that the newly created foundation is endowed with tax privileges provided by law for non-profit organisations.

When receiving non-taxable income, such as donations, the foundation shall annually complete and submit a special report on intended use of funds to the tax authority, as part of its financial (accounting) statements (the Order of the Ministry of Finance of the Russian Federation dated 02.07.2010 N 66n “On Forms of Accounting Reporting of Organisations”).

In addition, the foundation is also required to complete and submit a tax return for income tax to the tax authority, which includes a special report on intended use of the property (the Order of the Federal Tax Service of Russia dated 26.11.2014 N MMV-7-3/600@ “On approval of the form of tax return for income tax of the organisations, the order for its completion, as well as the format of submission of tax returns for income tax of the organisations in electronic form”). However, this tax return and a report to shall be submitted only by the foundations using general taxation system. For foundations using simplified taxation system, the law provides for a simplified form of tax return, they shall also complete and submit annually to the tax authority (the Order of the Federal Tax Service of Russia dated 04.07.2014 N MMV-7-3/352@).

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

Generally, reporting on the use of budget funds is provided under negotiated agreements. For example, in the agreement concluded by the Ministry of Economic Development of the Russian Federation to provide grants with a foundation as non-profit organisation, the procedure and time shall be indicated for submission of reporting on the use of subsidies (the Decree of the Government of the Russian Federation dated August 23, 2011 No. 713).

Government subsidies are not taxable income for non-profit organisations for purposes of taxation of corporate profit tax (p. 2, Art. 251 of the Tax Code of the Russian Federation).

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

Providing donors with reports on the use of donations is not required under donation contracts concluded (Art. 582 of the Civil Code of the Russian Federation). However, in practice, the foundations are interested to prepare and provide donors with such reports, in view of the fact that the reports are the only evidence that the donation was spend in intended way.

Grants represent a different matter. A report to grant maker on the use of granted funds is obligatory by law (p.1 Art. 251 of the Tax Code of the Russian Federation).

5. Are there specific accounting rules for foundations?

Yes, foundations are required to keep separate records of income (expenses) on received grants, donations and other untaxed receipts (Art. 251 of the Tax Code of the Russian Federation).

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.

Russian civil law does not have a definition of a "public benefit purpose". However, the list of purposes that are recognized as public benefit is given in the Federal Law on Non-profit Organisations as the purposes of non-profit organisations. This Act also specifically lists public benefit purposes for recognition of certain non-profit organisations as socially oriented.

In addition, the purposes of charity activity are listed in Art. 2 of the Federal Law on Charitable Activity.

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.

The Tax Code of the Russian Federation does not contain a definition of a "public benefit purpose".

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

Public benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
(1) Science and research	X			
(2) Religion	X			
(3) Furtherance of health (in particular the prevention of and the fight against contagious illnesses) and public health care	X			
(4) Support of youths and older people	X			

(5) Arts and culture	X			
(6) Preservation of historical sites and monuments	X			
(7) Education	X			
(8) Environmental protection	X			
(9) Public welfare including support to organisations providing e.g. social services, social care etc.	X			
(10) Support to victims (of crime, war, persecution because of political, racial or religious reasons, and discrimination), refugees and disabled people	X			
(11) Emergency rescue	X			
(12) Public safety and accident prevention (including fire and work safety and disaster response)	X			
(13) International understanding and tolerance	X			
(14) Animal protection	X			
(15) Development aid and development co-operation		X		
(16) Consumer protection	X			
(17) Offender rehabilitation		X		
(18) Gender equality		X		
(19) Protection of marriage and family	X			
(20) Crime prevention	X			
(21) Amateur sports (including chess)	X			
(22) Local history and local geography	X			
(23) Traditional customs (including Carnival)	X			
(24) The national democratic political system				

(25) Civic commitment for public benefit purposes and public benefit organisations.	X			
(26) Protection of and support for disadvantaged individuals (in particular support of people in need because of their physical, intellectual or mental condition).	X			
(27) Relief of poverty		X		
(28) Protection/promotion of Human Rights	X			
Other – please add other purposes listed in your country’s legislation				
(29) Formation of intolerance in a society towards corrupt behavior;				
(30) Activities in the field of patriotic, including military-patriotic education of citizens of the Russian Federation;				
(31) Search work aimed at identifying unknown military burials and unburied remains of the defenders of the Motherland, identification of names of the dead and missing in the defense of the Motherland;				
(32) Social and cultural adaptation and integration of migrants;				
(33) Provision of free legal aid and legal education of the population;				
(33) Supporting production and (or) distribution of social advertising.				

9. Support of “the public at large”

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

No, tax-exempt status of the foundations as non-profit organisations does not depend on whether the foundations perform activities to benefit the public at large, or perform these activities in favor of certain categories of persons.

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

f)

c) 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

g) Does a tax-exempt foundation generally have to follow a “non-distribution constraint”⁶ which forbids any financial support of the foundation board, staff, etc?

Yes, foundations as non-profit organisations are not entitled to pay remuneration to the members of its supreme management body for performance of their assigned functions, except for reimbursement of expenses directly related to participation in the work of the supreme management body (p.5 Art.29 of the Federal Law on Non-profit Organisations).

The Act does not contain other requirements.

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

According to p. 3 Art. 123.20 of the Civil Code of the Russian Federation, “in case of dissolution of the foundation, its assets remaining after satisfaction of creditors’ claims, shall be used for the purposes specified in the statute of the foundation, except for the cases when the law provides return of such assets to the founders of the foundation”.

⁶For 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.

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 amount of remuneration of expenses of the members of the supreme collegial body of the foundation directly related to participation in activity of such body, are not limited by the applicable Russian legislation.

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)

No. According to Articles 572 and 582 of the Civil Code of the Russian Federation, donation shall be done free of charge, i.e., the actions of beneficiary shall have no items of consideration of the obligation. Thus, receiving some type of benefit in return for a donation will not be qualified as a donation and will be recognized as revenue from services rendered (works) and will be subject to taxation.

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

Yes, such a limitation is established only in respect of foundations that are charitable organisations. According to p. 3 of Art. 16 of the Federal Law on Charitable Activities, "a charitable organisation shall not use more than 20 percent of funds spent by the organisation per financial year for remuneration of administrative staff labor".

However, this limitation does not apply to remuneration of labor of the persons involved in charity programs.

d) 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) **Yes/No**
- Board remuneration **Yes**
- Costs of external audit **Yes**
- Other legal/accounting costs **Yes/No**
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage) **Yes/No**
- Insurance **Yes**
- Publicity and promotion of the foundation (e.g. website, printed promotional materials) **Yes/No**
- Asset administration costs **Yes**
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation **No**
- Costs related to fundraising **Yes**

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>freeholdreversion</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>freeholdreversion</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, the foundations are allowed to spend down their capital. However, an exception to the general rule is endowment foundations. The Federal Law on Endowments sets a certain procedure of how to use the income from endowment (p. 4, Art. 13).

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

Yes, they are allowed to be set up for a limited period of time. As required by law, length of time for the foundation shall be provided in its statute (p. 2 Art. 3 of the Federal Law on Non-profit Organisations).

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)?

Yes, certain rules on spending income are established regarding endowment foundations. They are allowed to include in the income from endowment not more than 10 percent of the book value of the assets constituting endowment per financial year if it is not prohibited by donation contract or a will, and provided by financial plan of the foundation (p. 4 Art. 13 of the Federal Law on Endowments).

The law also establishes the fact that endowment foundation is permitted not to use the income from endowment management within two consecutive years. But in this case, the amount of unused income from trust management of the assets constituting endowment cannot be more than 50 percent of such income (p. 5 Art. 13 of the Federal Law on Endowments).

In addition, certain rules on donation spending are established for charitable foundations. If the donor or the charitable program does not establish otherwise, not less than 80 percent of charitable donations in cash and in kind shall be used for charitable purposes in the year of receipt of this donation by a charitable foundation (p. 4, Art. 16 of the Federal Law on Charitable Activities).

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”?

As has already been mentioned, a similar rule is established only in relation to charitable foundations that shall use not less than 80 percent of charitable donations for charitable purposes within the year from the date of receipt of this donation.

e) 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

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

The Russian tax law does not regulate this issue.

	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.					

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

According to Russian legislation the foundation's activity abroad has no effect to its tax status.

However, receipt of foreign financing by the foundation and at the same time exercising political activity becomes a high risk for the foundation to be recognized as a foreign agent. The consequences of the foundation's recognition as a foreign agent are: introduction to a special register, marking of its published materials (if any), quarterly reports to the Justice Ministry or its territorial body (p. 6, Art. 2 and Art. 32 of the Federal Law on Non-profit Organisations).

In addition, not all foreign grants are exempt from taxation, but only those which grantors are included in a special list approved by the Government of the Russian Federation. In addition, foreign grants shall be provided for particular fields of activities of foundations, which are also listed in the law (p. 2, Art. 251 of the Tax Code of the Russian Federation).

15. Income tax treatment

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

b) Grants and donations

c) *non-taxable*

d) Investment income (asset administration)

e) *non-taxable only for foundations of target capitals*

f) Interest from fixed rate bonds

g) *taxable in any case*

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

h) Economic activities related/unrelated) taxable in any case

- 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)

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

No, the use of granted funds not for its intended purpose shall be recognized as taxable income of the foundation and be subject to taxation by virtue of p. 8 Art. 250 of the Tax Code of the Russian Federation.

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

Yes, obtaining property by the foundation free of charge from the organisation with registered capital which is more than 50 percent made up of the contribution (share) of the foundation is exempt from taxation in the foundation by virtue of p. 11, Art. 251 of the Tax Code of the Russian Federation.

16. Is foundations' income subject to capital gains tax, where separate from income tax?

Russian tax legislation separately does not provide such tax as capital gains tax. Gains or gross receipt from sale of assets are included into income tax base.

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

Yes, the foundation may impose VAT deduction but only subject to income-generating activity and application of general taxation system.

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

There is no capital tax in Russia. But the value of assets is subject to property tax.

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

The transfer of assets by foundations will not be subject to income tax if the transfer of assets is in the form of donations. In this case, donations by the foundation to other non-profit organisations will not be subject to tax on their income, while donations to individuals will be subject to tax on their income.

Only donations of the charity foundation to an individual will not be recognized as its taxable income (p. 8.2 Art. 217 of the Tax Code of the Russian Federation).

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

In the presence of taxation objects, the foundation shall pay the following taxes:

- Personal income tax (act as an agent);
- Contributions to state non-budgetary funds;
- State duty;
- Motor vehicle tax;
- Corporate property tax;
- Land tax.

21. 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:

Foreign foundations enjoy the same tax benefits as national foundations. They can conduct their activities in the territory of the Russian Federation through their branches and representative offices, as well as divisions. They shall notify the Ministry of Justice on opening of a branch or a representative office, and in case of opening of a division – they shall register (Art. 13.1 and 13.2 of the Federal Law on Non-profit Organisations).

- Statutes (translation required?) **Yes**
- Last annual financial report (translation required?) **No**
- Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought? **No**
- Other? **Yes**
- Notification/Application;
- Decision to open a branch or representative office/decision to establish a subdivision;
- Statement of a branch or representative office/Statute of the branch;
- Decision on appointment of the head of a branch or representative office;
- Document outlining the purposes and tasks of a branch or representative office;
- Extract from the register of foreign legal entities of the corresponding country of origin or another equivalent legal document confirming legal status of the founder – foreign person (only for divisions);
- Information about founders (only for divisions);
- Document confirming payment of the state duty (only for divisions);
- Information about the address (location) of continuing body of non-profit organisation through which you can contact non-profit organisation (only for divisions).

22. Does your country apply withholding tax to the income from local investments held by foreign-based foundations?

Yes, as a general rule, the tax is deducted from the source of payment; however, the tax agreements concluded shall be taken into account to avoid double taxation.

III. Tax treatment of donors of public benefit foundations

1. System of tax credit⁷ or tax deduction⁸?

In Russia, tax preferences for donors are provided only in the form of tax deductions.

2. Tax treatment of individual donors

Individual donors can reduce their taxable income by the amount of donations they have made to the following organisations:

- Charity organisations;
- Public benefit non-profit organisations;
- Non-profit organisations working in the field of science, culture, physical culture and sports (except professional sports), education, enlightenment, healthcare, protection of the rights and freedoms of man and citizen, social and legal support and protection, promoting the protection of citizens from emergency situations, environmental and animal protection;
- Religious organisations to conduct their statutory activity;
- Non-profit organisations for formation or replenishment of endowment (p. 1, Art. 217 of the Tax Code of the Russian Federation).

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?

Tax deductions are provided in the amount of actual expenses, but not more than 25 percent of the amount of income received during the calendar year and subject to taxation (p. 1, Art. 217 of the Tax Code of the Russian Federation).

For example, Ivanov have made a donation in the amount of 70,000 rubles to charity foundation and 50,000 rubles to religious organisation. Ivanov's taxable income for the year amounted to 450,000 rubles.

The amount of contributions per year is 120,000 rubles (50,000 rubles +70,000 rubles). It exceeds 25% of the limit set by law (120,000 rubles > (450,000 rubles x 25%)). Therefore, the amount of tax deduction, which Ivanov may declare will be 112,500 rubles. (450,000 rubles x 25%).

b) Which assets qualify for tax deductibility?

Only donations made.

⁷For 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)

⁸For 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)

3. Tax treatment of corporate donors

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

Corporate donors make donations from their net profit, i.e., from their income remaining after payment of taxes. The law does not provide them with any tax relief in respect of donations made in payment of income tax.

However, there are tax benefits to pay value added tax (hereinafter – VAT) for corporate donors:

- Transfer of fixed assets, intangible assets and (or) other property of non-profit organisation for the implementation of the main statutory activity not related to business activity is not recognized as sale and is not subject to VAT (subp. 3 p. 3 Art. 39 of the Tax Code of the Russian Federation and subp. 1 p. 2, Art. 146 of the Tax Code of the Russian Federation);
- Transfer of goods (works, services) by a donor for free as part of charitable activities according to the Federal Law on Charitable Activities, except for excisable goods (subp. 12 p. 3 Art. 149 of the Tax Code of the Russian Federation);
- Transfer of cash or real estate for formation or replenishment of endowment of non-profit organisation in the manner prescribed by the Federal Law on Endowments of Non-profit Organisations (p. 8, Art. 146 of the Tax Code of the Russian Federation).

b) Which assets qualify for tax deductibility?

For the purposes of exemption from VAT such assets are: cash, fixed assets, intangible assets, immovable property, other property, as well as goods, work and services.

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

Article 217 of the Tax Code of Russian Federation is formulated in such a way that tax deductions can be obtained by individual donors, who have made donations, for example, to a foreign charity foundation.

However, the practice of providing tax deductions of individual donors, who have made donations to foreign non-profit organisations is still undeveloped.

5. Other frameworks such as percentage law systems

The subjects of the Russian Federation by their own laws have the right to reduce the rate of income tax for certain categories of taxpayers, for example, for charity organisations, but not less than to 13.5 percent (p. 1, Art. 284 of the Tax Code of the Russian Federation). Thus, if the income tax rate is 20 percent, of which 2 percent goes to the federal budget, and 18 percent goes to the regional budget, the subjects of the Russian Federation shall have the right to reduce the rate credited to the regional budget to 13.5 percent.

At the moment, the benefits of income tax in relation to charity organisations are introduced in Saint-Petersburg, the Moscow and Samara regions.

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

a) 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?)?

To receive a tax deduction, individual donors shall make an application and, together with the tax return and copies of documents confirming donations made, submit them to the tax office at the place of residence (subp. 2 p. 1 Art. 219 and Art. 229 of the Tax Code of the Russian Federation).

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?

It is not specifically regulated by law. In practice, such cases are not known.

a) 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?)?

It is not specifically regulated by law. In practice, such cases are not known.

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

Individuals

Art. 217 of the Tax Code of the Russian Federation lists the incomes of the individuals that are exempt from taxation. These incomes include:

- Amounts received by individuals in the form of grants provided to support science and education, culture and art in the Russian Federation from international, foreign and (or) Russian organisations according to the lists of such organisations approved by the Government of the Russian Federation (p. 6);
- Amounts of payments in the form of beneficent aid in cash and in kind provided according to the legislation of the Russian Federation on the charitable activities from duly registered Russian and foreign charity organisations (p. 8.2);
- Amounts received by individuals in the form of international, foreign or Russian awards for outstanding achievements in the field of science and technology, education, culture, literature and art, mass media according to the list of awards approved by the Government of the Russian Federation (p. 7);
- Amounts of payments (including in the form of financial aid) by individuals affected by the terrorist attacks in the territory of the Russian Federation, as well as individuals, who are members of the families of the victims of the terrorist attacks in the territory of the Russian Federation, regardless of the source of payment (p. 8.4);
- Incomes not exceeding 4,000 rubles in the form of gifts received by individuals from organisations or individual entrepreneurs (p. 28);
- And others.

Thus, for the purpose of exemption from taxation of incomes received by individuals from foundations, its legal status is important, whether it is charitable or not.

As a general rule, incomes (payments) of individuals will be fully exempt from taxation if such incomes (payments) are received from foundations that are foreign or Russian charity organisations.

Grants or awards of foreign or Russian foundations will also be exempt from taxation, if they are included in the corresponding lists of the Government of the Russian Federation.

Individuals can also receive gifts with the cost not more than 4,000 rubles (about 70 euros) from any organisation, including foundations.

Legal entities

When considering tax exemption of organisations – recipients of support from the foundations, we shall take into account both legal status of such organisations and the nature of transactions on property transfer.

Incomes not subject to income tax are only provided for maintenance of non-profit organisations and conduct of their statutory activity (p. 2, Art. 251 of the Tax Code of the Russian Federation). Such incomes, for example, include donations; funds and other property, property rights received to conduct charitable activity, etc.

Thus, the recipients of support from the foundations not subject to income tax may only be non-profit organisations.

Interestingly, the grants also will not be subject to income tax. At the same time, legal status of the recipient of support does not matter. It can be commercial organisation as well.

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

Yes, upon receipt of funding from abroad, non-profit organisations, including foundations, shall fill out the corresponding report form, which shall annually be submitted to the Ministry of Justice or its territorial body report form No. ON0001.

In addition, foundations as foreign agents semi-annually and quarterly have to submit to the Ministry of Justice or its territorial body report form No. OIA001.

V. Gift and inheritance tax

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

No, gift and inheritance tax/transfer tax does not exist in Russian tax system.

According to p. 2, Art. 251 of the Tax Code of the Russian Federation, donations and inheritance of non-profit organisations, including foundations, are exempt from corporate income tax, subject to its intended use and separate accounting.

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?

Incomes in the form of donations and inheritance are recognized in non-profit organisations as non-taxable and are not taken into account when determining the tax base for income tax.

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

Incomes in the form of donations and inheritance are recognised in non-profit organisations as non-taxable in full.

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?

No, donations or inheritance come at full disposal of non-profit organisations, including foundations.

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

Russian tax legislation does not provide special procedures for tax exemption for inheritance or donations for non-resident public benefit foundations. It is likely that such incomes will be taxed as from payment source, unless tax agreements on avoidance of double taxation provide otherwise.

Non-resident public benefit foundations may conduct their activity in the territory of the Russian Federation through established divisions, branches or representative offices. In this case, donations and inheritance received may not be subject to income tax.

VI. Trends and developments

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

Russia is not a member of the European Union. The legal basis for relations between the European Union and Russia is the Agreement on Partnership and Cooperation which entered into force on December 1, 1997. This agreement is supplemented by a number of sectoral agreements.

A greater role for development of intergovernmental relations and strengthening of cooperation between non-profit organisations of Russia and the European Union is played by a newly established EU – Russia Civil Society Forum (<http://eu-russia-csf.org/>). The forum discusses issues, including those related to settlement of visa process, the development of social standards and norms in environmental protection, human rights, treatment of history and citizen participation, as well as establishing favorable legal environment for cross-border activities.

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)?

Russia became a member of the Financial Action Task Force since 2003.

The growing threat of terrorist attacks and the use of non-profit organisations in the activities of terrorist organisations and laundering criminal funds through them make non-profit organisations vulnerable to the tightening of legislation requirements regarding implementation of state control over receipt and expenditure of the funds.

Thus, recent amendments to the Federal Law dated 07.08.2001 N 115-FZ “On counteraction to legalization (laundering) of incomes from crime and financing of terrorism” lowered the threshold of funds and (or) other property received by non-profit organisations subject to mandatory control by special authority – Federal Financial Monitoring Service, from 200,000 to 100,000 rubles (amendments entered into force on May 16, 2014).

In addition, the same amendments tightened requirements for receiving so-called “electronic donations” by non-profit organisations. Now, credit institution shall identify individual donors to transfer their donations to non-profit organisations, excluding donations to religious and charity organisations registered in the prescribed manner.

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

Yes, the law on non-profit organisations is constantly changing. The last significant changes were associated with the reform of civil law.

On September 1, 2014, amendments to the Civil Code of the Russian Federation entered into force, which almost entirely replaced the previously existing rules on establishment, operation and reorganisation of legal entities (the Federal Law dated 05.05.2014 N 99-FZ “On Amendments to Chapter 4 of the First Part of the Civil Code of the Russian Federation”).

As against previously existing provisions of the Code, now the list of non-profit organisations is closed (numerous clauses).

According to these amendments, all legal entities (both profit and non-profit) were divided into corporations and unitary legal entities (Art. 65.1 of the Civil Code of the Russian Federation). A foundation as a legal form of non-profit organisations was referred to unitary legal entities, i.e. to legal entities with founders that are not their members and do not acquire the rights of membership.

New amendments also concerned general rules of foundation management. If previously foundation management structure was determined by its statute, it is now the law that sets the requirements for the presence of certain managerial bodies in the foundation, and also contains specific requirements for their competence.

In addition, the article of the Federal Law on Non-profit Organisations, regulating support for public benefit non-profit organisations, is constantly updated with new public interest purposes of such organisations (Art. 31.1). Thus, the article was amended with the following purposes:

- Search work aimed at identifying unknown military burials and unburied remains of the defenders of the Motherland, identification of names of the dead and missing in the defense of the Motherland;
- Participation in accident prevention and (or) fire fighting and disaster response;
- Social and cultural adaptation and integration of migrants;
- Measures for medical and social rehabilitation, social and labor reintegration of persons engaged in the illegal use of narcotic drugs or psychotropic substances.

At the moment the work is continuing on preparation of amendments to the Federal Law on Non-profit Organisations and other laws.

4. Public fundraising

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

Special requirements for regulation of fundraising activities in the Russian legislation are not provided. In practice, their lack is strongly felt.

Useful contacts

Anastasia Kumaritova, Legal Work Executive of the Russian Branch of Evolution and Philanthropy Company (UK)

Address: Efremova, 8, 119048, Russia, Moscow

Email: kumaritovaaa@uralsib.ru

a.a.kumaritova@gmail.com

Tel.: +7 917 598 59 19

Pavel Kumaritov, Tax consultant

Email: paul.kumaritov@gmail.com

Tel.: +1 (347) 391-8882

Selected bibliography

Gamolskii P., Tolmasova A. (2014). Non-profit organisations: accounting, taxation and legal status. M.: Buhgalterskii uchet;

Kumaritova A. (2012, November). *Fundraising of NGO: legal support*. Paper to be presented to the Conference on Crowdfunding. ASI, Moscow, Russia, (<http://te-st.ru/2013/01/11/legal-issues-crowdfunding/>);

Kumaritova A. (2011). *Benefits for donors in Russia and abroad*// The best Russian and international practices in the field of regulation of non-profit organisations. M.: CAF Russia;

Kumaritova A., Chekmareva U. (2008). *How do the donation in Russia?* M.: ICNL. (http://www.lawcs.com/index.php?option=com_phocadownload&view=category&id=24&Itemid=85);

Nonprofit Partnership Lawyers for Civil Society (LCS) (www.lawcs.com)

Legal consultations, legal research, constructive dialogue between Russian state bodies and civil society organisations;

International Center for Not-for-Profit Law (ICNL) (<http://www.icnl.org/research/monitor/russia.html>)

Resource legal center;

Information portal of the Ministry of Justice of the Russian Federation about the activities of non-profit organisations (<http://unro.minjust.ru/>).

Selected law texts online:

Garant (<http://english.garant.ru/>)

Legal reference system, comments, current legal news on legislation, and also enormous amount legal information;

Consultant Plus (<http://www.consultant.ru/sys/english/>)

Legal reference system, analytical legal materials, monitoring of legislation, and other legal information;

Official Internet portal on legal information (<http://www.pravo.gov.ru/ips/>)

State system of legal information, systematisation and providing public access to regulatory information.

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