

## Hungary

This document summarises information provided by national experts as to the tax treatment by the relevant EU Member State of public-benefit foundations and their donors both domestically and in cross-border scenarios. The information was collected for a joint project of the Transnational Giving Europe network (TGE) and the European Foundation Centre (EFC), “Taxation of cross-border philanthropy in Europe after Persche and Stauffer – from landlock to free movement?”, which resulted in a comparative study to be downloaded in full, [here](#). Following the ground-breaking decisions of the European Court of Justice, “Stauffer” (ECJ C-386/04) and “Persche” (ECJ C-381/07), most Member States have adapted their laws in order to comply with provisions of the Treaty on the Functioning of the European Union. The project mapped relevant laws and procedures across the European Union: Does a donor giving to a public-benefit organisation in another EU Member State obtain the same tax reliefs as they would get if they donated to a local organisation? What do foreign EU based public-benefit foundations need to do to have their public-benefit status recognised by foreign tax authorities? Are the procedures in place adequate and are they clear for users? How close are we to genuine free movement for philanthropy? And what steps must be taken to bring us closer?

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To receive a hard copy of the full study or for further information, please contact: [legal@efc.be](mailto:legal@efc.be).

### **1. Persche: A donor resident in Hungary donates to a public-benefit foundation registered in another EU country – does the donor get a tax incentive?**

#### **1.1. Legal situation**

##### **Are there tax incentives for giving?**

Hungarian tax law foresees tax incentives for donations to public benefit foundations only for corporate donors. Individual donors have no tax incentives for giving. According to Act LXXXI on Corporate and Dividend Tax, Chapter II Section 7, a corporate donor can deduct the amount of the donation in his/her tax declaration (tax deduction) in the following way:

20 per cent of the support or grant, or the book value of the goods or services if provided to a public-benefit organisation, 50 per cent of the support or grant, or the book value of the goods or services if provided to the National Cultural Fund or to the Hungarian Trap-trough Fund. Additionally, 20 percent of the support or grant, or the book value of the goods or services if

provided under a long-term donation contract, up to the amount of the pre-tax profit on the aggregate.

### **Do the incentives apply in cross-border scenarios?**

The present wording of the tax law gives the impression that the tax incentives for corporate donors are not explicitly applicable to donations going across borders to foreign EU based public benefit foundations/organisations. In the light of the TFEU the Hungarian tax law must however be interpreted in such a way that also donors giving to non-resident EU based public benefit foundations and other NPOs would receive the same tax treatment/incentives as those donors giving to local tax exempt organisations if they are comparable (fulfils Hungarian tax law requirements).

Based on the Act Lxxxi of 1996 on corporate tax and dividend tax chapter i, section 2 (3-4), any nonresident individual whose principal place of business/management is in Hungary shall be treated as a resident taxpayer. Foreign nationals shall be deemed taxpayers (as well as nonresident entities whose head office is located abroad) if: they carry out business operations at their branches in Hungary, provided that they are not considered resident taxpayers due to the location of their head office.

Thus the Hungarian tax law has to be interpreted that it corresponds with the Persche decision of the ECJ by requiring a comparability test.

#### **1.2. Procedures for tax incentives/the comparability test**

In order to get the tax incentive the corporate donor must state in its tax declaration that the EU or EEA based public-benefit foundation, which received its donation, fulfils Hungarian tax law requirements.

The responsible Hungarian tax authority (in the region where the donor is registered) performs the comparability test only for this specific case/request for a tax incentive by the donor. This individual decision is not kept in any register/list and may be judged differently for the same foundation by another donor's responsible local tax authority. Hungarian tax payers must show a certificate issued by the recipient public benefit organisation. The certificate must include the name and registered office of the tax payer, the name and registered office of the recipient organisation, tax number, the amount of the donation and the objective supported.

The donor has the burden of proof and the authority may require translated documents to prove the donation and the status of the recipient organisation, such as a receipt of the donation, the statutes of the foundation and the financial report of the recipient organisation.

#### **1.3. Criteria for the comparability test:**

The tax authority checks during the comparability test, whether the EU or EEA based public benefit foundation fulfils the requirements of Hungarian tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) is promoted.
- The pursuance of the public benefit purpose has to be exclusive. That means, there exists a non-distribution constraint. In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members and the administration costs must not be excessive.

2. **Missionswerk/Gift and inheritance tax: Donor stipulates in their last will that a foreign EU-based public-benefit foundation should inherit a certain amount of money – is the donation subject to gift and inheritance tax?**

### 2.1. Legal situation

#### **Are there tax exemptions for legacies to public-benefit organisations?**

Hungarian tax law foresees a gift and inheritance tax.

However, there also exists a tax benefit for public benefit foundations. According to the Act XCIII on Duties, public benefit foundations including foundations are exempt from gift or inheritance tax.

#### **Do the exemptions apply in cross-border scenarios?**

According to Hungarian law, it would only be the recipient who is tax liable for gift- and inheritance tax. If the recipient is a foreign/EU based organisation, Hungary would not levy gift- and inheritance tax but it would be up to the rules and regulations in the country where the foreign organisation is based.

### 3. Stauffer: Foreign EU-based public-benefit foundation generates income in Hungary – does the foreign foundation get a tax incentive?

#### 3.1. Legal situation

A foreign-based foundation is taxed in Hungary as far as it generates income in Hungary. Examples are:

- Income generated from purpose-related economic activities (e.g. Museum which promotes the foundation's public benefit purpose (art and culture)).
- Income generated from purpose-unrelated economic activities (e.g. noodle factory which just generates income that is used to promote the public-benefit purpose, but does not in itself directly promote the public-benefit purpose).
- Income generated from renting out property, fixed rates bonds, dividends

Hungarian tax law foresees (partial) tax incentives for public-benefit foundations in the following cases:

Fully exempt is income generated by economic activity of public benefit foundations (up to a limit of 10 million HUF or 10% of total revenues in one year), asset administration and leasing a property that belongs to the organisation

Foundations can as of January 2012 be classified as public benefit organisations according to Act CLXXV of 2011 on Right of Association, Non-Profit Status, and the Operation and Funding of Civil Society Organisations. According to Act LXXXI of 1996 on Corporate Tax and Dividend Tax, Chapter II section 7 In case the foundation is classified as a PBO the exempt entrepreneurial income of the organisation is up to 10% of its total annual income up to a maximum of 20 million HUF (approx. €73,000).

In the concrete case it is necessary to clarify, whether this tax incentive is also applicable to income generated by foreign based public benefit foundations.

Based on the Act lxxxi of 1996 on corporate tax and dividend tax chapter i, section 2 (3-4), any nonresident individual whose principal place of business/management is in Hungary shall be treated as a resident taxpayer. Foreign nationals shall be deemed taxpayers (as well as nonresident entities whose head office is located abroad) if: they carry out business operations at their branches in Hungary, provided that they are not considered resident taxpayers due to the location of their head office.

Foreign public benefit organisations are hence deemed tax payers if they have operations/branches in Hungary. They are considered resident tax payers if they have an office is in Hungary. Hungarian tax law makes no distinction according to whether the income generating public-benefit foundation is resident in Hungary or another EU or outside EU country. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Hungarian law corresponds with the Stauffer decision of the ECJ by requiring a comparability test.

Corporate tax returns shall be prepared in the Hungarian language, denominated in Hungarian Forints (HUF). In the tax declaration form, a box can be ticked that the organisation is a public-benefit organisation or a prominently public benefit organisation according to the Act CLVI of 1997). It is assumed that foreign public benefit organisations can provide evidence of their public benefit character without being obliged to register as a public-benefit organisation or a prominently public benefit organisation in Hungary.

[http://en.nav.gov.hu/data/cms226367/12T201\\_DATA\\_SHEET\\_EN.pdf](http://en.nav.gov.hu/data/cms226367/12T201_DATA_SHEET_EN.pdf)

### **3.2. Procedures for tax incentives/the comparability test**

In order to get the tax incentive the foreign based public-benefit foundation must state in its tax declaration that it fulfils Hungarian tax law requirements.

The tax exempt status of public benefit foundations is usually not decided upon for the future, meaning that the tax exempt status is not granted in a formal procedure beforehand (ex ante) but instead when dealing with the tax declaration of the foundation, the tax authority checks annually if the foundation fulfilled the requirements for tax exemption (ex post).

The responsible Hungarian tax authority will perform the comparability test to assess whether the foreign based public benefit foundation fulfils the requirements of Hungarian tax law. It performs the comparability test only for this specific case/request for a tax incentive by the foreign EU or EEA based public-benefit foundation. This individual decision is not kept in any register/list and may be judged differently for the same foundation by another responsible local tax authority.

The foundation has the burden of proof and the authority may require translated documents to prove the foundation's status, such as statutes and a financial report of the foundation.

### **3.3. Criteria for the comparability test:**

The tax authority checks during the comparability test, whether the EU or EEA based public-benefit foundation fulfils the requirements of Hungarian tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) is promoted.
- The pursuance of the public benefit purpose has to be exclusive. That means, there exists a non-distribution constraint. In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members and the administration costs must not be excessive.

## 4. Practical information

### 4.1. Further resources

National Tax and Customs Administration of Hungary: [http:// en. na v.go v.h u/](http://en.nav.gov.hu/) National Judicial Office: [www.b ir os ag. hu/e n](http://www.birosag.hu/en)

Here you will find information on the necessary steps to be taken by a foreign EU-based organisation seeking tax incentives in Hungary. The steps are the same as for resident organisations.

Legal references:

Act CXVII of 1995 on Personal Income Tax

Act LXXXI of 1996 on Corporate Tax and Dividend Tax

Act IV of 1959 on the Civil Code of the Republic of Hungary

Act XCII of 2003 on the Rules of Taxation

Act XCIII of 1990 on Duties

Act CLXXV of 2011 on Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations

Act LXXXI of 1996 on Corporate Tax and Dividend Tax – version in English:

[http://www.icnl.org/research/library/files/Hungary/corporate\\_ENG.pdf](http://www.icnl.org/research/library/files/Hungary/corporate_ENG.pdf)

### 4.2. Useful contacts

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