



## Lithuania

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 Lithuania 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?**

The Lithuanian tax law foresees tax incentives for donations to public-benefit foundations/organisations only for corporate donors. Individual donors have no tax incentives but can allocate 2% of their income tax to approved public-benefit entities. According to corporate Income Tax Act corporate donors can deduct the amount of the donation in their tax declaration (tax deduction) in the following way:

Tax deduction of cash and in-kind donations for charity and sponsorship from their income (except for cash payments beyond 250 MLS for one single recipient).

In some cases double the amount of the donation may be deducted up to 40% of taxable income.

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

Lithuanian tax law only allows tax deductibility for donors if the recipients are Lithuania based approved public-benefit organisations. Thus the Lithuanian law does not correspond with the Persche decision of the ECJ and the TFEU.

## **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?**

A gift/legacy is taxed in Lithuania as the state where the donor/testator at his/her last residence.

Lithuanian tax law foresees a gift and inheritance tax.

However, there also exist tax benefits/exemptions for donations to public-benefit foundations/organisations. According to Lithuanian gift tax law there will be no gift or inheritance tax on donations according to the Law of the Republic of Lithuania on Charity and Sponsorship.

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

Lithuanian tax law only exempts donations according to the Law of the Republic of Lithuania on Charity and Sponsorship. Donations to foreign public-benefit foundations/organisations would not fall under this exemption. The normal inheritance and gift tax rates are applicable. Thus the Lithuanian law does not appear to correspond with the Missionswerk decision of the ECJ and the TFEU.

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

#### **3.1. Legal situation**

A foreign-based foundation is taxed in Lithuania as far as it generates income in Lithuania. 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

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

Fully exempt is income generated by economic activity, which does not exceed 1,000,000 LTL (25,000 EUR). Income going beyond that threshold is taxed at a 15% rate. It should however be noted that income which is used to directly support public-benefit activities is not considered as income generated by economic activity.

Lithuanian tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Lithuania or another EU or EEA country. However foundations based in other countries are excluded. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Lithuanian law corresponds with the Stauffer decision of the ECJ by requiring a comparability test.

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

In order to get the tax incentive the EU or EEA based public-benefit foundation must state in its tax declaration that it fulfils Lithuanian tax law requirements.

The responsible Lithuanian tax authority will perform the comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Lithuanian 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 Lithuanian tax law, the core elements of which can be summarised as follows:

- The foundation/organisation pursues a public-benefit purpose. This includes that the interest of the public at large (and just the interest of a small circle of beneficiaries) is promoted.

- The pursuance of the public-benefit purpose has to be exclusive, meaning that, there exists a so-called 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

Information in English on the Law on Corporate Income Tax:

<http://www.vmi.lt/en/?itemId=108781>

Information in English on the Law on Personal Income Tax:

[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=321613&p\\_query=&p\\_tr2=2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=321613&p_query=&p_tr2=2)

Translations of other relevant laws can be found here:

<http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwelit.htm>

##### 4.2. Useful contacts

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