

Romania

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.

1. Persche: A donor resident in Romania 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?

Romanian tax law and sponsorship law foresees tax incentives for donations to any registered foundations, whether or not they hold public-benefit status. Fiscal deduction is based on a tax credit system: an individual or corporate donor has the possibility to decide how is used part of his tax income, and can chose to direct this amount to one NGO (percentage law system). In case of sponsorship made by someone in a liberal profession (lawyer, notary, etc.) they have the possibility, in addition to the 2% deduction, to deduct 5% from their income.

The donor can deduct the amount of the donation in his/her tax declaration (the fiscal declaration is submitted once per year and includes all the incomes obtained by the individual tax payer. This

declaration contains a special section where the tax payer has the possibility to nominate one NGO to which the Fiscal Authority submits 2% from the tax income. In the case of corporate sponsorship, fiscal declarations are submitted every 3 months.

Individual donors have the possibility to have the benefit of a fiscal deduction only in the two following situations:

- Directing 2% of the income tax (salary) to a non-governmental organisations (also to unions, religious cults, political parties, etc.) only once when submitting the annual fiscal declaration (Art. 57, alin.4 Fiscal Code).
- Additional deduction of the amount of sponsorship in the case of contributors who obtain incomes from independent activities (liberal professions), within the limit of 5% from the tax base amount (Art. 48, alin.5, lit.a) Fiscal Code).

Companies have only one single instrument for supporting non-governmental organisations, meaning the deduction of the sponsorships from their income tax within the limit of 20% from the tax payable, but not more than 0.3% from the annual turnover (Art. 21, alin.4, lit.p) Fiscal Code).

Do the incentives apply in cross-border scenarios?

The above mentioned sponsorships and fiscal deductions are not foreseen for donations going to foreign based beneficiary organisations. In fact there are 2 main constrains: 1) The Fiscal Code (that is governing the fiscal deduction) refers to all NGOs registered according to the GO 26/2000 (Art.7 pct. 2.2.18 Fiscal Code) as being the organisations eligible to receive tax deductible gifts, and 2) According to the sponsorship law sponsorship can support only non-profit activities that are implemented in Romania. Also, the section from fiscal declaration contains: Name, Fiscal registration number and Bank account. Only Romanian NGOs or NGOs registered in Romania could provide valid information allowing the fiscal authority to send in their bank account the amount of donation. Foreign foundations can however be recognised by the Romanian government and registered with the Tribunal of Bucharest, which enables them to perform activities in Romania and a get fiscal registration number and be recipient of deductible sponsorships/donations. This recognition process for foreign organisations is a very long procedure and only a few foreign based organisations have undergone the process.

Thus the Romanian law does not appear to correspond with the Persche decision of the ECJ. Romanian law appears to conflict the TFEU unless is it interpreted in the line of the Persche decision as to allow also donors giving to comparable EU based public-benefit organisations to be able to claim tax incentives.

1.2. Procedures for tax incentives

In order to get the tax incentive the donor must state in his/her tax declaration that the foreign based public-benefit foundation, which received his/her donation, is registered and recognised in Romania.

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

Romania levies no gift and inheritance tax on gifts and legacies, except for a few notary taxes for issuing the certificate of inheritance. There is no special provision for non-profit organisations.

Thus the Romanian law corresponds with the Missionswerk decision of the ECJ by foreseeing a non-discriminatory approach.

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

3.1. Legal situation

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

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

Public-benefit organisations may obtain non-taxable incomes as well as taxable incomes.

The incomes obtained from occasional activities (generally accepted in practice if performed 2 to 3 times per year), such as fundraising events, conferences at a fee are tax exempt, regardless of the amount of the sum.

Public-benefit organisations may perform economic activities only if the actions have a subsidiary character and are closely linked with to the purpose of the organisation. In case of incomes obtained from economic activities, the organisations are exempted from the payment of the tax for sums up to €15,000 and not more than 10% of the annual income.

Asset administration is generally tax exempt/considered non-taxable income for example interests or dividends.

Fiscal Code provide a list of incomes that are tax excepted. Below is the English version of Art. 15 alin 2 & 3:

(2) Non-profit organisations, trade unions and employers' organisations are exempt from income tax for the following types of income

- a) Fees and enrolment fees from members;
- b) Contributions in cash or in kind by members and supporters;
- c) Registration fees as established by law;
- d) Revenues from visa fees and penalties sport or participation in sports competitions and demonstrations;
- e) Donations and sponsorship money or goods received;
- f) Dividends and interest earned from the placement results of exempt income;

- g) Income for which tax is due on shows;
- h) The resources obtained from public funds or grants;
- i) Income from occasional activities such as fundraising events with participation fee , festivals, raffles , conferences, used in social or professional purposes , according to their status;
- j) Exceptional income from the disposal of tangible assets owned by non-profit organisations other than those that are or have been used in an economic activity;
- k) Income from advertising and publicity carried out by public-benefit non-profit organisations , according to the laws of organisation and functioning of culture, scientific research, education , sports, health , and the chambers of commerce and industry, trade unions and organisations employers .
- l) Amounts received as a result of failure to comply with which to make the donation / sponsorship, by law, provided that the respective amounts to be used by non-profit organizations in the current year or in future years to achieve their goals and objectives according to the act constitution or statute, as applicable;
- m) Income from compensation from insurance companies for damage to tangible equity, other than those that are used in economic activity;
- n) Amounts received from the income tax owed by individuals under the provisions of Title III.

(3) Non-profit organisations, trade unions and employers' organisations are exempt from corporation tax on income from economic activities carried out up to the equivalent in RON of €15,000 in a fiscal year, but not more than 10 % of total income exempt from income tax provided in par. (2). Organisations referred to in this paragraph tax due for the taxable profits corresponding to income, other than those referred to in para. (2) or this paragraph, calculated by applying the tax rate provided in Art. 17 para. (1) or 18, as the case may be.

Public-benefit organisations pay income tax on rental income but not on income from sales of real estate.

Renting a space is considered being economic activities. Are tax exempted only the real estates obtained from non-profit sources/activities.

In case the foundation is recognised in Romania, benefits of the same fiscal treatment as Romanian organisations.

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

Thus the Romanian law does not correspond with the Stauffer decision of the EC. Romanian law appears to conflict the TFEU unless is it interpreted in the line of the Stauffer decision as to allow also comparable EU based public-benefit organisations to be able to claim tax exemptions.

3.2. Procedures for tax incentives

In order to get the tax exemptions the foreign EU-based organisation must be registered and recognised in Romania.

In order to get the tax incentive the EU or EEA based public-benefit foundation must state in its tax declaration that it fulfils Romanian tax law requirements and is registered and recognised in Romania.

3.3. Criteria for the comparability test:

There is no comparability test but a full registration/recognition process according to Romanian law.

4. Practical information

4.1. Legal references

- Article 15 para.2 from Fiscal Code
- Article 46 from GO26/2000 regarding associations and foundation

4.2. Useful contacts

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