

Slovenia

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 Slovenia 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?

Slovenian tax law foresees tax incentives for donations to public-benefit foundations. According to the Slovenian Income Tax Act or Corporate income Tax Act the donor can deduct the amount of the donation in his/her tax declaration (tax deduction) in the following way:

Individual donors can designate up to 0.5% of their income tax. They can allocate the donations to one or more (up to five – in this case 0.1% each) organisations but they have no other tax incentives.

Under Article 59 Corporate income Tax Act corporate donors can deduct their donations to public-benefit organisations. Under Corporate Income Tax donations can be given to organisations, that:

1) Pursue humanitarian, disabled persons' assistance, social, charity, scientific, sport, cultural, health, educational, ecological or religious purposes; and

2) Are registered to pursue said activity as not-for-profit activity (Article 59, Corporate Income Tax Act).

The maximum deductible amount is 0.5% of the donor's taxable income for the fiscal year in question, though the deductible amount cannot exceed the amount of the total tax base. An additional deduction of up to 0.2% of taxable income can be taken if the donation is made for cultural purposes or to an organisation established for protection from natural and other disasters. Donations that exceed this percentage are not treated as tax deductible, but can be deducted within three years.

Do the incentives apply in cross-border scenarios?

Slovenian tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Slovenia or in another EU or EEA country. However, donations to foundations based in other countries are excluded. Under the Corporate Income Tax Act tax relief is available for donations to organisations within EU (Article 59) and EEA. Conditions are the same as for Slovenian organisations. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Slovenian law 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 donor must state in his/her tax declaration that the EU or EEA based public-benefit foundation, which received his/her donation, fulfils Slovenian tax law requirements.

The responsible Slovenian 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.

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 Slovenian tax law, the core elements of which can be summarised as follows:

- The foundation/organisation must pursue a public-benefit purpose according to Article 59 Corporate Income Tax Act in the field of humanitarian, disabled persons' assistance, social, charity, scientific, sport, cultural, health, educational, ecological or religious purposes.
- In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed.

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 Slovenia as the state where the testator at his/her last residence.

Slovenian tax law foresees a gift and inheritance tax.

However, there also exists a tax benefit for public-benefit foundations/organisations. According to Article 2 and 9 Slovenian Gift and Inheritance Tax Act there will be no gift and inheritance tax. Legal entities established for religious, humanitarian, charity, health, social, educational, research, cultural, protection or rescue activities are exempt from inheritance and gift tax are *inter alia* if gift or inheritance is given to perform such activities (Source: *Zakon o davku na dediščine in darila*) (Article 2 and 9 Inheritance and Gift Taxation Act), Official Gazette of the Republic of Slovenia, 16 November 2006, 117-12327/06.

Do the exemptions apply in cross-border scenarios?

Slovenian tax law no longer makes a distinction according to whether the recipient public-benefit foundation/organisation is resident in Slovenia or in another EU or EEA country. However donations to 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 Slovenian law corresponds with the Missionswerk decision of the ECJ by requiring a comparability test.

2.2. Procedures for tax incentives/the comparability test

The responsible Slovenian tax authority (in the region where the testator was resident) will perform the comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Slovenian tax law. It performs the comparability test only for this specific case. This individual decision is not kept in any register/list and may be judged differently for the same foundation by another testator's responsible local tax authority.

The recipient organisation has the burden of proof and the authority may require translated documents to prove the status of the recipient organisation, such as statutes and a financial reports. The recipient organisation has to fulfil the tax declaration and qualify for tax exemption in the application form and with the documents indicate that it is eligible for tax exemption.

The application form has to be in Slovenian language. Further information can be provided by the Tax Administration of the Republic of Slovenia and also by SKUP (see contact information below). The decision is made by tax authority. The check is done after submission of the tax declaration. The special tax status is valid only for the assets, mentioned in the form. We estimate that the process takes up to two weeks. No official deadlines are defined in legislation.

2.3. 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 Slovenian tax law, the core elements of which can be summarised as follows:

- The foundation/organisation must pursue a public benefit purpose according to Article 59 Corporate Income Tax Act in the field of humanitarian, disabled persons' assistance, social, charity, scientific, sport, cultural, health, educational, ecological or religious purposes.
- In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed.

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

3.1. Legal situation

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

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

Institutes, associations, and foundations do not pay corporate income tax on their not-for-profit activities, if they were established for not-for-profit purposes in accordance with the applicable law, and if their activities are carried out in accordance with their purposes (Article 9, Corporate Income Tax Law).

Each of these organisations, however – including public institutes – must pay corporate income tax on income derived from for-profit activities, even if the activities are related to the organisation's statutory purposes and activities (Article 9, Corporate Income Tax Law).

Income from profit and not-for profit activities is defined by special rules adopted by the Ministry of Finance. Under these rules, an activity is considered for-profit, if at least one of the following conditions is fulfilled: 1) the activity is performed on the market with the goal of generating a profit; or 2) by engaging in the activity, the organisation competes on the market with other taxpayers (Article 9, Corporate Income Tax Law).

Slovenian tax law makes no distinction according to whether the income generating public-benefit foundation is resident in Slovenia 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 Slovenian law corresponds with the Stauffer decision of the ECJ by requiring a comparability test.

Institutes, associations, and foundations do not pay corporate income tax on their not-for-profit activities, if they were established for not-for-profit purposes in accordance with the applicable law, and if their activities are carried out in accordance with their purposes (Article 9, Corporate Income Tax Law).

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

- The foundation/organisation must pursue a public benefit purpose according to Article 59 Corporate Income Tax Act in the field of humanitarian, disabled persons' assistance, social, charity, scientific, sport, cultural, health, educational, ecological or religious purposes.
- In case of dissolution the remaining assets have to be used for the public benefit, and the remuneration of board members is not allowed.

4. Stauffer (foreign based public benefit foundation generates income in Slovenia)

4.1. Further resources

Tax Administration of the Republic of Slovenia:

www.durs.gov.si

gp.durs-gdu@gov.si

4.2. Useful contacts

SKUP Skupnost privatnih zavodov (finance.nvo.si)

Britof 469

4000 Kranj, Slovenia

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Website: <http://www.skup.si>