



Sweden

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 Sweden donates to a public-benefit foundation registered in EU-another country – does the donor get a tax incentive?

1.1. Legal situation

Are there tax incentives for giving?

The Swedish tax law only foresees limited tax incentives for donations to public-benefit foundations/organisations approved by the tax agency in line with a law introduced in 2011(2011:1269). According to Swedish tax law, the donor can deduct the amount of the donation in his/her tax declaration (tax deduction) in the following way:

Individual donors: Since 2012 donors giving to foundations and other non-profit organisations active in charity work for the economically needy or in the promotion of scientific research receive the following tax deduction:

- 25% of a gift of 200--1,500 SEK (approx. 25-- 170€) and total gifts amounting to at least 2,000 SEK (approximately 225€)
- If the recipient is approved by the tax authorities.

Corporate donors: No tax relief is provided for corporate donors but they can deduct some expenses as business expenditure.

Do the incentives apply in cross-border scenarios?

Swedish tax law makes no distinction according to whether the recipient public-benefit foundation/organisation is resident in Sweden or in another EU or EEA country. However, donations to foundations/organisations based in other countries may only be deductible if Sweden has a double tax treaty with the home country of the organisation that includes provisions on the exchange of information. The foreign EU or EEA based public-benefit foundation must in any case fulfil all legal requirements that a resident foundation has to fulfil. Thus the Swedish 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 foreign based public-benefit foundation, which received his/her donation, fulfils Swedish tax law requirements and is approved by the Swedish tax authority as qualifying the donor's for tax relief. The foreign-based organisation must fulfil Swedish tax law requirements and must ask for approval of a specific recipient status with the Swedish Tax authorities. The organisation meeting the requirements for domestic donations (that is, active in charity work for the economically needy or in the promotion of scientific research) may be approved by the Swedish tax authority as qualifying the donors for tax relief either if Sweden has a double tax treaty with the home country of the organisation that includes provisions on the exchange of information or if the organisation's home country is a part of the European Economic Area. The recipient organisation must send a statement of the donation to the Swedish tax authorities.

An individual donor will have a tax deduction of 25% of the gift amount up to a maximum of 1,500 SEK.

The responsible Swedish tax authority performs the comparability test for the status of the organisation as eligible recipient for tax deductible donations. This decision is kept in a list and will therefore not be judged differently for the same foundation by another donor's responsible local tax authority. The decision is valid for three years and must be made before the organisation received the first gift/donation. The organisation must pay an application fee (10,000 SEK) and for the following two years a fee of 7,000 SEK.

The organisation has the burden of proof. The foreign-based public-benefit organisation must send an application form (SKV 4693 – forms are available in English) to the Tax Agency and also its current statutes, activity account and annual report for the last two fiscal years, preliminary budget, records to certify authorised signatory and account plan showing bookkeeping/account management tools to report the donations given and the use of the donations. The organisation must have at least one authorised/certified accountant. It is required that the organisation should meet the requirements for restricted tax liability in accordance with chapter 7 of the Income Tax Act.

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

- The foundation pursues a public-benefit purpose/be engaged in charity work for the economically needy or in the promotion of scientific research. This includes that the interest of the public at large 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.
- There exists a rule of timely disbursement of income under Swedish tax law.

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

Gift and inheritance tax was abolished in Sweden some 10 years ago. As of 2005, Sweden abrogated its former inheritance and gift tax law (*lag om arvsskatt och gåvoskatt* - 1941:416 (AGL)). Before the abrogation, foundations of special public benefit purpose were in any case free from gift and inheritance tax. Other types of foundations, with religious, charitable, social, political, artistic, cultural, sports or similar objectives, were free from gift tax but not from inheritance tax, according to former Art. 38 AGL.

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

3.1. Legal situation

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

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

According to Swedish tax law, most Swedish public-benefit foundations do not have to pay income tax on other income than income from holdings of real property or business activities. Thus, this means that income from capital, i.e. regular income in the form of interest and dividends as well as capital gains is tax exempt, while tax has to be paid on business and real property income. Exempt is also income generated by public-benefit foundations related economic activity needed to pursue the public benefit purpose such as running a hospital.

The rules regulating tax relief for non-profit associations are considerably more generous and wide-ranging than those regulating foundations – a law revision is in the loop to streamline the tax incentives. Only associations may for example engage in unrelated economic activities but income beyond 15,000 SEK is taxed.

To qualify for this tax relief the foundation must either fulfil the requirements in the general rules on tax relief for foundations in Chap 7 §§3-6 ITA or belong to a specially selected group of subjects that is listed in the law. Qualifying public purposes include the following:

- Sports
- Environment
- Culture
- Care and upbringing of children,
- Political activities
- Religion
- Healthcare
- Activities for poor and needy; social support
- Strengthen Sweden's defence in cooperation with military or other government authorities.
- Teaching or education,
- Scientific research,
- other similar purpose.

According to the general rules on tax relief, foundation must, pursuant to Chapter 7 §§ 6 and 18 ITA, use its income (80%) to engage in such activities over a period of several (five) years. A non-eligible subsidiary purpose may only represent an insignificant part of the foundation's activities.

The abovementioned general rules for tax relief as a result of public-benefit activities do not appear to be applicable to foreign based public-benefit organisations. There is however a tax relief in place which covers all types of foreign legal entity, not only foreign foundations and non-profit associations. As far as income tax is concerned a foreign legal entity is only liable to taxation on dividends on units in Swedish economic associations and income from a permanent place of business and real estate in Sweden (Chapter 6, articles 7 and 11 ITA). Other income from capital, i.e. the regular income in the form of interest and dividends on shares, is free of tax, as are all kinds of capital gains. A foreign legal entity therefore enjoys broadly the same tax relief as a Swedish foundation does (on the other hand, the question of paying withholding tax of 30 per cent on

dividends may arise, which may have to be questioned in the light of the decisions of the ECJ and the TFEU).

It has to be noted that certain Swedish foundations and non-profit associations can enjoy a higher degree of tax relief than only tax-freedom for income from capital. This special tax relief however only applies to specifically listed Swedish organisations. However, the general rules for tax relief for foundations and non-profit associations appear to only apply to tax subjects with an unlimited tax liability, i.e. Swedish foundations and non-profit associations, and not to such tax subjects with limited tax liability, i.e. foreign foundations and non-profit associations. However, according to our knowledge this has not been tested in case law. In the light of the TFEU and recent ECJ decisions one could argue that foreign EU based foundations/organisations should also be able to show that they fulfil Swedish tax law requirements/are comparable to those Swedish foundations/associations with an even more privileged tax regime.

Thus the Swedish tax law does not appear to correspond entirely with the Stauffer decision of the ECJ even though foreign based public benefit foundations (as well as other foreign legal entities) get almost the same tax relief as Swedish foundations and non-profit associations by applying the general rule on limited tax liability to foreign legal entities.

3.2. Procedures for tax incentives

Foreign legal entities do not need to meet the prerequisites for privileged tax status laid down in the general rules for tax relief for public benefit activities, which a Swedish foundation or non-profit association has to do if it is to enjoy the tax relief.

3.3. Criteria for the comparability test:

Not applicable.

4. Practical information

4.1. Further resources

The Tax Agency – Skatteverket:
www.skatteverket.se

4.2. Useful contacts

Skeppsbron Skatt – tax advisors
<http://skeppsbronskatt.se/en/>