

## Bulgaria

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 Bulgaria 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?**

Bulgarian income tax law foresees tax incentives for donations to public-benefit foundations in Article 22, Paragraph 1 of the Personal Income Tax Act and Article 31, Paragraph 1-3 of the 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: According to the income tax law, individuals working under a labour contract, self-employed individuals, or people receiving income from rent, annuities, or and leases are entitled to deduct donations from their taxable income. The donations must be made in favour of recipients, exhaustively listed in the law, among which are public-benefit organisations registered in the Central Registry, including foundations pursuing public-benefit purposes. The amount of the

deduction varies in three categories: 5%, 15% and 50% of the income depending on the donation recipient as briefly outlined below. The total amount of the deduction for the different categories of organisations cannot exceed 65% of the total income.

- The tax deduction of 5 % of the profit before taxation if the donation is made in favour of registered NPOs and various organisations in the field of healthcare, social-care, child protection, education, religion, integration of disabilities, people in need, helping drug addicts, etc.
- The tax deduction is 15% of the profit before taxation if the aid is provided in accordance with the procedures set forth in the Law on Maecenasship.
- The tax deduction is 50% of the profit before taxation if the donation is made in favour of the "Fund for Treatment of Children" Centre, the "Assisted Reproduction Fund", the "Transplantation Fund" Centre, or the "Central Fund for Treatment of Children".

Corporate donors: Under the Law on Corporate Income Taxation donations made by corporate donors in favour of recipients, exhaustively listed in the law, must be accounted as expenses. They are not liable to tax withheld at the source and lead directly to decrease of the financial result if they total up to 10%, 15% or 50% (depending on the recipient) of the positive financial result. If the expenses for donation exceed this percentage, the financial result is increased by the excess amount, which means that it is subject to corporate tax (10%).

- The tax deduction of 10% of the profit before taxation if the donation is made in favour of registered NPOs and various organisations in the field of healthcare, social-care, child protection, education, religion, integration of disabilities, people in need, helping drug addicts, etc.
- The tax deduction is 15% of the profit before taxation if the aid is provided in accordance with the procedures set forth in the Law on Maecenasship.
- The tax deduction is 50% of the profit before taxation if the donation is made in favour of the "Fund for Treatment of Children" Centre, the "Assisted Reproduction Fund", and the "Central Fund for Treatment of Children".
- In addition, the total amount of the expenses for donations of computers and their peripheral devices, produced up to one year before the date of the donation, made in favour of Bulgarian schools and universities, are also accounted for tax purposes. The total amount of the deduction for the different categories of organisations cannot exceed 65% of the total income.

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

Following a recent reform, enforce from January 2010, Bulgarian tax law (Article 31, Paragraph 7 of the Corporate Income Tax Act, in Article 22, Paragraph 5 of the Personal Income Tax Act) no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Bulgaria or in another EU or EEA country. However, donations to foundations based in other countries are excluded. There are differences between the tax treatment as regards organisation registered in EU Member States, EFTA Member States and third countries. One has to note that only corporate donors and not individuals have the right of tax relief when the donations are in favor of students, studying in an EU/EEA country. This exemption is not applicable to natural persons making donations for scholarships.

The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil (recipients listed in Bulgarian tax law or comparable to them). Thus the Bulgarian 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 Bulgarian tax law requirements. The donor has the burden of proof. The donor must provide an official legalised document certifying the status of the recipient organisation, issued or verified by a competent authority of the foreign country along with the translation in Bulgarian by a certified translator. The donor should also provide documents stating the date of transfer of the donation officially verified and translated into Bulgarian by a certified Bulgarian translator.

The responsible Bulgarian 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 during the review of the annual tax declaration of the donor. The duration of the process cannot be determined as it is dependent on the examination of the local tax authorities. The local tax authorities are in charge of the review and investigation, and have the right to ask for additional evidence and further details about the donation. The general period in which Bulgarian authorities should respond is 30 days. However, the annual tax declaration may be subject to a tax audit any time during the 5 years following the date its submission. This individual decision is not kept in any register/list and may be judged differently for the same foundation by another donor's responsible tax authority.

## **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 Bulgarian tax law, the core elements of which can be summarised as follows: The foundation pursues a public-benefit purpose and in case of dissolution the remaining assets have to be used for the public benefit.

## **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 or legacy is taxed in Bulgaria as the state where the testator at his/her last residence.

Bulgarian tax law foresees a gift and inheritance tax, which is payable to the municipalities.

However, there also exists a tax benefit for public-benefit foundations/organisations - see Articles 29 (for inheritance) and 44 (for gifts) of the Local Taxes and Fees Act. According to Articles 38 (for inheritance) and 48 (for gifts) of the Bulgarian gift and inheritance tax law, there will be no gift and inheritance tax for gifts/legacies made to the organisations listed in the law, including public-benefit foundations registered with the Ministry of Justice and other public-benefit organisations.

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

Following a recent reform, enforce from January 2009, Bulgarian tax law (articles 38, par.4 and 48 of the Local Taxes and Fees Act) no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Bulgaria or in another EU or EEA country. However donations to foundations based in other countries are excluded. There are differences in tax treatment according to whether the organisation in question is registered in an EU Member State, an EFTA Member State and or third country. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Bulgarian 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 Bulgarian 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 Bulgarian 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 donor/recipient has the burden of proof. The foreign public-benefit organisation must verify the existence of their public-benefit status and their identity or similarity with the legal requirements for equivalency with the Bulgarian public-benefit status. The foreign-based public-benefit organisation has to provide information in the form of an official legalised document, stating the status of the beneficiary of the donation, issued or verified by the respective authorised foreign body, translated into Bulgarian by a certified Bulgarian translator. In case of exemption for donations made for medical treatment of Bulgarian citizens resident in an EU/EEA country, as well as of technical aids for people with disabilities, the person should provide in addition a deed of donation, stating that the donation is made for medical treatment purposes or for acquisition of technical aids for people of disabilities, as well as medical documentation proving the respective illness.

The general period in which Bulgarian authorities should respond is 30 days. However, the annual tax declaration may be the subject of a tax audit at any time during the 5 years following the date its submission. There are not specific costs, except for translation and possible legal fees.

### **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 Bulgarian tax law, the core elements of which can be summarised as follows:

The foundation pursues a public-benefit purpose and in case of dissolution the remaining assets have to be used for the public-benefit.

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

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

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

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

The general principle is that the legal entities with non-profit purposes are not taxed for the non-economic activities pursuing their statutory goals. Their economic activity must be only additional and related to their statutory purposes. The income generated from the economic activity is accounted for separately. Any accounted for undistributable expenses, corresponding to the activity subject to levy of corporation tax, incurred by any not-for-profit legal entities, shall not be recognised for tax purposes. The part of the undistributable expenses, determined by multiplying the total amount of undistributable expenses by the ratio between the income from the activity subject to levy of corporation tax and all income accruing to the not-for-profit legal entity, shall be recognised for tax purposes.

The interest from fixed-rate bonds and income from interest on bank deposits is not taxed as long as the funds deposited come from non-profit activity. If it comes from for-profit activity it is taxed at the standard corporate tax rate. Income from sale of shares on a regulated Bulgarian market is tax-exempt. Dividends are taxed at a rate of 5%. Capital gains are generally not tax-exempt, thus 10% profit tax is due. The income from leasing a property shall be liable to taxes as an income from an economic activity. According to Article 10, immovable property tax shall be levied on the buildings and lots located within the territory of Bulgaria. However the taxable real estate shall be exempt from taxation which includes the Red Cross, community centres and research/educational centres. The exemption is provided that the properties are not used for commercial purposes unrelated to the core activities of the exempt organization.

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.

Bulgarian tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Bulgaria or another country (does not have to be EU/EEA) – In this situation the tax treatment does not differ between EU Member States, EFTA Member States and third countries. The foreign-based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Bulgarian law corresponds with the “*Stauffer*” decision of the ECJ by requiring a comparability test. If a foreign organisation prefers to utilise its status of public-benefit organisation or NGO in Bulgaria, it has to prove it and also to prove that the economic activity performed in Bulgaria is additional and related to its statutory purposes.

Foreign-based PBOs may choose to have activities in Bulgaria by establishing local daughter organisation, branch and permanent establishment. According to Article 2, Paragraphs 1 and 2 of the Corporate Income Tax Act, taxable persons shall be resident legal persons and non-resident legal persons which carry out economic activity in the Republic of Bulgaria through a permanent establishment or which receive income from a source inside the Republic of Bulgaria. According to Article 12, Paragraph 8, this shall include any income from immovable property or from transactions in immovable property in the country.

Foreign-based and resident public-benefit organisations in Bulgaria benefit from the same tax benefits/exemptions. The only requirements are for a legal registration and status verification. The

foreign public-benefit organisation has to fulfill all tax requirements that resident public-benefit organisations have to fulfill.

### **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 Bulgarian tax law requirements. The foreign public benefit NGOs must verify the existence of their charitable and public benefit status and their identity or similarity with the legal requirements for equivalency with the local public-benefit status. The foreign-based public-benefit organisation has to provide information in the form of an official legalised document, stating its status, issued or verified by the respective authorised foreign body, translated into Bulgarian by a certified Bulgarian translator (statutes, annual financial report and other documents at the discretion of the authority).

The tax exempt status of public benefit foundations is 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 Bulgarian tax authority will assess whether the foreign based public benefit foundation fulfils the requirements of Bulgarian tax law. It performs the test only for this specific case/request for a tax incentive by the foreign 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.

The decision whether a foreign-based organisation gets special tax status is undertaken by the local tax authorities' audit of the annual tax returns, which reflect on the activities performed. The duration of the process cannot be determined as it is dependent on the examination of the local tax and other authorities. The local tax authorities are in charge of the revision and investigation, and have the right to ask for additional evidence and further details. Foreign Nonprofit organisations do not require a specific registration unless they chose to create a permanent establishment, which would then be examined by the local tax authorities for tax purposes.

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

The tax authority checks whether the foreign-based public-benefit foundation fulfils the requirements of Bulgarian tax law, the core elements of which can be summarised as follows:

The foundation pursues a public-benefit purpose and in case of dissolution the remaining assets have to be used for the public benefit, This is not applicable in relation to the tax status of the foreign organization doing additional and related economic activity in Bulgaria. If a foreign organisation prefers to utilise its status of public-benefit organisation or NGO in Bulgaria, it has to prove it and also to prove that the economic activity performed in Bulgaria is additional and related to its statutory purposes.

## 4. Practical information

### 4.1. Useful contacts

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