

Czech Republic

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 Czech Republic 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 Czech tax law foresees tax incentives for donations to public benefit foundations (nadace). According to Section 15 (1) and Section 20 (8) of the Income Tax Act the donor can deduct the amount of the donation in his/her tax income tax statement (tax deduction) in the following way:

The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate.

The donation made by a **natural person** is deductible up to 15% of tax base, provided at least 2% of tax base is donated or not less than 1,000 CZK (approx. €35).

The donation made by a legal person is deductible up to 10 % of tax base, provided at least of 2% of tax base is donated

Do the incentives apply in cross-border scenarios?

Deductible is donation provided to foundations and associations with their registered office in the Czech Republic or EU or EEA country (reform in force from 2009). 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 Czech law corresponds with the "*Persche*" decision of the ECJ by requiring a comparability test.

Deductible is only a donation to entities pursuing one or more of the following purposes:

- science and education,
- research and development purposes,
- culture,
- education,
- police,
- fire protection,
- support and protection of young people,
- animal protection,
- social, health, ecological, humanitarian purposes,
- charitable, or religious purposes of registered churches and religious organizations, physical education and sports purposes, or
- activities of political parties and movements.

Deductible is also a donation to:

- benefit pensioners or underage persons dependent on someone else's care for
 - health equipment which is not financed through the health security system,
 - special equipment according special Act (only up to the sum which is not finance by government budgeted)
 - property which helps the education and employment for these persons.
- providers of health services or provide schools or school facilities or facilities for abandoned animals
- State or other public organizations.

The recipient of the gift is also liberated from income tax (Czech law do not foreseen gift or inheritance tax since 1st January 2014) when it is used according above mentioned purposes.

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 gift for the EU or EEA based public-benefit foundation, was given for the above mentioned purposes. Whether it is finally really used for these purposes is not liability of donor, except of cases of tax law abuse (there are some judgements on this in Czech Republic).

The responsible Czech tax authority 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 and the statutes of the foundation.

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

- The foundation pursues a public benefit purpose and performs public benefit activities enumerated in the Income Tax law (there is a list of around 20 activities including political and religious ones). This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) 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 be reasonable.
- There exists a rule of timely disbursement of income under Czech tax law. The court will wind up a foundation that does not distribute grants for a period of 2 years.

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?

Czech tax law does not foresee gift and inheritance taxes. Gifts and inheritance are considered as an income for purposes of income tax. There also exists a tax benefit for public benefit foundations according to § 19b (1), b) of income tax code. Donations and legacies to foundations registered in the Czech Republic (and also in the EU or EEA) are exempted from income taxes. The same applies to any organisation (regardless of legal form) which is performing one or more of the activities mentioned above. Also donations and legacies to political parties and registered churches are exempted.

Do the exemptions apply in cross-border scenarios?

There is a special clause dealing with inheritances to foreign EU based public benefit foundations - § 19b (1), b), 2. Following a recent reform of Czech tax law (Article 20 of Act no. 357/1992 Sb. Inheritance-, the Gift- and Real Estate Transfer Tax Act was called off, and relevant sections were transferred into income tax code), which no longer make a distinction according to whether the recipient public-benefit foundation is resident in Czech Republic 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 Czech law corresponds with the Missionswerk decision of the ECJ by requiring a comparability test.

2.2. Procedures for tax incentives/the comparability test

The public-benefit organisation has to register the donation at the tax office in cases where it is applying for tax exemption. The responsible Czech 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 Czech 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 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 report of the recipient organisation.

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

- The foundation pursues a public-benefit purpose. This includes that the interest of the public at large (and not just the interest of a small circle of beneficiaries) 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 be reasonable.
- There exists a rule of timely disbursement of income under Czech tax law.

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

3.1. Legal situation

A foreign-based foundation is taxed in Czech Republic as far as it generates income in Czech Republic. Czech tax law foresees (partial) tax incentives for public-benefit foundations in the following cases:

The profit from the foundation (nadace) principal is exempted from corporate income tax according § 19 (1), r). The foundation is prohibited from doing business under its own name, save for real estate leases and organising lotteries, raffles, public collections, cultural, social, sport and educational events., Profits of less than 300,000 CZK (approx. 11,000 euros) could be exempt. According to Article 20 section 7 Tax Act Foundations may deduct 30% from their tax base up to 1 million CZK (36,000 euros) if the tax savings are used to cover expenses from tax-exempt activities or the promotion of them.

Following a recent reform, Czech tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Czech Republic 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 Czech 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 Czech 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 not is 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 Czech tax authority will perform the comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Czech 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 Czech tax law, the core elements of which can be summarised as follows:

- The foundation 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 be reasonable.

- There exists a rule of timely disbursement of income under Czech tax law.

4. Practical information

4.1. Further resources

Web of Czech tax administration:

<http://www.financnisprava.cz/> (in English, however in the Czech version more information is given)

4.2. Useful contacts

Michal Radvan – Czech Tax Law. Accessible online via:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1826782