



Estonia

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 Estonia 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?

Estonian tax law foresees tax incentives for donations to public benefit foundations. According to Estonian Income Tax Act (hereinafter the EITA) the donor can deduct the amount of the donation in his/her tax declaration (tax deduction) or if the donor is a corporation does not have to pay tax on the donation to qualifying organisations included in a specific list kept by the Tax and Customs Board and approved by the Government of the Republic in the following way:

For individual donors, the total of donations deducted from the taxable income cannot exceed 5% of the donor’s total income (Section 27 of EITA).

For corporate donors - For corporate donors (if the recipient is in the list or mentioned in Section 11 of ITA), the total of donations deducted from taxable income may not exceed either 3% of

the sum of the payments made during the year and subject to social insurance tax, nor 10% of the calculated profit of the latest fiscal year (Section 49 of EITA).

Do the incentives apply in cross-border scenarios?

Following a recent reform in 2009, following a European Commission initiated infringement procedure, Estonian tax as law of January 2011 no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Estonia or in another EU or EEA country. However, donations to foundations based in other countries are excluded. The changes are based on the European Commission infringement procedure (IP/08/1818, 27 November 2008) and came into effect from 1 January 2011. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil but does not have to be included in the specific register for resident qualifying organisations kept by the Tax and Customs Board and approved by the Government of the Republic. Donations given to EEA based public benefit organisations that fulfil these requirements will be treated as donations given to public benefit organisations included in an Estonian list. Thus the Estonian 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/organisation, which received his/her donation, fulfils Estonian tax law requirements of Section 11 Estonian Tax Code (ITA). Subsection 10 of Section 11 of ITA enacts that a public benefit organisation established in another EEA country is deemed to be a public benefit organisation benefiting from income tax incentives if it is supported by sufficient evidence that it meets the requirements set forth in subsection (2) and no circumstances specified in clauses (4) 1), 3)–5), 7) and 8) do not exist.

The responsible Estonian 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 basis for the tax relief of donors is the inclusion of the foundation in the government's list of organisations benefiting from income tax incentives but the list includes only organisations registered in Estonia. Foreign organisations do not need to be included in this list but simply have to show that they are equivalent.

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. If the documents are in English, the tax authorities generally do not require translation.

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 Estonian tax law Section 11 ITA, the core elements of which can be summarised as follows:

- The foundation/organisation 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 not be excessive.

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?

Estonian tax law foresees no gift and inheritance tax. Thus the Estonian law corresponds with the Missionswerk decision of the ECJ.

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

3.1. Legal situation

Foreign legal persons (including EEA-based foundations) are taxed in Estonia based on the source principle by withholding or self-assessment, whereas taxation depends on the type of income. If the income is in the form of dividends or interest (not exceeding market interest rate), the income is not taxable in Estonia. If the income is in the form of royalty, there is a tax withholding, unless the recipient qualifies for associated person under directive 2003/49. Income related to the real estate in Estonia will also cause tax obligation in Estonia.

If the activities of a foreign legal person generate a permanent establishment in Estonia, income (expenses) are taxed similarly to Estonian companies taking into account the double tax treaty, if it exists.

Foreign-based foundations with permanent establishments in Estonia are not granted with same incentives as Estonian public-benefit foundations.

According to the applicable double tax treaties a foreign-based foundation is taxed in Estonia as far as it generates through permanent establishment income in Estonia. 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.

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

In general, public benefit foundations/organisations are treated in a manner similar to business organisations. They do not pay taxes on their income (in the moment the income/profit is earned) but on certain distributions/expenses. The government may grant tax-exempt status to foundations and other non-profit organisations according to section 11 ITA. In order to be included in the list of organisations benefiting from income tax incentives, a foundation must file an application and give information about its statutes and activities. However, no exemption is granted for foreign PBOs with income in Estonia (e.g. real estate investment). This implies a conflict with EU law (TFEU) and a conflict with Stauffer ruling:

4. Practical information

4.1. Further resources

Estonian tax authorities:

www.emta.ee

4.2. Useful contacts

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