

Finland

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 Finland 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?

The Finnish tax law foresees tax incentives for donations to public benefit foundations mainly for corporate donors. According Finnish 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:

Only donations in money made by corporations are tax-deductible. Deductible amounts are min 850 and max 50.000 euros. The purpose of the donation must be supporting the scientific research, arts or Finnish cultural heritage.

Individual donors do not receive tax deductions for gifts to public-benefit organisations.

However there is a temporary (2009-2013) legislation for donations to states, public funded universities and funds related to these universities in European Economic Area. This legislation is same for corporations and individual donors and estates. Deductible amounts are min 850 and max 250,000 euros.

Do the incentives apply in cross-border scenarios?

Following a recent reform Finnish tax law no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Finland 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 and must be included in a special list of accepted public-benefit organisations kept by the Finnish tax administration (so far no non-Finnish organisations are on that list). Thus the Finnish 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 Finnish tax law requirements and is included in the list of accepted public benefit organisations kept at the Finnish Tax Administration.

The responsible Finnish tax authority (in the region where the donor is registered) does not perform the comparability test but refers to the centralised list of accepted PBOs kept by the Tax Administration.

The donor has the burden of proof for the donation and the authority may require translated documents to prove the donation, such as a receipt of the donation.

The foreign PBO must apply for getting in to the list and has the burden of proof to show that it fulfils the Finnish tax law requirements. The application is a free-form but in it must be included:

- Extract from a (foundation) register
- Foundations approved by-laws
- 2 latest annual accounts
- Latest annual report
- Effective budget and
- Plan of action

The application and the documents must be translated to Finnish or Swedish.

The decision is made by state / Tax administration. The decision is valid for max 5 years. The application fee is 300 euros.

1.3. Criteria for the comparability test:

The tax authority checks during the comparability test, before registering a foreign EU based PBO, whether the EU or EEA based public benefit foundation fulfils the requirements of Finnish tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose according to Finnish tax law. 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 direct and 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 must not be excessive.
- There exists a rule of timely disbursement of income under Finnish 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

Are there tax exemptions for legacies to public-benefit organisations?

Finnish tax law foresees a gift and inheritance tax. Responsible for gift tax is the PBO and the tax must be paid if the donor had her/his domicile in Finland. Responsible for inheritance tax is also the PBO if the deceased had her/his domicile in Finland.

However, there also exists a tax benefit for public benefit foundations/organisations. According to Finnish Gift and Inheritance tax, which makes reference to the public benefit definition in the Income Tax Act, Income Tax Act there will be no inheritance tax.

Do the exemptions apply in cross-border scenarios?

Following a recent reform Finnish tax law no longer makes a distinction according to whether the recipient public-benefit foundation/organisation is resident in Finland or in another EU or EEA country. However donations to foundations based in other countries are excluded. This implementation of Stauffer/Missionswerk is not written down in the law but in regulations given by the tax authorities. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Finnish 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 Finnish 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 Finnish 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 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.

The necessary documentation would be:

- Public benefit-definition according to the foreign law
- Extract from the foreign register for foundations
- Approved by-laws
- A written evidence from the foreign tax authorities and
- All the necessary establishment related to the possible differences between the public benefit definitions in Finland and in the foreign country

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 Finnish 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 direct and 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 must not be excessive.
- There exists a rule of timely disbursement of income under Finnish tax law.

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

3.1. Legal situation

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

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

Fully exempt is income generated by related economic activity, asset administration (including fixed-rate bonds and leasing a property, if considered asset management)

Purpose unrelated economic activity is taxed.

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.

Following a recent reform Finnish tax law no longer makes a distinction according to whether the recipient public-benefit foundation/organisation is resident in Finland or in another EU or EEA country. However donations to foundations based in other countries are excluded. This implementation of Stauffer/Missionswerk is not written down in the law but in regulations given by the tax authorities. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Finnish 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 Finnish tax law requirements.

The responsible Finnish tax authority will perform the comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Finnish 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.

The necessary documentation would be:

- Public benefit-definition according to the foreign law
- Extract from the foreign register for foundations
- Approved by-laws
- A written evidence from the foreign tax authorities and
- All the necessary establishment related to the possible differences between the public benefit definitions in Finland and in the foreign country

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 Finnish 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 direct and 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 must not be excessive.
- There exists a rule of timely disbursement of income under Finnish tax law.

4. Practical information

4.1. Further resources

www.vero.fi (website for taxation, vero = tax) – see tax instruction 4.12.2009 (C-386/04)

www.finlex.fi (website for Finnish legislation)

4.2. Useful contacts

Council of Finnish Foundations

info@saatiopalvelu.fi

<http://www.saatiopalvelu.fi/>