

Greece

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 Greece 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?

Greek tax law foresees tax incentives for donations to public benefit foundations. According to Greek 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 may deduct from their taxpayer’s gross income, up to 20% of the following:

Sums of donations to charitable institutions; to non-profit public or private legal persons which provide education and award scholarships as well as other legal persons which pursue charitable purposes; to research and technology organisations governed by Law 1514/1985, and research

centres which are domestic legal non-profit persons (Art. 9 para. 3 g) cc) of Law 2238/1994, as amended with Art. 1 para. 4 cc) of Law 3842/2010).

Sums paid in sponsorship to non-profit domestic legal persons which are operating for cultural purposes (Art. 9 para. 3 g) dd) of Law 2238/1994 as amended with Art. 1 para. 4 dd) of Law 3842/2010).

In cases where the value of donations and sponsorship in line with the criteria outlined above exceeds €300 per year, these must be deposited in a special account of the legal person opened for this purpose at the Deposits and Loans Fund or a bank lawfully operating in Greece. The value of gifts and donations is deductible only if their aggregate sum exceeds €100. The deduction will apply only if the total amount of donations and sponsorships does not exceed 10% of the donor's total income taxed under the general provisions.

Corporate donors may deduct from their gross income: The amounts paid as donations to the State, to agencies of local government, to Universities, public or municipal hospitals and hospitals that are private legal persons or are subsidised by the state budget and to the Archaeological Resources Fund. The value of food donated by enterprises which produce or sell such goods to the charitable foundation called "Food Bank-Foundation for the Prevention of Hunger". The value of movable monuments, as defined by the current legislation, which are transferred as a donation to the State or to Museums recognised by the Minister of Culture. The amount deducted in this case cannot exceed 15% of total net income or profits derived from the balance sheet of each financial year. The value of medical equipment and ambulance cars, transferred as donations to the State Amounts, which do not exceed 10% of the total net income or profits derived from balance sheets and which are donated to charitable institutions, non-profit legal persons which provide educational services and award scholarships, to Churches, to the Monasteries of Mount Athos, to the Orthodox Church of Constantinople, to the Patriarchates of Alexandria and Jerusalem, to the Holy Monastery of Sinai, to the Orthodox Church of Albania, to domestic legal entities of public or private law which are lawfully formed in Greece and operate for proven charitable purposes, to the research and technology organisations established and governed by the provisions of the Law 1514/1985 and the Law 3653/2008, and to research centres which are private domestic non-profit legal entities and have been legally established in Greece.

Amounts which do not exceed ten percent of total net income or profits derived from balance sheets and which are donated to domestic non-profit legal persons of private law legally established in Greece and pursuing cultural purposes.

Donations and sponsorships which exceed €290 per year must be deposited in the Deposits and Loans Fund or in an account of the legal person kept in a bank, which legally operates in Greece. In particular, donations to sports clubs are taken into consideration only if they are deposited in an account of the Deposits and Loans Fund or in a bank, which legally operates in Greece.

The total amount of donations that are deductible may not exceed the amount of net profits generated by the removal of these amounts from the gross revenues of the relevant accounting period.

Do the incentives apply in cross-border scenarios?

Following a recent reform Greek tax law no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Greece or in another EU or EEA country. However, donations to foundations based in other countries are excluded. The donor will also benefit from tax deduction for donations to the following non-resident organisations: The Ecumenical Patriarchate of Constantinople, the Patriarchate of Alexandria and Jerusalem, the Holy Monastery of Sinai, the Orthodox Church of Albania. The foreign EU or EEA based public-benefit foundation

must fulfil all legal requirements that a resident foundation has to fulfil. Thus the Greek law corresponds with the Persche decision of the ECJ by requiring a comparability test.

The donations may be deposited into a bank of the country where the recipient is domiciled.

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 Greek tax law requirements.

The responsible Greek 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 donor has the burden of proof. The donor must provide a cash receipt voucher, which indicates the donor and the recipient, the amount of donation or sponsorship, the date, and the signature of donor or sponsor. The donor must also hand in information about the foreign non-profit legal persons receiving the donation. It must provide to the competent Greek tax authority official documents issued by the competent authorities in their country of origin giving evidence (i) that they pursue public benefit purposes and (ii) that the tax laws of their country of origin also provide for tax exemption in favour of foreign (Greek) non-profit legal persons. The donors tax authority may require translated documents to prove the status of the recipient organisation, the statutes of the foundation and the financial report of the recipient organisation.

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

- The foundation pursues a public benefit purpose. The pursuit of public benefit purposes is the main requirement for receiving tax exemptions. According to Article 1 of Law 2039/1939, a charitable purpose is any public, religious, philanthropic or other purpose beneficial to the community. The section of the public that is benefited must be chosen on the basis of an objective criterion.
- 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 is not allowed.

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/legacy is taxed in Greece as the state where the testator at his/her last residence.

Greek tax law foresees a gift and inheritance tax.

Gifts and inheritances are subject to separate taxation at a rate of 0.5% if the recipients are: Non-profit entities who exist or are formed legally in Greece, as well as foreign non-profit legal persons on the basis of reciprocity and Art. 96 of Law 2039/1939, if they are operating for a proven national or religious purposes or a wider circle of charitable, educational or artistic purposes within the meaning of Article 1 of Law 2039/1939. (Art. 25 para.3 of Law 2961/2001 and Art. 25 para. 9 of Law 3842/2010).

Cash donations to non-profit legal persons shall be subject to tax after the removal of a tax-exempt amount of thousand €1,000 per year (Art. 43 B a) of Law 2961/2001).

Do the exemptions apply in cross-border scenarios?

INFORMATION PENDING

2.2. Procedures for tax incentives/the comparability test

INFORMATION PENDING - The responsible Greek tax authority (in the region where the testator was resident) should perform the comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Greek 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.

2.3. Criteria for the comparability test:

INFORMATION PENDING -The tax authority should check during the comparability test, whether the EU or EEA based public-benefit foundation fulfils the requirements of Greek tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose. The pursuit of public benefit purposes is the main requirement for receiving tax exemptions. According to Article 1 of Law 2039/1939, a charitable purpose is any public, religious, philanthropic or other purpose beneficial to the community. The section of the public that is benefited must be chosen on the basis of an objective criterion.
- 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 is not allowed.

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

3.1. Legal situation

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

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

For Greek non-profit legal persons, only the net income earned in Greece or abroad through rental properties as well as securities is subject to tax. Any other income, including other revenues, acquired through the pursuit or fulfilment of the foundation's purposes or missions is not subject to tax (Art. 99 para. 1e of Law 2238/1994, Income Tax Act (I.T.A.)). Grants and donations, investment income, and economic activities such as income deriving from grant expenditures cannot be qualified as taxable income under Greek law (Response no. 373/2003 of the State Legal Council).

The income of Greek foundations or other charitable Greek legal persons gained from renting buildings and land is taxed at a rate of twenty percent (20%) (Art. 109 para. 2 after the amendments of Art. 12 para. 4 of the Law 3842/2010 for income from the 1 January 2010).

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.

For foreign non-profit legal entities, public or private, the net income from rental properties as well as securities (or any source) earned in Greece is subject to tax. Any other income of these entities acquired through the pursuit or fulfilment of their missions is not subject to tax (Art. 99 para. 1f of Law 2238/1994, Income Tax Act (I.T.A.)).

The income of foreign based public benefit foundations/organisations and agencies of foreign religion and faith gained from renting buildings and land is taxed at the same rate as Greek public benefit organisations a rate of twenty percent (20%) (Art. 109 para. 2 after the amendments of Art. 12 para. 4 of the Law 3842/2010 for income from the 1 January 2010).

Hence Greek tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Greece or another EU or EEA country, however only on the basis of reciprocity and Art. 96 of Law 2039/1939, if they are operating for a proven national or religious purposes or a wider circle of charitable, educational or artistic purposes within the meaning of Article 1 of Law 2039/1939. (Art. 25 para.3 of Law 2961/2001 and Art. 25 para. 9 of Law 3842/2010).

The foreign EU or EEA based public-benefit foundation must show reciprocity and fulfil all legal requirements that a resident foundation has to fulfil. Thus the Greek law corresponds with the "Stauffer" decision of the ECJ by providing equal tax treatment in case of comparability.

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 reciprocity exists for the tax treatment of Greek public benefit organisations in their home country or that it fulfils Greek tax law requirements.

The basis for reciprocity is a relief provided by national law, based on bilateral agreements for reciprocal treatment, and is examined on a case-by-case basis. In order to benefit from this relief, the beneficiary foreign non-profit legal persons must provide to the competent Greek tax authority official documents issued by the competent authorities in their country of origin giving evidence (i) that they pursue public benefit purposes and (ii) that the tax laws of their country of origin also provide for tax exemption in favour of foreign (Greek) non-profit legal persons. The responsible Greek tax authority will in addition perform a comparability test to assess whether the foreign EU or EEA based public benefit foundation fulfils the requirements of Greek tax law (e.g. it pursues a public benefit purpose etc.). 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 foreign foundation/organisation has the burden of proof. It must provide to the competent Greek tax authority official documents issued by the competent authorities in their country of origin giving evidence (i) that they pursue public benefit purposes and (ii) that the tax laws of their country of origin also provide for tax exemption in favour of foreign (Greek) non-profit legal persons. 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 Greek tax law, the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose. The pursuit of public benefit purposes is the main requirement for receiving tax exemptions. According to Article 1 of Law 2039/1939, a charitable purpose is any public, religious, philanthropic or other purpose beneficial to the community. The section of the public that is benefited must be chosen on the basis of an objective criterion.
- 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 is not allowed.