

Italy

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 Italy 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?

Italian tax law foresees tax incentives for donations to public benefit foundations and other public benefit organisations qualified as ONLUS (Organizzazione non lucrativa di utilità sociale). Italian donors/taxpayers can deduct the amount of the donation in his/her tax declaration (tax deduction) in the following way:

According to the Law no. 80/2005, an Italian tax liable individual donors can deduct from his/her income tax donations to ONLUS for an amount not exceeding 10% of the total declared income up to 70,000 euro per year. Alternatively, according to article 15 of Presidential Decree 917/86, a taxpayer may deduct, from gross tax, a certain percentage of the amount donated, up to a

maximum of 2065 euro. That percentage was 19% until 2012 but, according to Law 6.7.2012 n. 96, it has been modified in 24% for the year 2013 and in 26% since 2014.

According to the Decree Law no. 35/2005 corporate donors can also deduct from income tax donations to ONLUS for an amount not exceeding 10% of the total declared income. The maximum inference is 70,000 euro per year.

In alternative, corporate donors can deduct from their declared income the donation to ONLUS up to a maximum of 2065.83 euro or for an amount not exceeding 2% of the total declared income (article 100 of Presidential Decree 917/86).

Do the incentives apply in cross-border scenarios?

Following a recent reform issued through a circular letter no 24/E of 26th June 2006, Italian tax law no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Italy or in another since it provides foreign organisations the possibility to get the ONLUS status. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil as outlined in article 10, paragraph 1 of legislative Decree n. 460 of 1997. Thus the Italian 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 foreign based public-benefit foundation, which received his/her donation, fulfils Italian tax law requirements and qualifies as ONLUS.

ONLUS are enrolled in a particular register (see Article 5, para. 3, of Decree no. 460/1997), kept by the Ministry of Finance but in the case of foreign public benefit foundations, no registration as ONLUS is required. The responsible Italian 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 that the organisation fulfils all legal requirements (translated statutes and documents providing evidence of the foundation's activity in the fields provided by Art. 10, as well as of the fact that related commercial activities are residual for the foundation).

1.3. Criteria for the comparability test:

The tax authority checks during the comparability test, whether the foreign based public benefit foundation fulfils the requirements of Italian 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 must not be excessive. There is no limit on the amount spent on administration costs.
- There exists a rule of timely disbursement of income under Italian 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?

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

Italian tax law foresees a gift and inheritance tax.

However, there also exists a tax benefit for public benefit foundations. Presidential Decree n. 346/1990 exemptions from inheritance and gift tax.

Article 3 provides that exemptions apply in case of transfer, inter alia, to legally recognised foundations or associations with the exclusive purpose of assistance, study, scientific research, education or any other purpose for public benefit and also to so called ONLUS. Furthermore, the above mentioned exemption also applies to transfers to legally recognised public bodies, foundations and associations other than those previously noted, if the transfers are made for purposes previously referred to.

Do the exemptions apply in cross-border scenarios?

Following a recent reform Italian tax law no longer makes a distinction according to whether the recipient public-benefit foundation is resident in Italy or in another country. The exemption provided under article Presidential Decree n. 346/1990 also applies to foreign public bodies, associations and foundations established abroad if the requirement of reciprocity is met or the organisation is considered comparable to a local organisation.

With reference to trusts, there are no specific provisions in the Presidential Decree n. 346/1990 dealing with taxation for the purposes of Italian inheritance and gift tax.

Nonetheless, the matter has been dealt with quite extensively by the Tax Authorities through Circular Letter 48/E of 6 August 2007 and Circular Letter 3/E of 22 January 2008.

Thus the Italian law corresponds with the Missionswerk decision of the ECJ by requiring reciprocity a comparability test.

2.2. Procedures for tax incentives/the comparability test

The responsible Italian tax authority (in the region where the testator was resident) will perform the comparability test to assess whether the foreign based public benefit foundation fulfils the requirements of Italian 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.

2.3. Criteria for the comparability test:

The tax authority checks during the comparability test, whether the foreign based public-benefit foundation fulfils the requirements of Italian 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 must not be excessive. There is no limit on the amount spent on administration costs.
- There exists a rule of timely disbursement of income under Italian tax law.

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

3.1. Legal situation

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

Italian 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)

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 issued through a circular letter no 24/E of 26th June 2006, Italian tax law no longer makes a distinction according to whether the income generating public-benefit foundation is resident in Italy or in another since it provides foreign organisations the possibility to get the ONLUS status. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil as outlined in article 10, paragraph 1 of legislative Decree n. 460 of 1997. Thus the Italian law corresponds with the Stauffer decision of the ECJ by requiring a comparability test.

Non-resident or international non-profit entities are governed by articles 153 and 154 of Decree no. 917/1986 (TUIR).

According to art. 153, the Italian tax law take into account only the income earned in national territory except those exempt from tax and those subject to withholding tax. For the taxation, it also takes into account the unrealised gains and losses of goods relating to the business activities in State territory, even if there is no permanent establishment.

Article 154 provides that the income of non-resident non-profit entities is determined, in the same way of non-resident individuals (Art. 23 of Decree no. 917/1986).

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 Italian tax law requirements and qualifies as ONLUS.

ONLUS are enrolled in a particular register (see Article 5, para. 3, of Decree no. 460/1997), kept by the Ministry of Finance but in the case of foreign public benefit foundations, no registration as ONLUS is required.

The responsible Italian tax authority will perform the comparability test to assess whether the foreign based public benefit foundation fulfils the requirements of Italian tax law. It performs the comparability 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.

3.3. Criteria for the comparability test:

The tax authority checks during the comparability test, whether the foreign based public-benefit foundation fulfils the requirements of Italian 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 must not be excessive. There is no limit on the amount spent on administration costs.
- There exists a rule of timely disbursement of income under Italian tax law.

4. Practical information

4.1. Further resources

Website of Italian tax administration:

<http://www.agenziaentrate.gov.it/wps/portal/entrate/home>

4.2. Useful contacts

Vita Giving Europe Onlus
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