

Latvia

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 Latvia 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 Latvian tax law foresees tax incentives for donations to public benefit foundations/organisations. According Latvian 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:

Individual donors - taxable income can be reduced by amount donated to public benefit organisations. Maximum – 20% of taxable income.

Corporate donors – tax is reduced by 85% of amounts donated to public benefit organisations. Maximum tax deduction is set to 20% of total tax.

Do the incentives apply in cross-border scenarios?

Following a recent reform Section 10, Paragraph 1 of the Latvian Personal Income Tax Act and Section 20 of the Enterprise Income Tax act no longer make a distinction according to whether the recipient public-benefit foundation/organisation is resident in Latvia or in another EU or EEA country (if Latvia has entered into a convention regarding the avoidance of double taxation and the prevention of fiscal evasion). However, donations to foundations based in other countries are excluded. The foreign EU or EEA based public-benefit foundation/organisation must be comparable to Latvian qualifying organisations and must hence fulfil all legal requirements that a resident foundation has to fulfil. Thus the Latvian 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 Latvian tax law requirements.

The responsible Latvian 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 decision on tax returns is normally made within 3 months for individuals and 1 month for corporates.

The donor has the burden of proof and the authority may require translated documents to prove the donation and the status of comparability of the recipient organisation to Latvian recipient organisations, its seat in an EU/EEA country, the statutes of the foundation and the financial report of the recipient organisation. The donor must provide additional documents to show that the beneficiary is engaged in the field of public benefit, which provides a significant benefit to the society and at least 75% of donation must be spent for the purposes of public benefit (operating costs max 25%).

These requirements of which documents must be provided are not listed in the law but the experts suggests that:

Translations of any foreign-language documents may be required as Latvian language is only officially recognised language in communication with state institutions. Of the following documents:

- a) Registration certificate (confirms country of registration);
- b) Any document (certificate, decision etc.) that explains having public benefit status – this might raise many questions from Latvian State Revenue Service;
- c) Statute should work to describe that recipient is engaged in activities of public benefit;
- d) Copies of financial documents of expenditure.

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

- The foundation/organisation pursues a public benefit purpose according to Latvian law on public benefit organisations. 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

Latvian tax law does not foresee a gift or inheritance tax and a transfer/legacy from a Latvian resident testator going abroad would hence not be taxed with any Latvian gift or inheritance tax, but a state fee has to be paid to inherit the estate (7.5% of the value of the legacy and an additional 7,5% of the estate's value has to be paid to the notary. The recipient of the legacy would cover the cost, which would normally reduce the legacy by 15%.

There are no exemptions of this state fee and notary fee for receiving public benefit foundations/organisations and the expert assumes that legacies from abroad would also fall under the same regime and be taxed accordingly. Thus the Latvian law corresponds with the Missionswerk decision of the ECJ by providing equal treatment of donations/legacies by local and foreign based donors.

2.2. Procedures for tax incentives/the comparability test

Not applicable.

2.3. Criteria for the comparability test

Not applicable.

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

3.1. Legal situation

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

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

Public benefit foundations/organisations do not pay any income tax. Income generated by related or unrelated economic activity must be ancillary.

Latvian tax law appears to only provide the tax exemption for income tax to organisations registered in Latvia according to the Law on Associations and Foundations and organisations must obtain the status as public benefit organisation to gain even more tax incentives. To set up a new Latvian organisation, a small state fee has to be paid and the application is reviewed within 6 working days. After registration, the status of public benefit may be obtained. The application of the public benefit status is reviewed within one month without costs (only one meeting with the Commission based in Riga is required)

Latvian tax law still makes a distinction according to whether the income generating public-benefit foundation/organisation is resident and registered in Latvia or another EU or EEA country. Thus the Latvian law does not appear to correspond with the Stauffer decision of the ECJ and the TFEU.

In the light of the ECJ decision Stauffer and the TFEU, one could argue that comparable foreign EU based public benefit foundations would also be able to claim the Latvian income tax exemption if they can prove that they are comparable to Latvian public benefit organisations. If the foreign EU or EEA based public-benefit foundation fulfils all legal requirements that a resident foundation has to fulfil it should also be able to benefit from the tax exemption by the special Public Benefit Commission (representatives from diverse sectors, including NGOs), established under State Revenue Service, which also assess the public benefit status of Latvian public benefit organisations.

3.2. Procedures for tax incentives/the comparability test

Unclear since wording of the law appears to discriminate foreign EU based public benefit foundations/organisations, which are not registered in Latvia.

3.3. Criteria for the comparability test:

Unclear since registration and public benefit status application in Latvia is required to get tax exempt status.

The core elements of the requirements for public benefit status according to Latvian tax law 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 not be excessive.

4. Practical information

4.1. Further resources

Law on Public Benefit organisations:

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Public_Benefit_Organisation_Law.doc

Law on Associations and Foundations:

(www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Associations_and_Foundations_Law.doc)

Law on Personal Income Tax:

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/On_Personal_Income_Tax.doc

Law on Enterprise Income Tax:

http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Enterprise_Income_Tax.doc

State Revenue Service (www.vid.gov.lv)

Ministry of Finance (www.fm.gov.lv)

4.2. Useful contacts

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