



Malta

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 Malta 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?

Maltese tax law provides tax incentives in respect of donations made to public benefit foundations. The tax incentives provided to the donors are in the form of tax deductions against the donor's taxable income and different rules apply to the donors depending on the person to whom the donation is made.

Donations made to the following persons / institutions/ bodies entitle the donor to deduct the amounts donated (subject to certain capping and to the satisfaction of certain conditions) against its chargeable income:

- Cash donations made to an athlete or sports regulatory body participating in national or international sports events where such events are approved by the Malta Sports Council¹;
- Cash donations made to the Arts Fund or a cash donation to a non-profit making cultural organisation approved by the Arts Fund²;
- Cash donations made to or a scholarship provided to a bona fide artiste who is ordinarily resident in Malta;
- Cash or asset donations (except immovable property) of not less than €2,320 made to certain national heritage organisations made for the purpose of research, conservation or restoration, education and exhibition of the cultural heritage³;
- Cash donations made to the University Research, Innovation and Development Trust⁴;
- Donations, in cash or in kind, made to the Creativity Trust, established by the Creativity Trust Order⁵;

The amount of donations referred to above that are allowed as a deduction against a person's income may be subject to a minimum and a capping in certain instances:

- Donations to cultural organisations: the deduction allowed for the donor is up to the amount of the donation or € 50,000 whichever is the lesser;
- Donations to an athlete or sport regulatory body: the deduction allowed is of the actual amount of the donation or € 60,000 whichever is the lesser; Donations made to university research, innovation and development: the deduction allowed to be taken by the donor is required to be of a minimum of € 150 EUR and capped at € 50,000.
- Donations to national heritage organisations: the deduction allowed to be taken by donor is allowed in full so long that the donation exceeds € 2,320.
- Donations to the Creativity Trust: deduction allowed to be taken by donor is capped at €100,000 provided that the donation exceeds €150.

Corporate donors are allowed for a deduction against their income in respect of any donation made to any one of the above.

Individual donors are allowed for a deduction against their income in respect of any donation made to:

- i. National heritage organisations referred to above;
- ii. The University Research, Innovation and Development Trust; and
- iii. Creativity trust.

Same capping for tax deductibility as applicable to corporate donors applies to individual donors.

Do the incentives apply in cross-border scenarios?

Maltese tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Malta or in another EU or EEA country. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil including that it must be approved by the Minister responsible for finance/Revenue Commissioners in certain cases and included in the relevant list of philanthropic organisations.

¹ Donations (Sports and Culture) Rules, CAP 123, SL 123.102, Laws of Malta.

² Donations (Sports and Culture) Rules, CAP 123, SL 123.102, Laws of Malta.

³ Donations (National Heritage) Rules, CAP 123, SL 123.96, Laws of Malta.

⁴ Donations (University Research, Innovation and Development Trust) Rules, CAP 123, SL 123.113.

⁵ Donations (Creativity Trust) Rules, CAP 123. SL 123.137.

1.2. Procedures for tax incentives/the comparability test

In order to get the tax incentive (by way of a tax deductible expense) the donor must attach to his income tax return a certificate issued by the relevant regulatory body (depending on the person to whom the donation was made). Such certificate will include the name and income tax registration number of the donor and the recipient, the date and value of the donation and the purpose for which the donation was made.

The burden of proof that a donation has been made is of the donor

In order for the donor to benefit from tax deductibility, it must ensure that:

1. The donation is granted to a qualifying entity (as mentioned above)⁶;
2. A certificate is issued by the relevant body (e.g. the Malta Sports Council for donations made to athletes or a sports regulatory body) containing the date of donation, name of donor, value of donation and such other details that may be prescribed;
3. Relevant proof of donation is attached to the income tax return.

1.3. Criteria for the comparability test

The same tax rules applicable to Maltese public benefit foundations apply to EU or EEA based public benefit foundations. Thus, as long as the EU or EEA based public benefit foundation is approved by the Minister responsible for finance, any donations made by donors may benefit from the above mentioned tax incentives.

2. Missionswerk/Gift and inheritance tax: Donor resident in Malta stipulates in the 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

Maltese tax legislation does not charge any gift and inheritance tax but a stamp duty is charged on any transfer causa mortis of certain chargeable assets including immovable property situated in Malta and shares, stock, debentures, bonds and any interest in a company, corporation or a partnership. Stamp duty is payable on any transfer causa mortis by the person acquiring the chargeable asset.

There exists no exemption for public benefit foundations/organisations with regard to the stamp duty tax and hence there is no discrimination for cross-border donations.

⁶ i. In the case of donations made to athletes or a sports regulatory body, for the donation to be tax deductible by the donor, the organisation should be approved by the Malta Sports Council;

ii. Donations made to cultural organisations are required to be approved by the Arts Funds;iii. Donations made to national heritage organisations should be made to one of the following:

- a) the Superintendent of Cultural Heritage;
- b) Heritage Malta;
- c) Fondazzjoni Patrimonju Malti;
- d) non-Government cultural heritage organisations registered with the Superintendence of Cultural Heritage in terms of the Cultural Heritage Act, and cannot be related to the donor.

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

3.1. Legal situation

A foreign based foundation is subject to tax in Malta to the extent that it derives income from Malta. Examples of income that may be derived from Malta by a foreign based foundation include:

- Income generated from purpose-related economic activities (e.g. Museum situated in Malta owned by the foreign based foundation from which the foundation derives income such as entrance fees.
- Income generated by the foreign based foundation from the rental of property in Malta owned by the foreign based foundation, interest derived from Malta Corporate / Government bonds⁷, dividends derived from a Malta company⁸.

Maltese tax law provides tax incentives for public-benefit foundations which are engaged in philanthropic work and are named by the Minister responsible for Finance as engaged in philanthropic work. The organisations named by the Minister as at 31 December 2013 amount to around 150.

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.

The same tax exemptions as applicable to local-based public benefit organisations apply to foreign-based organisations. In order for foreign based organisations to benefit from the tax exemptions referred to above applicable to local organisations, they need to satisfy the conditions imposed by law, including for example that the organisation has to be for public benefit and be approved by the Minister responsible for Finance.

Maltese tax law generally makes no distinction according to whether the income generating public-benefit foundation is resident in Malta or another EU or EEA country, but there are certain exemptions from tax which are available to non-Malta resident foundations. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil.

3.2. Procedures for tax incentives

In order to benefit from the relevant tax incentives, the EU or EEA based public-benefit foundation must be approved by the Minister responsible for Finance. It must then claim the relevant tax incentive in its tax return.

3.3. Criteria for the comparability test

Before the organisation is included in the list of philanthropic organisations, the relevant authority would check whether the EU or EEA based public-benefit foundation fulfils the requirements of Maltese tax law. Element which should be considered include⁹:

- 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.

⁷ A tax exemption applies for any interest derived by a foreign based foundation from a Maltese payor.

⁸ No Malta tax will be payable by the foreign based foundation on dividends derived from a Malta company as Malta operates a full imputation system of taxation.

⁹ There may be additional requirements in the relevant national tax law. A comprehensive study of all requirements does not exist until now.

- 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

For information on the tax treatment of donors and public-benefit organisations in Malta see:

- The Malta Income Tax Act, CAP 123 and subsidiary legislation made thereunder.
- The Malta Duty on Documents and Transfers Act, CAP 364

4.2. Useful contacts

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