

Netherlands

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 Netherlands 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?

Dutch tax law foresees tax incentives for donations to public-benefit foundations.

According to Articles 6.32 and 6.34 as well as 6.38 (periodic donations by notarial deed) the individual donor can deduct the amount of the donation in his/her tax declaration (tax deduction) in the following way:

Periodic donations are fully deductible.

According to Article 6.39 Dutch Income Tax Act, other gifts are deductible for the amount that they extend €60 or 1% of the income before application of the allowance with a maximum of 10% of the income before the application of the allowance. In case of donations to cultural institutions, Article 6.39a foresees a deduction of 125% of the amount donated with an absolute maximum of €1,250.

According to Article 16 Dutch Corporate Income Tax act, the corporate donor can deduct the amount of the donation in his/her tax declaration (tax deduction) up to 50% of the profits with a maximum of €100,000. In case of donations to cultural institutions, Article 6.39a foresees that these can be taken into account for 150%. However, the maximum additional deduction is €5,000.

Do the incentives apply in cross-border scenarios?

Since 2008, Dutch tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Netherlands, the EU, Aruba, Curacao, Sint Maarten, Bonaire, St. Eustatius and Saba (the BES Islands) or in another designated country. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil and has to register as a public-benefit organisation for tax purposes as so called ANBI in the Netherlands. Thus the Dutch law corresponds with the Persche decision of the ECJ by requiring a comparability test. However an infringement procedure was launched in 2010 against the Netherlands deeming the requirement to register locally as an ANBI with the tax authorities as unnecessarily restrictive.

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, is included in the list of accepted PBOs kept by the Tax Authority Oost Brabant and hence fulfils Dutch tax law requirements. The donor can check if the concerned beneficiary organisation has already been included in the list of accepted organisations at the website of the Ministry of Finance.

The donors responsible Dutch tax authority (in the region where the donor is registered) only refers to the fact that the foreign organisation is included in the list.

A public-benefit organisation, which is registered outside the Netherlands should submit a written request for an application form at the *Belastingdienst/Oost Brabant*. The application form is in Dutch. If the organisation fulfils all Dutch tax law requirements, see below under 1.3, it will be included in the list. The process takes about 2 months and the foreign organisations generally have to submit the following:

- The statutes. If these are not in English, German or Dutch, a translation must be provided.
- A copy of a statement of the tax authorities of the country of residence and a copy of the registration with the Chamber of Commerce in the resident country.
- A copy of the most recent accounts.
- A list with names and addresses of the board members.
- A copy of the passport of the person filing the request.

Once an entity has been registered, it only has to provide information to the tax authorities on request. There is no yearly obligation to spontaneously send information, such as accounts, to the tax authorities. However, as of 1 January 2014 the PBE is obliged to post certain information on a website and to report this website to the tax authorities. Renewal of the registration is not necessary. As long as the tax authorities do not decide to deregister the PBE because it no longer meets the requirements, the entity keeps its registration.

The donor still has to provide evidence for the fact that the donation was actually made.

1.3. Criteria for the comparability test:

Before including a foreign registered organisation into the list of accepted PBOs, the tax authority checks, whether the public benefit foundation fulfils the requirements of Dutch tax law (in particular Article 5b General Tax Act), the core elements of which can be summarised as follows:

- The foundation pursues a public-benefit purpose. The institution and the persons involved must comply with integrity requirements.
- The pursuance of the public-benefit purpose has to be exclusive – at least 90% of the institutions efforts must be focused on the good cause. 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 be limited and reasonable.
- The organisation must possess and up to date policy plan.

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 Netherlands as the state where the testator at his/her last residence.

Dutch tax law foresees a gift and inheritance tax.

However, there also exists a tax benefit for public benefit foundations. According to Articles 32 and 33 Dutch Gift and Inheritance Act there will be no inheritance tax.

Do the exemptions apply in cross-border scenarios?

If the non-resident public-benefit foundation is a public-benefit entity registered as ANBI in the Netherlands, the legacy is exempt, otherwise the regular rates for third parties apply, in 2013 30% for legacies up to 118,254 and 40% for the remainder. A general exemption of €2,057 (2013) applies.

Dutch gift and inheritance tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Netherlands, the EU or in another designated country. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil and has to register as a public-benefit organisation for tax purposes (ANBI status) in the Netherlands. Thus the Dutch law corresponds with the Missionswerk decision of the ECJ by requiring a comparability test. However an infringement procedure was launched in 2010 against the Netherlands deeming the requirement to register locally as an ANBI with the tax authorities as unnecessarily restrictive.

2.2. Procedures for tax incentives/the comparability test

In order to get the exemption from gift and inheritance tax, the organisation must state in its tax declaration that it is included in the list of accepted public-benefit organisations (ANBIs) kept by the Tax Authority Oost Brabant and hence fulfils Dutch tax law requirements.

The responsible Dutch tax authority only refers to the fact that the foreign organisation is included in the list.

A public benefit organisation, which is registered outside the Netherlands should submit a written request for an application form at the *Belastingdienst/Oost Brabant*. The application form is in Dutch. If the organisation fulfils all Dutch tax law requirements, see below under 2.3, it will be included in the list. The process takes about 2 months.

2.3. Criteria for the comparability test:

Before including a foreign registered organisation into the list of accepted public-benefit organisations, the tax authority checks, whether the public benefit foundation fulfils the requirements of Dutch tax law (in particular Article 5b General Tax Act), the core elements of which can be summarised as follows:

- The foundation pursues a public benefit purpose. The institution and the persons involved must comply with integrity requirements.
- The pursuance of the public benefit purpose has to be exclusive – at least 90% of the institutions efforts must be focused on the good cause. 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 be limited and reasonable.
- The organisation must possess and up to date policy plan.

3. Stauffer: Foreign EU-based public-benefit foundation generates income in Netherlands – 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 Netherlands as far as it generates income in Netherlands. 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

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

In the Netherlands, foundations and associations are only liable to corporate income tax insofar as they run a business or are in competition with taxable businesses. All other income is not liable to corporate income tax. Certain business activities, such as maintaining a designated country estate, pension funds, hospitals, care for old people and libraries are exempt. Next to these specific exemptions a general exemption applies. As of 2012 this exemption applies to all associations and foundations (including similar foreign entities which are liable to tax as non-residents). The ANBI-status is not necessary for this exemption. The exemption applies if the profit in a year was less than € 15,000 or the profit in the year and the 4 preceding years was less than €75,000.

Since 2008, Dutch tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Netherlands, the EU, Aruba, Curacao, Sint Maarten, Bonaire, St. Eustatius and Saba (the BES Islands) or in another designated country. The foreign based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil and has to register as a public-benefit organisation for tax purposes as so called ANBI in the Netherlands. Some of the tax exemptions apply since 2012 to Dutch and foreign organisations irrespective of an ANBI status but the organisation just have to file a Dutch corporate income tax return and ask for application of the general exemption rule of Article 6 Corporate Income Tax law and prove that the requirements are fulfilled. Thus the Dutch 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 exemption corporate income tax, the organisation must state in its tax declaration that it is included in the list of accepted public-benefit organisations kept by the Tax Authority Oost Brabant or otherwise fall under the general corporate income tax exemption of Article 6 and hence fulfils Dutch tax law requirements.

The responsible Dutch tax authority only refers to the fact that the foreign organisation is included in the list.

A public benefit organisation, which is registered outside the Netherlands should submit a written request for an application form at the *Belastingdienst/Oost Brabant*. The application form is in Dutch. If the organisation fulfils all Dutch tax law requirements, see below under 2.3, it will be included in the list. The process takes about 2 months.

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:

Before including a foreign registered organisation into the list of accepted public-benefit organisations, the tax authority checks, whether the public benefit foundation fulfils the requirements of Dutch tax law (in particular Article 5b General Tax Act), the core elements of which can be summarised as follows:

- The foundation pursues a public-benefit purpose. The institution and the persons involved must comply with integrity requirements.
- The pursuance of the public-benefit purpose has to be exclusive – at least 90% of the institutions efforts must be focused on the good cause. 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 be limited and reasonable.
- The organisation must possess and up to date policy plan.

4. Practical information

4.1. Further resources

Website of the Netherlands tax authority:

www.belastingdienst.nl

On the following website you can check or the organisation is qualified as a public-benefit organisation in The Netherlands:

http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/

A PBO with its registered office outside the Netherlands wishing to apply for designation as a PBO should submit a written request for an application form to the Belastingdienst/Oost-Brabant:

Belastingdienst/Oost-Brabant
ANBI-team
Postbus 70600
5600 TR Eindhoven
The Netherlands

The application form is in Dutch.

Once an institution is qualified as a public-benefit organisation, the donations are deductible for donors. The donor can check on the website given above whether the foreign beneficiary is qualified as a PBO according to Dutch Law.

4.2. Useful contacts

Prins Bernhard Cultuurfonds
Herengracht, 476
1017 CB Amsterdam, The Netherlands
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Fax: +31-20-623 84 99
E-mail: tge@cultuurfonds.nl
Website: <http://www.cultuurfonds.nl/>