

Poland

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 text 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 Poland 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?

Polish tax law foresees tax incentives for donations to public-benefit foundations [Personal Income Tax Act [26(1)(9a)] and Corporate Income Tax Act [18(1)(1) and (1j)]. According to Polish 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:

Taxpayers of personal income tax can deduct the amount of certain donations from their taxable basis up to 6% of the taxable income (no limits for support to Roman Catholic Church). A donation is deductible if the recipient organisation conducts public-benefit activities and is a non-governmental organisation (as defined in the Act on Public Benefit and Volunteer Work) or a

corporate entity or organisation operating against provisions on relations between the State and the Catholic Church in the Republic of Poland, on the State position on other churches and religious unions, and on the guaranteed freedom of conscience and religion, should their statutory objectives encompass public-benefit work or a local authority organisation unions.

There are no strict limitations regarding the type of organisation to which donations may be made; the only restriction is that a donation, in order to qualify for tax exemption, may not be made to natural persons; entities engaged in the production of alcoholic beverages, fuels, tobacco, electronic devices, precious metals; or entities engaged in the trade of precious metals. [PIT Article 26(5), CIT Article 18(1a)].

Corporate donors can deduct the amount of their gifts from their taxable basis up to 10% of the taxable income (no limits for support to Roman Catholic Church).

Do the incentives apply in cross-border scenarios?

Polish tax law (Personal Income Tax Act [26(1)(9a)] and Corporate Income Tax Act [18(1)(1) and (1j)]) does not make a distinction according to whether the recipient public-benefit foundation is resident in Poland or in another EU or EEA country. However, donations to foundations based in other countries are excluded. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil.

Taxpayers of personal income tax can deduct from their taxable base certain donations for the benefit of organisations equivalent to Polish public-benefit organisations specified in the provisions regulating public-benefit activities applicable in an EU Member State other than Poland or other state belonging to European Economic Area, which conduct a public-benefit activity in the field of public tasks and which realise these tasks.

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 Polish tax law requirements. The deduction can be made if the following conditions are jointly met [Article 26(1)(9a) in connection with Article 6e of the PIT Act]:

- a. A taxpayer submits a written statement of the organisation that as of the day when the gift is made it was an equivalent organisation to a domestic public-benefit organisation realising purposes set out in Article 4 of the public-benefit act and conducting public benefit activity in the field of public tasks; The foreign-based public-benefit organisation should therefore provide the donor with such a statement.
- b. There exists a legal basis in a convention for the avoidance of double taxation or other ratified international agreements, to which Poland is a party, to obtain by a tax authority tax information from a tax authority of a state, in which territory the organisation has its seat.

The Polish law does not require from the foreign organisation to get a special tax status in Poland beforehand. The responsible Polish 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 and the authority may require translated documents to prove the equivalency status of the recipient organisation, such as statutes, annual financial report, other. All documents should be presented in Polish language version (sworn translation required).

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

- The foundation pursues a public-benefit purpose/activities according to the Act on public benefit and Volunteer Work. 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 and the entire income has to be allocated to public-benefit activities. 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.

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?

Gift and inheritance tax (*podatek od spadków i darowizn*) exists in Poland. It is not levied on the donors at all. It is levied only on recipients but only if they are natural persons. Thus it is not levied on public benefit-organisations irrespective of their legal form.

In turn, it cannot be levied on a foreign organisation in any circumstances, irrespective whether they are domestic or foreign.

Transfer tax (*podatek od czynności cywilnoprawnych*) exists in Poland but is not levied on gratuitous/free of charge transfers such as gifts/donations and in consequence the organisation receiving a gift are not subject to any transfer tax irrespective whether it is foreign or domestic.

Do the exemptions apply in cross-border scenarios?

This tax exemption is also applicable to inheritances to foreign EU based public-benefit foundations.

The Polish tax law makes no distinction according to whether the recipient public-benefit foundation is resident in Poland or in another EU or EEA country. Thus the Polish law corresponds with the Missionswerk decision of the ECJ.

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 Poland – does the foreign foundation get a tax exemption?

3.1. Legal situation

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

Polish tax law foresees (partial) tax incentives for public-benefit foundations in the following cases (Article 17(1)(6c), Article 17(1)(4) and Article 17(1e) of Polish CIT Act):

Income of resident public-benefit organisations from economic activity which is related to the public benefit purpose is fully exempt from corporate income tax. There are no limits for the exemption.

Any income of resident public-benefit organisations attributed to unrelated economic activities is normally taxable with corporate income tax.

Asset administration (fixed-rate bonds):

Income of resident public-benefit organisations from interest from fixed-rate bonds which is related to the public benefit purpose is fully exempt from corporate income tax.

Income from leasing a property that belongs to the organisation which is related to the public-benefit purpose is also fully exempt from corporate income tax.

A foreign organisation which derives income from sources located in Poland is in principle considered as a taxpayer of Polish corporate income tax – the same as domestic PBOs. Its tax liability in Poland is, however, limited to income derived from sources located in Poland.

There are two exemptions from CIT for public-benefit organisations/foundations and only one of them applies to foreign public benefit foundations/organisations:

1. On the one hand Polish CIT Act provides for in Article 17(1)(6c) that any income of PBOs, referred to in the provisions on public benefit and volunteer work, in so far as dedicated to statutory purposes, except from business activity, is fully exempt from taxation. This exemption does not apply to foreign public-benefit organisations/foundations since they are not "referred to in the provisions on public benefit and volunteer work".

2. On the other hand, under Article 17(1)(4) of Polish CIT Act income of taxpayers whose statutory objectives consist of activities in the fields of:

- science, technology and education, including tuition of students;
- culture;
- physical education and sports;
- environmental protection;
- supporting public projects in building roads and telecommunication networks and water supply systems in rural areas;
- charity;

- health care and social welfare;
- occupational and social rehabilitation of the disabled; and
- religious worship

is also fully exempt from corporate income tax.

Income of resident public-benefit organisations from economic activity which is related to the public-benefit purpose is fully exempt from corporate income tax. There are no limits for the exemption.

This exemption applies also to foreign public-benefit organisations/foundations.

Parts of Polish tax law (Article 17 (1) (4) Polish Corporate Income Tax Act do not make a distinction according to whether the income generating public-benefit foundation is resident in Poland or another country (foundations based in third countries are not excluded from the scope of the exemption). The exemption provided for in Article 17(1)(6c) is not applied to foreign public-benefit organisations/foundations since they are not “referred to in the provisions on public benefit and volunteer work”. In practical terms it means that the scope of the exemption from CIT under Polish law is broader in the case of resident public-benefit organisations than in the case of non-resident public-benefit organisations/foundations. This may amount to a violation of the TFEU.

3.2. Procedures for tax incentives/the comparability test

To obtain the tax exemption based on Article 17 (1) (4) of Polish CIT Act, the foreign based organisation does not need to provide information to the tax authorities beforehand. It is up to the tax inspector to take the initiative to perform a tax audit or send a questionnaire and ask all relevant information as defined on a case-by-case basis which is necessary to check the exempt status.

The foreign based public-benefit foundation must state in its tax declaration that it fulfils Polish tax law requirements. The organisation which estimates that it fulfils the conditions for exemption will complete the part of the tax return for entities, which are corporate tax exempted. There is no procedure for obtaining the tax exempt status. The tax inspector decides, during a tax audit or after an investigation whether an organisation, which considers itself tax exempt, should lose its status. Tax audits can be performed at any time.

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.

4. Practical information

4.1. Further resources

- Information from the government Department of Public Benefit on public-benefit organisations and public-benefit status in Poland (in English):
<http://www.pozytek.gov.pl/Public,Benefit,Organizations,554.html>
- See also:
<http://www.pozytek.gov.pl/Non-governmental,Organizations,533.html>
- Information from the government Department of Public Benefit on public-benefit laws in Poland:
<http://www.pozytek.gov.pl/Law,534.html?PHPSESSID=14e466b7bbeb7d1a37ed7aea2059dc6d>
- Text of gift and inheritance tax act (in Polish):
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU19830450207>
- Text of transfer tax act (in Polish):
<http://isap.sejm.gov.pl/DetailsServlet?id=WDU20000860959>
- Information on personal income tax in Poland (in English):
http://www.paiz.gov.pl/polish_law/taxation/pit
- Website of the Ministry of Finance:
<http://www.finanse.mf.gov.pl/en/abc-of-taxes/tax-system-of-poland>

4.2. Useful contacts

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