

Croatia

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 Croatia donates to a public-benefit foundation registered in EU another country – does the donor get a tax incentive?

1.1. Legal situation

Are there tax incentives for giving?

Croatian tax law foresees tax incentives for donations to public-benefit foundations. According to Croatian 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:

Income Tax Act - *Zakon o porezu na dohodak* (Public Gazette 177/04, 73/08, 80/10, 114/11, 22/12, 144/12, 120/13, 125/13)

Personal tax deduction for resident donors can be obtained for donations of in-kind and monetary donations for cultural, educational, scientific, health, humanitarian, sports and religious purposes which have been allocated to accounts of associations and other legal entities who perform these activities in

accordance with special regulations (foundations) up to 2% of income for which an annual tax registration has been made. Exceptionally, the personal tax deduction can be increased for donations made above the set value of 2 %, provided that they were approved by the competent ministries for implementation and financing of special programs and actions, but not for the regular activities of the donation recipient.

Non-residents: A natural person who is a resident of an EU or EEA member country (other than Republic Croatia) and realises income in Croatia under Article 5 of the Income Tax Act can use personal deductions for donations in his/her annual income tax declaration based on the annual tax registration.

Corporate Income Tax Act - *Zakon o porezu na dobit* (Public Gazette 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13), Article 7. (1), 10, i (7)

Profit corporate taxpayers can include in-kind and monetary donations (for cultural, educational, scientific, health, humanitarian, sports and religious purposes to associations and other persons who perform these activities in accordance with special regulations) into their business expenses (which will decrease their tax base) up to 2% of the total revenue generated in the previous calendar year.

Do the incentives apply in cross-border scenarios?

No, the Income Tax Act only regulates local donations (Croatia) and the Corporate Income Tax Act does not mention this type of case. The wording of Croatian tax law does not correspond with the Persche decision of the ECJ.

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

Croatian tax law foresees a gift and inheritance tax.

ACT ON FINANCING LOCAL AND REGIONAL SELF-GOVERNMENT UNITS

(Public Gazette 117/93 33/00, 73/00, 59/01, 107/01, 117/01-correction, 150/02, 147/03, 132/06, 73/08, 25/12), The decision of the Constitutional Court of the Republic of Croatia (Public Gazette 26/07 (Articles 6-16)

However, there also exists a tax benefit for public-benefit foundations. There will be no inheritance tax.

Article 14.

Inheritance and gift taxes are not paid by:

4. Republic of Croatia and units of local and regional self-government, government bodies and bodies of local and regional governments, public institutions, religious organisations, foundations, the Red Cross and other humanitarian organizations established under special regulations
5. Natural and legal persons when receiving gifts (donations) for purposes regulated by special regulations

The Law does not foresee a possibility of donations and inheritances abroad. Thus the Croatian law does not appear to correspond with the “*Missionswerk*” decision of the ECJ by requiring a comparability test.

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

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

CORPORATE INCOME TAX ACT

(Public Gazette no. 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13)

Article 2.

(6) State institutions, institutions of local (regional) governments, institutions of local self-government, state bureaus, religious organizations, political parties, unions, chambers, associations, art associations, volunteer fire departments, technical culture communities, tourist associations, sports clubs, sports associations and foundations are not liable to income tax.

(7) Exceptionally, if persons from Paragraph 5 and 6 of this Article perform economic activity and non-taxation of that activity would lead to unfair advantages on the market, the Tax Administration will decide (on its own initiative or at the suggestion of other taxpayers or other interested persons) that the person is liable to income tax for that activity.

Fully exempt is income generated by related economic activity, asset administration.

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. Croatian tax law does not mention taxation of income generated by public-benefit foundation resident outside Croatia. Thus the Croatian law does not appear to correspond with the “*Stauffer*” decision of the ECJ. However, according to the Law on Associations, a foreign association founded in the Republic of Croatia should be treated equal to Croatian associations and one could argue that this should also apply to the tax treatment but this is not explicitly written in the law.

Article 8.

(1) A foreign association in terms of this Act is an association or other form of association established without the intention of making a profit, which meets the requirements of this Act and which was established on the basis of the legal system of the foreign state.

(2) A foreign association can perform its activity on Croatian territory after its registration in the Register of foreign associations by the Ministry in charge of general administration.

(3) A foreign association acts in the Republic of Croatia in accordance with this Law.

4. Practical information

4.1. Useful contacts

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