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Legal Environment for Philanthropy in Europe

Belgium

COUNTRY PROFILE

By Ludwig Forrest
King Baudouin Foundation

Francis Houben
Legal & Tax Management
SPRL

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I. Legal framework for foundations

1. **Does the jurisdiction recognise a basic legal definition of a foundation? (please describe) What different legal types of foundations exist (autonomous organisations with legal personality, non-autonomous without legal personality, civil law, public law, church law, corporate foundations, enterprise foundations, party political foundations, family foundations, foundations of banking origin as a specific type, companies limited by liability, trusts)? Does your jurisdiction recognise other types of philanthropic organisations?**

According to the new companies and association's code (hereafter mentioned as CAC), a foundation is defined as "a legal entity which has no members and is set up by one or more persons called founders. Its assets are allocated to the pursuit of a disinterested goal within the framework of the exercise of one or more specific activities that constitute its purpose".

In Belgium there are two types of foundation, namely the private foundation and the public-benefit foundation.

Art 11.1 of the CAC states that a foundation can be recognised as a public-benefit foundation if it pursues "philanthropic, philosophic, educational, cultural, religious, social or other public benefit purposes".

The other foundations are called "private foundations".

2. **What purposes can foundations legally pursue?¹**

- Only public-benefit
- Both public- and private-benefit

3. **What are the requirements for the setting up of a foundation (procedure, registration, approval)? What application documents are required? Are there any other specific criteria for registration?**

For the foundations (as well public-benefit foundations as private foundation) the statutes have to be enacted by a notary public. Public-benefit foundations need to be recognised as such by the Ministry of Justice. The approval takes the form of a Royal Decree.

4. **Is state approval required? (approval by a state supervisory authority with/without discretion)**

- Approval by a state authority with discretion
- Approval by a state authority without discretion (only for public-benefit foundations)
 - Approval by a court
- Notarisation by a notary public

5. **Are foundations required to register?**

a) If foundations must register, in what kind of register?

- Company register ((Banque Carrefour des Entreprises)
 - Foundation register at national level
 - Foundation register at the regional/county level
- Beneficial ownership register
 - Any other public register (other than a foundation/charity one)

¹ This question focuses only on public-benefit foundations; see the definition in the Glossary developed for this project, which can be found on the Philanthropy Advocacy website.

- b) If foundations are registered, what information is kept in the register?

At a minimum: full legal name, including its translation into the other national languages (if applicable), legal address, other places of business (if applicable), company number, date of establishment, status (in operation or dismantled), foundation type (private or public benefit), names of legal representatives, social security activity category (only if the foundation employs staff), accounting year (for large foundations).

Other data fields are optional (website, telephone number, fax, email address).

- c) If foundations are registered, is the register publicly available?

- Yes, all information publicly accessible
 Yes, some information publicly accessible
 Yes, accessible upon request
 No

6. Is a minimum founding capital/endowment required?

- No. The law only states that the initial capital of a non-profit foundation must be sufficient to enable it to achieve the disinterested objective it has set itself.
 Yes, amount:

7. Is the foundation required to maintain these assets or any other specified asset level throughout its lifetime? Are spend-down foundations allowed?

Yes, spend-down foundations are allowed. There is no obligation to maintain assets or any other specified asset level throughout the lifetime of the foundation.

8. What governance requirements are set out in the law? Is it a one-tier or two-tier foundation governance model?

- a) Is it mandatory to have a:

- Supervisory board
 Governing board

- b) What are the requirements concerning board members? Is a minimum/maximum number of board members specified? Does the law regulate the appointment of board members and their resignation/removal or can this be addressed in the statutes/bylaws?

The law does not require a minimum number of board members. The rules on the appointment and resignation/removal of board members are not foreseen in the law. They must be enacted in the statutes according to art 2.11 §2 4° of the CAC.

- c) What are the duties and what are the rights of board members, as specified by national legislation or case law?

Since there are no members, and consequently no general assembly, the board of directors cumulates the powers of these two bodies, which also impacts the rights and duties of board members. Generally speaking, the board of directors has the power to perform all acts necessary or useful to achieve the goals of the foundation. In the Belgian civil law (CAC) there is no enumeration of the rights and duties of the directors. It goes without saying that the rights include the right to participate in board meetings in order to participate in the deliberations and to vote. The duties of the board members could be described in the light of the rules on director's liability. The director should manage the foundation with competence, seriousness and loyalty in order to ensure its stability, continuity and development. He or she must, of course, keep himself or herself informed, be present at board meetings and monitor the person(s) in charge of the daily management and the staff. It should be kept in mind that the new CAC replaced the individual liability of directors by a joint and several liability.

- d) What are the rights of founders during the lifetime of the foundation? Can fundamental decisions, such as change of purpose, be made at the discretion of the founder? What are the legal requirements in such circumstances?

The law does not foresee specific rights for the founders. However, the statutes can grant rights to them and foresee that fundamental decisions, such as change of purpose, or appointment or dismissal of directors, can be made at the discretion of the founders. The first meeting held before the notary can also appoint the founders (or some of them) as board members.

- e) Can the board or the founder amend the statutes including the purpose of the foundation? If yes, please indicate any particularities. What is the relationship between the powers of the founders, the statutes of the foundation and the power of the board members?

The board can amend the statutes including the purpose of the foundation if this is foreseen and regulated by the statutes. It should be noted that some modifications of the statutes need to be enacted in a notarial deed. These modifications are those concerning: (1) the nomination and dismissal of Directors, (2) the nomination or dismissal of legal representatives of the foundation, as well as the way in which the representation powers are exercised, (3) the nomination and dismissal of the persons responsible for the daily management of the foundation, as well as the way in which daily management is exercised, (4) the conditions for amending the statutes, (5) the use of the foundation's assets in case of dissolution, and (6) for private foundations, the precise description of the not-for-profit aims pursued by the foundation.

Moreover, in case of a public-benefit foundation and if the modification consists in a modification of the purpose, the notarial deed should be submitted to the approval of the Ministry of Justice. The approval takes the form of a Royal Decree.

- f) What are the rights of third parties (e.g. right of information)?

The beneficiaries of a charitable foundation do not have more rights than third parties (consulting the file at the clerk office of the court of first instance or consulting the annual accounts of large foundations through the website of the "Centrale des bilans"), unless more rights would be conferred to them in the statutes, or on a separate contractual basis.

- g) What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?

When the board of directors is called upon to take a decision or carry out an operation in which a director has a direct or indirect patrimonial interest which is opposed to the interest of the foundation, that director must inform the other directors before the board takes a decision. The director's statement must be included in the minutes of the meeting of the board that has to take this decision. A director with a conflict of interest may not take part in the deliberations of the board concerning these decisions or operations, nor take part in the vote on this point.

In case there is only one director and if this person has a conflict of interest, he/she may take the decision. However, the director must then describe, in a special report, the nature of the decision or transaction in question and its patrimonial consequences for the foundation and justify the decision that has been taken. This part of the minutes or this report is included in its entirety in the management report or in the document filed with the annual accounts.

If the foundation has appointed a statutory auditor, the report shall be communicated to the auditor. In a separate section, the auditor will assess the financial consequences for the foundation of the decisions of the administrative body in which there is an opposing interest. Ultimately the auditor might refuse to certificate the accounts.

- h) Can staff (director and/or officers) participate in decision-making? How and to what extent?

Non-members of the board cannot participate in the decision-making (vote). However, the statutes foresee that founders may have a voting right. Staff can normally not participate in decision-making, unless persons entrusted with daily management if decisions limited to daily management have to be taken and if this is foreseen in the statutes.

9. What is the liability of the foundation and its organs? What is the general standard of diligence for board members? (e. g. duty of obedience, duty of care/prudence, duty of loyalty)? In what type of rule are these criteria established: fiscal, administrative, civil, commercial? Is there a solid case law, if any, regarding the duty of due diligence? Does your country differentiate between voluntary (unpaid) and paid board members? Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities? If a complaint is brought, which authority has competence in such cases: administrative, tax authority, only the judiciary power (attorney general) or beneficiaries/general public?

The CAC has introduced a harmonised framework of directors' liability for all legal entities including foundations. The most important general liability grounds, outside bankruptcy, are:

- Liability for management errors (that is decisions, actions or behaviour that apparently fall outside the margin within which normal, prudent and careful directors, placed in the same circumstances, can reasonably be expected to avoid).
- Liability for damages resulting from a violation of the articles of association or the provisions of the CAC (such as not filing the annual accounts).

Now, directors are in principle always jointly liable, which means that damages can be claimed from each director for the entire amount. The limitation period has been set at five years for all liability grounds. The CAC has also limited the hold-harmless practices, since it explicitly provides that legal entities may not exonerate or indemnify in advance their directors from their liability towards the INPA or third parties.

Does your country differentiate between voluntary (unpaid) and paid board members?

Whether or not the directors are paid does not in principle make a difference as far their liability is concerned. However, according to some sources of doctrine, as far as extra-contractual liability is concerned, the liability of a non-remunerated director might be treated less severely than of a remunerated director. It is difficult to predict how the jurisprudence will evolve on this point after the entry into force of the CAC.

Who can claim responsibility for breaches of such duties: the other members of the board, the founder/s, the public authorities. In which case who: administrative, tax-authority, only the judiciary power (Attorney General) or beneficiaries/general public?

The other members of the board or any interested third party can claim responsibility for breaches of such duties.

10. Who can represent a foundation towards third parties? Is this specified in law or is it up to the statutes of the organisation? Do the director and officers have powers of representation based on legislation?

The law art 11:7 of the CAC foresees that the board of directors represents the foundation in all matters including representation in justice. The statutes can also confer one or more board members the power of representation, which can be exercised individually, jointly or collegially. For the representation in the framework of the daily management the statutes can also give the possibility to appoint a non-member of the board.

11. Are purpose-related/unrelated economic activities allowed? If so, are there other types of limitations on economic activities (related/unrelated)?

It should be noted that, according to the civil law, a foundation is allowed to carry out economic activities, even if these activities are more than incidental. However, if a foundation carries out economic activities more than incidentally, this might have adverse consequences on its tax status. The entity might lose its exemption from corporate tax. Moreover, the eligibility to receive income tax deductible gifts might also be challenged.

12. Is there any legal/fiscal framework for grantmakers to be able to fund legal entities that are conducting economic activities in addition to their public utility activities? If any, what are the limitations for funding those kinds of legal entities?

It should be emphasised that the new CAC foresees that associations and foundations are fully allowed to carry out economic activities (but they are forbidden to distribute profits). However, the tax rules are totally different: a non-profit organisation which carries out economic activities (unless these economic activities are incidental or unless in case of other specific derogations foreseen by art 181 or 182 of the income tax code), will be subject to corporate tax.

13. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity?

There is no legal provision which would prohibit a foundation from being a major shareholder in a company. However, from a tax point of view and depending on different elements of the context, the corporate tax exemption of this foundation might be challenged. (see answer in II 14, e).

14. Are there any rules/limitations in civil and/or tax law regarding foundations' asset management (only secure investments/bonds/investments with a certain return)? What, if any, types of investment are prohibited? Are there any limitations on mission-related investments?

There are no civil rules regarding asset management. From a tax point of view, art 182 of the income tax code states that operations consisting in the investment of funds obtained within the scope of the statutory non-profit purpose are not considered as profit-making operations. Consequently, they do not put in danger the exemption from corporate tax.

15. Are foundations legally allowed to allocate grant funds towards furthering their public-benefit purpose/programmes which (can) also generate income – impact investing? (recoverable grants; low interest loans; equities)

Yes, foundations can allocate or grant funds towards furthering their public-benefit purpose / programmes which (can) also generate income – impact investing.

16. Are there any limitations (in civil law/tax law) to political party related or general lobby/advocacy activities?

As far as the law on companies and associations is concerned, there are no explicit restrictions on lobbying/advocacy activities. However as far as public-benefit foundations are concerned there could be doubts as to whether lobbying for interests of a (commercial or industrial) sector would fit with the notion of “public benefit” and whether a foundation with such a purpose would be recognised by the Belgian Ministry of Justice. Advocating (for the general interest) would in principle not be a problem. As far as private foundations are concerned, lobbying would not be a problem.

17. What are the requirements for an amendment of statutes/amendment of foundations' purpose?

The modification of the statutes requires a notarial deed. If the modification concerns the modification of the purpose of the foundation and if the foundation is a public-benefit foundation the statutes should be submitted to the approval of the Ministry of Finance. The approval takes the form of a Royal Decree.

18. What are requirements with regard to reporting, accountability, auditing?

- a) What type(s) of report must be produced?
 - Annual financial report/financial accounts
 - Annual activity report (only for large foundations)

- Public-benefit/activity report
- Tax report/tax return
 - Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members) - deposit for publication in the Moniteur Belge and Banque Carefour des Entreprises
- Report on conflict of interest (self-dealing and conflict of interest breach cases) - See answer to question 8 h

b) Must all/any of the reports produced by the foundation be submitted to supervisory authorities? If so, to which authorities (e.g. foundation authority, tax authority)?

As far as the annual accounts, budget and management report of foundations are concerned, these reports should be submitted to the National Bank of Belgium (Centrale des Bilans) for large and small private or public-benefit foundations, together with the report of the statutory auditors (when the foundation meets the conditions to appoint a statutory auditor).

Micro and other small foundations have to file their accounts and annual budget with the clerk's office of the Court of enterprises. This is the case if, on the balance sheet date of the last closed financial year, no more than one of the following criteria is exceeded:

- An annual average number of employees of 5
- €334,500 for the total income, other than non-recurring, excluding value added tax
- €1,337,000 for total assets
- €1,337,000 for total debts

As far as income tax return is concerned the return has to be filed with the Ministry of Finance (online procedure).

c) Are the reports checked/reviewed? By whom (supervisory/tax authorities)?

The National Bank does not perform a systematic control regarding the content of the annual accounts. As far as tax aspects are concerned, the inspector may perform tax audits in order to determine whether all elements that are subject to the tax on legal entities were properly declared and whether the formalities concerning payments to third parties were completed. The inspector will also check whether the exemption from corporate tax can effectively be claimed by the foundation.

d) Do any or all of the reports and/or accounts of foundations need to be made publicly available? If so, which reports and where (website, upon request)?

Accounts of large foundations can be consulted online by any third party.

e) Is external audit required by law for all foundations?

No, only for very large foundations. Very large foundations are foundations which meet 2 of the following criteria:

- More than 50 employees
- More than 9.000.000 EUR income, VAT excluded
- More than 4.500.000 EUR total balance sheet

f) By whom should audits be undertaken? Do requirements/guidelines exist regarding international and national auditing agencies and standards?

In order to ensure the independence of audits, they should be undertaken by statutory auditors who are members of the Institut des Réviseurs d'entreprises (Belgian Institute of statutory auditors).

19. Supervision: Which authority, what measures?

- a) What type of body is the supervisory authority? (multiple answers possible)
- A public administrative body

- A public independent body
 - A combination of a governmental body and a court
 - A court
 - A public administrative body and an independent body
 - A tax authority
 - Other
- b) Does the supervisory body review reports?
- Yes
 - No
- c) Are foundations subject to inspection?
- Yes: tax inspection (for income tax, VAT and substitute inheritance tax).
 - No
- d) Is approval from the authority required for certain decisions of the governing board?
- Yes, formal approval is needed - Yes, but it is even more than an approval. The decision of dissolving a foundation distributing the assets to another charity and closing the liquidation cannot be taken by the board of the foundation, but only by the Court, possibly upon request of the board or the founders or upon request of the public prosecutor in certain cases.
 - Yes, needs just to be informed
 - No

If yes, please specify which type of decisions:

- e) Is it mandatory to have a state supervisory official on the governing board?
- Yes
 - No
 - Can a government official be appointed to the governing board by a state authority, if so please mention:

f) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public-benefit status?

- Sanctions for non-compliance:

Failure to register or to publicise: failure to comply with the obligation to register or to deposit certain documents at the clerk's office of the court will result in the decisions contained in these documents being unenforceable and claims introduced by the foundation before a court being inadmissible.

- Accounting obligations:

Foundations that have not published their annual accounts for three years (dormant foundations) can be liquidated by the Court upon the request of the public prosecutor or any third party. Any claim that would be introduced by a foundation that had not deposited its annual accounts would be inadmissible.

- Tax aspects:

Foundations that do not file their income tax returns will receive penalties: A tax of 309% will be imposed on foundations that do not justify in a specific format (statement 325) the payment of professional income to employees or self-employed persons. The eligibility for receiving income tax deductible gifts will not be renewed in cases of infringement of the tax laws, if it appears that the foundation is no longer exempted from the corporate tax or if the foundation has not published its annual accounts.

- Other enforcement measures:

Upon the request of the public prosecutor, the court of first instance can dismiss directors who have been blatantly negligent and appoint new directors. It can also modify the statutes if the application of the current statutes leads to a paralysed situation or to a situation which was not foreseen by the founder.

20. When and how does a foundation dissolve?

According to art 2:114 Book 2 of the CAC, only the competent court can dissolve a foundation upon the request of the founder, the board, or of the public prosecutor's department in the following cases:

- If the purpose has been achieved or is impossible to achieve
- If the foundation uses its estate for purposes other than the statutory purpose
- If the foundation violates the law, or the bylaws, or neglects to submit its accounts for three years

21. Is there a maximum that can be spent on office/administration costs in civil law and/or tax law? If yes, what is the amount?

As far as the law on associations is concerned there is no maximum. However on the tax level there is a maximum if the foundation is eligible to receive income tax deductible gifts.

22. Does civil and/or tax law require a foundation to spend a certain percentage of its overall assets within a certain period of time (e.g. within the next financial year)? In particular, can a foundation accumulate these expenses over a period of time (and if so, what kind of authorisation is required to do so)?

Neither civil law nor tax law (exemption of corporate tax) require that foundations spend a certain percentage of their overall assets within a certain period of time. However, foundations eligible to receive income tax deductible gifts should show annual activity reports showing that they have performed the charitable activities which make them eligible to receive such gift. In order to perform these activities they have costs normally. The fact that they would not have any activity might cause them to lose eligibility.

23. Under what conditions does the civil law in your country recognise a foreign foundation? Do they have to register? Does your law recognise the concept of trusts?

Foreign foundations can operate in Belgium through a centre of activity, insofar as they have been validly constituted abroad in accordance with the law of the state to which they belong. In order to be recognised in Belgium, they have to comply with Article 2.26 of the CAC, which requires creation of a file at the clerk's office at the court of enterprises and deposit of the following elements:

- Articles of the foundation
- Address of the foundation
- Identity of the persons who can represent the foundation towards third parties
- Description of their powers
- Annual accounts of the foundation

These elements will be published at the Belgian Official Gazette. The centre of activity or branch must also register at the Banque Carrefour des Entreprises.

24. Does the law in your country allow a foundation to conduct (some or all) activities (grantmaking, operating, asset administration, fundraising) abroad? Is there any limitation?

Activities performed abroad are not forbidden or restricted in the civil law. It should however be kept in mind that there are some tax provisions which might restrict such a freedom, among others the provisions on the eligibility to receive income tax deductible gifts.

25. Does the law in your country impose any restrictions on ability to receive donations from abroad? If so, please describe.

The CAC does not impose restrictions on the ability to receive income tax deductible gifts.

26. Does the civil law in your country allow the transfer of the seat of a foundation (in the EU) and/or cross-border mergers?

Yes, cross-border transfers of the seat are also allowed for non-profit organisations, including foundations. The Belgian legislation (new CAC) allows inbound and outbound cross-border conversions of associations and foundations. Cross border conversions include relocation of the registered office and at the same time the conversion of the legal entity into a legal form which is foreseen by the legislation of the host state (Inbound conversion = immigration = seat transfer and conversion of a foreign non-profit entity into a Belgian Foundation or association. Outbound conversion = emigration = seat transfer and conversion of a Belgian Foundation into a non-profit legal form foreseen by the legislation of the foreign state.) The whole operation takes place under the principle of continuity of the legal personality of the entity being transferred. Thanks to this amendment to the law, Belgium has become an attractive country for non-profit organisations wishing to establish themselves in Belgium without being liquidated and consequently without losing their original identity, assets, contracts, and subsidies.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

- Pursuing public-benefit purposes
- Non-distribution constraint
- Being resident in the country
- Other

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

Income tax exemption: The exemption is not subject to any prior formal agreement by the tax authorities. The tax inspector, however, may challenge the organisation's income tax status later on, at any time.

Eligibility to receive income tax deductible gifts: An application request should be filed with the Ministry of Finance.

3. Is specific reporting required for the use of public funds (grants received from public bodies/state/municipality/etc.)?

In the CAC itself, there are no rules on reporting for the use of public funds. However in case a foundation solicits a subsidy or a grant from public bodies (State subsidy, local subsidy or EU funds) there will be conditions, obviously, for obtaining this subsidy, including rules on reporting.

4. Is there an obligation to report to public authorities on donors and beneficiaries? If so, to which authority and what type of information?

In the framework of the provisions on eligibility to receive income tax deductible gifts there is an obligation to report on donors (identification, name, address). The donors list should be sent to the Ministry of Finance (through Belco Tax on Web). Since the foundation which qualifies for receiving deductible gifts should issue an activity report, there is in fact indirectly an obligation to report on beneficiaries.

5. Is there a statutory definition of what a public-benefit purpose (charitable purpose) is in the civil law (foundation law, trust law) of your country? If yes, please give us the definition. If so, is the determining definition that subsequently links to tax benefits?

In the framework of the CAC there is a very precise definition of the public-benefit foundation: "a foundation can be recognized as public-benefit foundation if it pursues a purpose which is philanthropic, philosophic, educational, cultural, religious, social or other public benefit purposes". There is only one specific tax advantage in being recognised as a public-benefit foundation, namely the exemption from the substitute inheritance tax.

6. Is there a statutory definition of what a public-benefit purpose is in the tax law of your country? If yes, please give us the definition.

In the Belgian tax law there is no other definition of public-benefit purpose as such.

7. Please indicate whether the following purposes would or would not be accepted for tax privileges in your country (noting that the tax status often depends on additional requirements):

(see following page)

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	x			
Environmental protection	x			
Civil or human rights		x*		
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination		x**		
Social welfare, including prevention or relief of poverty	x			
Humanitarian or disaster relief	x			
Development aid and development cooperation	x			
Assistance to refugees or immigrants	x			
Protection of, and support for, children, youth or elderly	x			
Assistance to, or protection of, people with disabilities	x			
Protection of animals	x			
Science, research and innovation	x			
Education and training		x		
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)		x		
Health, well- being and medical care	x			
Consumer protection				x
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			

Infrastructure support for public-benefit purpose organisations	x			
Party political activity				x
Advocacy				x
Advancement of religion			x	
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

Additional comment on the chart:

It should be noted that in Belgium, tax privileges are treated differently depending on the type of privilege: The criteria for income tax exemption are not the same as the criteria for being eligible to receive income tax deductible gifts. These last are more severe. None of the purposes enumerated in the chart can be considered as an obstacle to the income tax exemption. However it should be pointed out that the main criterion for the exemption from corporate tax is the fact of carrying out for-profit operations or not. Foundations and associations may however carry out for-profit operations if these operations remain purely ancillary to the principal not-for profit activity.

The answers in the above-mentioned chart do only focus on one of the tax privileges, namely the eligibility to receive income tax deductible gifts.

Commentary on the asterisks in the first column of the chart:

* Civil or human rights: Not as such, but it may fall in the category “culture”, sub-category “permanent education”.

** Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination: Not as such, but it may fall in the category “culture”, sub-category “permanent education”.

8. Support of “the public at large”

- a) Do the activities of a foundation with public-benefit status for tax purposes generally have to benefit “the public at large”?

For corporate tax exemption, the number of beneficiaries concerned (“public at large”) is not a criterion as such.

For the eligibility of the foundation to receive income tax deductible gifts, there is a geographical criterion. According to Art. 104 of the Income Tax Code, the activity scope of organisations in some of the sectors enumerated by the law should be national or at least cover one of the three regions or the geographical scope of one of the three communities of Belgium.

- b) If yes, can a foundation with public-benefit status for tax purposes support a closed circle in a sense that beneficiaries can be identified based on legal or family affiliations?

The criterion “public at large” is not relevant for determining whether tax exemption and income tax deduction should be granted or not. In the below-mentioned examples the income tax exemption for gifts might in some cases not be granted, since for some types of charities enumerated by the law there are conditions regarding the geographical scope of activity of the foundation which might not be met (second row of the table). For the first row, this criterion would be met if we take the example of Brussels, which is a city, but also a “region” in the sense of Belgian law. Universities (rows 5 and 6) do not meet the criterion of the geographical scope, but are explicitly mentioned by the law as eligible for tax benefits.

9. Non-distribution constraint

- a) Does a foundation with public-benefit status for tax purposes generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc.?

Yes, according to the CAC, the entity should not provide to its directors, staff or founders any material gain. Any distribution of surpluses or distribution of assets is forbidden.

Articles 181 and 182 of the ITC (on corporate tax exemption) deals with foundations, associations and organisations that do not pursue a profit-making purpose. This wording has to be understood as a prerequisite. Even if the other conditions of art 181 or 182 are met, the organisation would not benefit from the corporate tax exemption if the organisation does not satisfy the prerequisite.

- b) What happens with the foundation’s assets in case of dissolution - can the assets revert to private ownership or do they have to stay in the public-benefit sphere?

The assets should be transmitted to another entity that has a similar purpose to that of the liquidated organisation. The statutes should indicate which organisation would be entitled to receive the net assets. For public-benefit foundations, the attribution of the assets coming from the liquidation will be submitted to the authority of a judge.

10. “Altruistic” element

- a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Remuneration of directors is not explicitly forbidden in civil nor in tax law. Neither of these establish any ceiling. However, according to the doctrine, the remuneration of directors should never be set as a function of the foundation’s income, but only as a function of their work.

- b) Does **tax law** allow a donor/funder to receive some type of benefit in return for a donation? (e.g. postcards, free tickets for a concert)

- If the founders/donors/directors receive some type of benefit from the foundation, this is taxable as a benefit in kind. If benefits are granted on a larger scale, it could contribute to jeopardising the (corporate) tax-exempt status of the foundation. It should also be stressed that the administrative comments on the eligibility to receive income tax deductible gifts stipulate that the benefits which a donor can receive after he made a gift should be extremely modest (e.g. a small brochure with the activities of the foundation, a sticker, etc.). If this rule is not respected, the gift or donation will not be deductible.

- c) Is there a maximum amount that can be spent on office/administration costs in **civil law** and in **tax law**? If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

In the civil law, there is no limit in the law. In the tax law, the provisions on the eligibility of an organisation to receive tax-deductible gifts require that the organisation does not spend more than 20% of its resources on administrative costs. There is also a specific ceiling for the costs related to collection of funds (30%)

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)
- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising - as mentioned above, there is a specific ceiling

11. Hybrid structures (elements of private benefit in public-benefit foundations)

- a) Does the **civil law** of your country accept the following provisions/activities of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.	x only for private foundations, never for public-utility foundations				
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.			x		
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.			x		
A foundation distributes a (small) part of its income to the founder or their family.					x

- b) Does the **tax law** of your country accept the following provisions/activities of a tax-exempt foundation?

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.	X - for private foundation only				
The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for their own continuing use.				x	
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.				x	
A foundation distributes a (small) part of its income to the founder or their family.					x

12. Distributions and timely disbursement

- a) Are foundations allowed to spend down their endowment?

Yes, as long as these expenses are made to pursue the objectives and activities of the foundation which are mentioned in the statutes.

- b) Are they allowed to be set up for a limited period of time only? If so, is there a minimum length of time for which the foundation must exist?

Yes.

- c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?

No.

- d) Does the **civil law** and/or **tax law** of your country require a foundation to spend a percentage of its overall assets in the form of a “pay-out rule”?

No.

Example: Does the **civil law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation.	x				

Example: Does the **tax law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation.		x*			

* On the income tax level the accumulation of income is not a problem insofar as it is income from investment (real estate income, interest, securities, etc.) and that there is still an intention to start the main (charitable) activity. As far as the eligibility to receive income tax deductible gifts is concerned, the pure accumulation of income during the first five years would be a problem since there would be no charitable activity which would justify the obtaining of this tax privilege.

13. Are activities abroad in another country compatible with the public-benefit tax status?

Yes, as far the exemption from corporate tax is concerned. It should however be kept in mind that there are some tax provisions, namely in the framework of tax deductible gifts: if a Belgian entity is recognised as eligible to receive income tax deductible gifts it should be verified whether the rules applicable to the category to which it belongs allow it to have activities outside the Belgian territory.

14. Can public-benefit organisations with a tax-exempt status also support/give grants to for-profit organisations (such as a small green start-up)?

Yes.

15. Corporate income tax treatment. How are the following types of income treated for corporate income tax purposes? Are they taxable or exempt?

For answering this question as well as question 16, we suppose that the foundation in question meets the criteria to be exempt from corporate tax. If this is the case, it will be subject to another tax, namely the tax on legal entities. In the framework of that tax some elements might be taxable, while others are not.

- a) Grants and donations – Not taxable
- b) Investment income (asset administration) – Taxable

- Interest from fixed rate bonds
 - Equities
 - Income from leasing of a property that belongs to the foundation
- c) Economic activities (related/unrelated)
- Income from running a hospital/museum/opera – Not taxable
 - Income from producing/selling books (e.g. art books sold by a cultural foundation) - Not taxable if it is ancillary
 - Income from running a bookshop inside a museum/opera run by the foundation - Not taxable if it is ancillary
 - Income from running a café in the hospital/museum run by the foundation - Not taxable if it is ancillary
 - Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose) - Not taxable if it is ancillary
 - Income from intellectual property (e.g. royalties and licence fees) – Taxable
- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?

Income deriving from loans, equities, etc...are subject to the tax on legal entities and are taxed at the rate corresponding to the withholding tax on these elements of income.

- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

Foundations are not forbidden from owning shares or even major shareholdings, if this “holding” activity is still subordinated to their statutory purpose and if the income from these assets is used for their statutory non-profit purpose. However from a tax point of view (income tax exemption) the answer is more complex: It should be examined in which context the acquisition of the major shareholding in a business undertaking has taken place, whether the foundation which has the major shareholding is also part of the board and takes an active role in the business. Three situations could be distinguished:

1. The foundation which has the major shareholding is a foundation trust office (« stichting administratiekantoor », « fondation bureau d’administration »), namely a private foundation which aims to limit the change of ownership in family businesses and to ensure the continuity, since the foundation itself is the legal owner of shares. The shareholders receive certificates in exchange for their shares. This structure can be considered as an inheritance planning vehicle. The foundation trust office is explicitly mentioned in art 181 of the income tax code, which foresees an exemption to the corporate tax, provided that the conditions of this provision are met.
2. The Belgian Tax Authorities (Ruling Commission) did also issue several favourable rulings (exemption of corporate tax) in situations where a foundation had a major shareholding in a company with social purpose.
3. In the other situations a foundation which would own a major shareholding in a company might be considered as indirectly running a business and would not meet the exemption criteria of art 182 of the ITC, namely « the investment of funds obtained in the scope of the statutory non profit purpose » if the major holding is the exclusive or principal activity of that foundation.

16. Are capital gains subject to tax? If so, are they liable to corporate income tax or to a separate tax?

Capital gains can arise on the transfer of assets for free or for monetary compensation. If the assets are donated by a non-profit organisation (subject to the tax on legal entities), the capital gains realised on these assets are not subject to the tax on legal entities. Only transfers for compensation (e.g. sale or exchange) are subject to the tax on legal entities as follows: If a non-profit organisation (i.e. foundation) transfers assets for compensation, the capital gain is taxable insofar as it concerns:

- Land or buildings located in Belgium which have been purchased or acquired through a lifetime gift if the capital gain is realised in a certain period after the acquisition.
- Substantial shareholdings in commercial companies which are subject to the Belgian corporate tax (i.e. if the NPO has owned a shareholding of at least 25% during the 5 years preceding the transfer of the shares), if the shares are sold to a company which is not subject to the corporate tax in Belgium, i.e. a resident company.

17. Does any kind of value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations exist in your country?

If a foundation delivers goods or provides services for monetary compensation in the sense of the VAT code, it is subject to VAT. The law foresees exemptions for services of social utility (including health care, education, and culture). These services are enumerated in Art. 44 of the VAT code. It should be mentioned that these exceptions should be interpreted restrictively. The VAT exemption is not optional: It is applicable or not, depending on the exact circumstances or facts relevant to the organisation that renders the services or supplies goods linked to these services. Foundations which are to be considered exempted taxpayers do not need to charge VAT on their services, but may not deduct input VAT. There is no other refund scheme for this irrecoverable VAT.

18. Is capital tax levied on the value of assets, where applicable?

Yes, the substitute inheritance tax (taxe compensatoire aux droits de succession/tax tot vergoeding der successierechten) is an annual worth tax levied on non-profit associations created after 10 July 1921, international non-profit associations and private foundations. Public utility foundations are not subject to this tax.

19. Are there taxes on the transfer/ sale of assets by foundations?

Transfers of real estate for monetary compensation made to a non-profit organisation or from a non-profit organisation are subject to registration duties at the normal rate of 12.5% for real estate located in the Brussels Region or in Wallonia and 10% for real estate located in Flanders. If a foundation transfers real estate for free to another non-profit organisation, there is no gift tax on the transfer, but only a flat tax of €100.

20. Are there any other taxes to which public-benefit foundations are subject to (e.g. real property tax)?

Non-profit organisations are subject to a real estate withholding tax on their immovable assets located in Belgium. This tax is assessed on the cadastral income (i.e. the annual rental value of the immovable property). Some non-profit organisations can be exempted from real estate tax (Art. 253.1 of the Income Tax Code). In order to benefit from this exemption, the charity should use the real estate, without profit purpose, for one of the purposes enumerated by the law, e.g. church-related aims or aims related to non-religious moral standards, education, health care (hospitals or clinics), holiday homes for children, or homes for the elderly.

21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If they have to fulfil exactly the same requirements as locally-based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:

- Statutes (translation required?)
 - Last annual financial report (translation required?)
 - Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public-benefit purposes, which may not be required by the organisation's country of seat but are required according to the legislation of the country from which tax benefits are sought?
 - Other

A foreign foundation operating in Belgium is in principle treated the same way as a Belgian foundation. As far as corporate tax exemption is concerned, the following comment can be made. As explained above, the corporate tax exemption can be obtained based on one of the two following grounds:

(i) The organisation can be exempted if it does not carry out operations of a for-profit nature or if it performs only incidental profit-making operations or if it does not use commercial methods.

(ii) An organisation can also claim the exemption on the sole basis that it belongs to one of the “privileged sectors” enumerated by Article 181 of the Income Tax Code (for instance, education).

It should be noted that the exception of “privileged sectors” mentioned in article 181 is only applicable to resident organisations. A foreign organisation operating in Belgium that only meets the second criterion (ii) would be subject to corporate tax. The Belgian legislation should be amended on this point, as far as organisations of the European Union or European Economic Area (EEA) countries are concerned, since it violates the Treaty of Rome (Jurisprudence « W. Stauffer case). As already mentioned above, if the exemption under (i) is claimed, no document should be produced in advance.

Income tax deduction: Eligibility for income tax deduction of gifts made by Belgian residents concerns only organisations established in Belgium. Equal treatment has been introduced by the law in December 2009 for organisations established in one of the EEA countries (see section III on the tax treatment of donors: Donations to non-resident public-benefit foundations). Inheritance and gift tax: Equal treatment is granted in the three regions of Belgium.

22. Does your country have signed bi-lateral tax treaties, which provide for reciprocal tax treatment of public-benefit organisations? If so, with which countries?

For income tax (exemption), Belgium has not concluded specific treaties focusing on tax treatment of non-profit organisations.

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

Foundations, as well as other NPOs, are normally subject to the tax on legal entities. This regime implies taxation through a withholding tax on movable income (dividend, interest, etc.) For foreign investment income consisting of dividends and interest income, the non-profit organisation should pay the withholding tax if the income was directly received abroad (which implies that no tax was withheld by a Belgian intermediary).

III. Tax treatment of donors of foundations

1. Is there a system of tax credit or tax deduction or other mechanisms such as tax allocation systems or matching grants?

For corporate donors: tax deduction (see point 3 below)

For individual donors: tax reduction (see point 2 below)

2. Tax treatment of individual donors

- a) What tax relief is provided for individual donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

There is a minimum of €40 per gift. The aggregate value of the gifts cannot exceed 10% of the taxable income, with an absolute maximum of €392,200 for the total of the gifts (tax year 2020 income 2019).

- b) Which assets qualify for tax deductibility (e.g. cash, real estate, in kind or other)?

In principle, only gifts of cash to qualifying NPOs can benefit from tax reduction. If the gift is made to a state museum, the Regions, the Communities (Flemish- or French-speaking Communities), the Provinces, or the Public Centres of Social Assistance (CPAS - OCMW), and provided that these bodies transfer these assets to their museums, gifts of works of art are tax deductible under certain conditions. Foundations do not benefit from this possibility.

3. Tax treatment of corporate donors

- a) What tax relief is provided for corporate donors? Is there a minimum and/or a ceiling to a contribution on which tax incentives can be claimed?

The tax relief consists of a tax deduction. Cash donations of €40 or more are deductible up to 5% of the taxable income, with an absolute maximum of €500,000.

- b) Which assets qualify for tax deductibility? (e.g. cash, real estate, in kind, or other)

Only cash.

4. Tax treatment of donations to non-resident public-benefit foundations: Do donors get the same tax incentive?

Originally the income tax deduction was only foreseen for gifts to qualifying charities located in Belgium. Further to infringement procedures issued by the European Commission and case law of the ECJ, the law has been modified. It states that gifts to qualifying domestic institutions or to similar institutions from another member state of the European Economic Area, which are recognised in a similar manner (“ou aux institutions similaires d'un autre Etat membre de l'Espace économique européen qui sont agréées de manière analogue”) will benefit from tax reduction. In order to generate tax relief for the donor, the non-resident receiving organisation within the EEA should be considered as comparable to a Belgian institution and should be licensed ‘in a similar manner’ in its country of residence.

Gifts to charities located outside the EU and outside the EEA are not deductible. Further to the Brexit, charities located in the UK receiving gifts from Belgian donors no longer benefit from the deduction.

5. Other frameworks such as percentage law systems, whereby the donating tax payer may assign part of the tax due to a public-benefit organisation?

Not applicable in Belgium.

6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their

tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?

For income tax deduction on gifts to charities located in Belgium and which are recognised by the tax authorities as eligible to receive deductible gifts, the conditions are as follows: For gifts to a Belgian qualifying organisation: the only document that the donor should provide is an attestation which is made by the recipient for each gift of which the amount is at least €40.

7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation? What information must donors to foreign-based organisations provide in order to receive tax incentives for their donation (e.g. statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)? Are translations of documents required?

Outside of the EEA or EU: Legacies to non-resident public-benefit foundations will not benefit from the privileged regime (reduced tax rate).

Within the EU/EEA: According to the new legislation, tax relief (reduced rate) has now been extended to comparable organisations located in EU or EEA countries.

For gifts to organisations located in another EU or EEA Member State: According to recent instructions of the Belgian tax authorities, the taxpayer who claims the deduction for a cross-border gift should keep at the disposal of the tax authorities the evidence showing that the foreign institution can be considered as similar to a Belgian institution dealt with by the law and the documents showing that it has been licensed “in a similar manner” in its country of residence.

The donor should provide a copy of the statutes of the foreign organisation (including the description of the charitable purpose) as well as documents showing that the organisation has been recognised as eligible for receiving tax deductible gifts by the administration of the country where it is established and that it can be compared, as far as its activities are concerned, with one of the types of organisation listed by the Belgian income tax code. There are no further comments on these conditions in the law, Royal decrees or administrative instructions. The Belgian tax inspector of the donor’s jurisdiction will verify whether the evidences are sufficient. There is no verification at a centralised or higher level. Since the collection of these documents might be quite cumbersome, the foreign organisation will have to help the Belgian donor.

The Belgian law does not require any procedural condition to the foreign organisations willing to collect deductible gifts in Belgium (like registration) or any obligation to file documents. In that sense, it follows closely the decision of the European Court of Justice in the Heine Persche case. Since the law requires that the foreign organisation is comparable to a Belgian one, it should be demonstrated that the foreign organisation complies with “comparable” conditions as those foreseen in the Belgian legislation or that they would comply with the Belgian conditions if they were established in Belgium.

In order to facilitate the task of the donor, and to avoid legal uncertainty for the foreign organisation, it is possible for this last to file a request to obtain a ruling that would confirm that the foreign entity can be considered as comparable to a Belgian entity which would qualify for receiving income tax deductible gifts.

8. Do donors get tax incentives when donations are done via specific tools such as:

- Requesting money in public (street, door-to-door) - No because the donor cannot be identified.
- Via TV and radio campaigns - yes if the donor is identified
 - Via sms
 - Crowdfunding

Do they have to follow any kind of particular process? If so, which one?

For donations via TV and radio campaigns, SMS, and crowdfunding, a circular, dated September 4, 2019 - 2019/C/83, foresees the conditions which should be met in order to get the tax reduction.

Donor identification must be possible. The donation must be made to an account opened in the name of the approved institution and of which it alone is the holder. The approved institution must record the donation in its accounts so that both the identity of the donor and the initial amount transferred can be clearly verified by both the institution and the Administration. The donation must be final and irrevocable. The donation must amount at least €40.

IV. Tax treatment of beneficiaries

(i.e. those receiving a grant or other benefit from a foundation)

1. **Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

Income tax: Social benefits provided to individuals by charities within the framework of their charitable purposes are normally not subject to individual income tax since these benefits are not linked to a professional activity of the beneficiary. The provision of grants, subsidies, prizes or other benefits by national or international institutions, including non-profit organisations (i.e. foundations or associations), to individuals can sometimes be connected to a professional or occasional activity of the beneficiary, for instance prizes awarded to musicians or to authors, and subsidies granted to scientists. In such cases the grants, subsidies or prizes are subject to individual tax if they exceed €3,200 per year. Generally, they will be taxed as miscellaneous income (at a reduced rate). However, these grants, subsidies or prizes can be totally exempted if they are paid by institutions or foundations which have been recognised by Royal Decree for this purpose.

Gift tax: This issue is not relevant, since grants, subsidies or prizes are generally not a “donation” in the strict sense of the word. Moreover, it should be kept in mind that there is no gift tax on informal gifts of movable assets.

2. **Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**

Income tax: If the legal entity which receives a grant or a benefit from a foundation is subject to corporate tax, the grant or benefit will be considered as income and will be taxed. If the entity receiving the grant is a non-profit organisation which is exempt from corporate tax and subject to the tax on legal entities, there will be no income tax on this grant.

Gift tax: As far as movable assets are concerned, it should be kept in mind that there is no gift tax on informal gifts (gifts from hand to hand). If the benefit is provided through a donation made by a non-profit organisation having one of the legal forms enumerated by the law to another organisation having one of these forms (e.g. from a foundation to another foundation or to an ASBL), the gift tax will be limited to a fixed amount of €100.

3. **Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

In case of an individual receiving grants, subsidies or social benefit from a foreign source it should be checked whether there is a double tax treaty with the country in question. If there is a treaty this kind of benefit might fall under the provision “other income”.

V. Gift and inheritance tax

1. **Does gift and inheritance tax/transfer tax exist in your country and, if yes, who has to pay the tax in the case of a donation/legacy to a public-benefit organisation (the donor or the recipient organisation)?**

Gifts and inheritance tax exist in Belgium and are organised respectively by the code of registration duties and by the code of inheritance tax. The tax rates are determined by the region of which the donor/testator is domiciled/had his last domicile. As far as inheritance tax is concerned, the heirs and the legatees should pay the tax, each of them for the portion of the estate he has received. It should be noted that the testator can stipulate that a legacy to certain beneficiaries is free of inheritance taxes. In that case the heirs should pay inheritance tax on these legacies. As far as formal donations (enacted in a notarial deed) are concerned, there is no legal provision stipulating that gift taxes should be paid by the beneficiary. The concerned parties are free to determine who will pay the duties. Since payment of the registration duties by the donor is not considered as an indirect donation, it is more interesting to have the duties paid by the donor. Informal gifts are not subject to registration duties. But the parties (donor or beneficiary) may decide afterwards to register the donation voluntarily and to pay the registration duties on it. Such possibility may be used in order to avoid inheritance tax which would be due in case the donor would die less than three years after the gift has been made (see below). The person who takes the initiative to register the deed (donor or beneficiary) should pay the duties.

2. **What are the tax rates? Is there a preferential system for public-benefit organisations (PBOs)? Which PBOs qualify? Is there a difference according to the region or the legal status of the PBO?**

There is a preferential system for donations and legacies to charities, consisting of reduced rates for donations and for legacies. As we will see below, the applicable rates depend on the Region where the donor or the testator resides. There might also be differences in the reduced rates depending on the legal form of the benefitting PBO. In some regions public-benefit foundations might benefit from lower rates than those for private foundations or associations.

DONATIONS:

Reduced rates for donations to qualifying charities

Flanders

For a donation made by an individual domiciled in Flanders or for a donation of real estate located in Flanders and belonging to a non-resident, the beneficiary will pay 5,5% per cent if it is structured in one of the following forms:

Non-profit associations (ASBL-VZW), international (scientific) non-profit associations (AISBL-IVZW), institutions for public benefit (fondations d'utilité publique—stichtingen van openbaar nut), private foundations, or professional unions.

Brussels Region

For a donation by a person who is domiciled in the Brussels Region or for a donation of real estate located in Brussels and belonging to a non-resident the beneficiary will pay:

- 7% for donations made to Belgian non-profit associations (ASBL-VZW), international non-profit associations (AISBL-IVZW), professional unions, or and private foundations
- 7% for donations made to public institutions (établissements publics- openbare instellingen); – depending on whether in the Brussels Region or communes located in the Brussels Region – and to foundations for the public benefit.

Wallonia

If the donor qualifies as a resident of Wallonia, the reduced rate will be 7% for donations made to Belgian non-profit associations (ASBL-VZW), to international (scientific) non-profit associations (AISBL-IVZW), to institutions for the public benefit (fondations d'utilité publique—stichtingen van openbaar nut), to private foundations, or and to professional unions.

Progressive rates (standard rates for third parties)

Unrelated parties, including non-qualifying charities, are subject to the following rates:

Flanders

Nature of assets	A	B	C
Movable assets	Flat rate	7%	
Other assets (real estate)	Progressive rates Shares		
	Amount (€)	Rate per share	Cumulative amount (€)
	0.01–150 000	10%	
	150 000,01 - 250 000	20%	15000
	250 000 – 400 000	30%	35000
	Above 400 000	40%	95000

Brussels Region

Nature of the assets	A	B	C
Movable assets	Flat rate	7%	
Other assets (real estate)	Progressive rates Shares		
	Amount (€)	Rate per share	Cumulative amount (€)
	0.01–150 000	10%	
	150 000,01 - 250 000	20%	15000
	250 000 – 400 000	30%	35000
	Above 400 000	40%	95000

Wallonia

Nature of the assets	A	B	C
Qualifying movable assets*	Flat rate	7,7%	
Other assets (real estate or non-qualifying movable assets)	Progressive rates Shares		

	Amount (€)	Rate per share	Cumulative amount (€)
	0.01–150 000	10%	
	150 000,01 - 250 000	20%	15000
	250 000 – 400 000	30%	35000
	Above 400 000	40%	95000

It should be noted that for movable assets the rate between unrelated parties (standard rate) is the same or almost the same as the reduced tax rates for qualifying charities.

It should also be reminded that informal gifts (gifts from hand to hand) are not subject to registration duties, unless the donor presents voluntarily a deed to the administration of the registration.

LEGACIES:

Reduced rates for legacies to qualifying charities

Charities which are structured in one of the legal forms foreseen by the law of 27 June 1921, are subject to reduced rates, as specified below. (art 59 of the inheritance tax code)

Flanders

If the testator qualifies as a resident of Flanders, the reduced rates are as follows:

- 8.5% for legacies to non-profit associations (ASBL/-VZW), international non-profit associations (AISBL/—IVZW), private foundations and foundations for public benefit, (fondations d'utilité publique—stichtingen van openbaar nut) and to professional unions.
- 6.6% for legacies to public institutions (établissements publics—openbare instellingen) located in Flanders relying on assistance from a province or from a commune.

Brussels Region

If the testator qualifies as a resident of the Brussels Region, the reduced rates are as follows:

- 7% for legacies to public institutions (établissements publics—openbare instellingen) dependent upon the province or commune and for legacies to public institutions dependent upon the French or the Flemish Community; or to the public scientific or cultural institutions dependent upon the Belgian State. This rate of 6,6% also applies to foundations for the public benefit (fondations d'utilité publique—stichtingen van openbaar nut).
- 7% for legacies to non-profit associations (ASBL-VZW) and other non-profit legal entities which are recognised as qualifying organisations eligible to receive tax-deductible gifts.
- 25% for legacies to Belgian non-profit associations (ASBL-VZW), international non-profit associations (AISBL-IVZW), private foundations, or professional unions.

Wallonia

If the testator qualifies as a resident of Wallonia, the reduced rate will be as follows:

- 7% for legacies made to Belgian non-profit associations (ASBL-VZW), to international non-profit associations (AISBL-IVZW), to public-benefit foundations (fondations d'utilité publique—stichtingen van openbaar nut), to private foundations, or to professional unions.

Progressive rates (standard rates for third parties)

Unrelated parties, including non-qualifying charities, are subject to the following rates:

Flanders

Amount (€)	Rate per share	Cumulative amount (€)
0.01–35,000	25%	
35,000–75,000	45%	8 750
75000+	55%	26 750

Brussels Region

Amount (€)	Rate per share	Cumulative amount (€)
0.01–50,000	40%	
50,000–75,000	55%	20,000
75,000–175,000	65%	33,750
175,000+	80%	98,750

Wallonia

Amount (€)	Rate per share	Cumulative amount (€)
0.01–12,500	30%	
12,500–25,000	35%	3,750
25,000–75,000	60%	8,125
75,000–175,000	80%	38,125
175,000+	80%	118,125

3. Is there a threshold (non-taxable amount) from gift and inheritance tax for donations/legacies to public-benefit organisations?

No.

4. Is there a legal part of the estate that is reserved for certain protected heirs and which a donor cannot give to third parties?

Yes, a part of the assets is reserved to certain heirs. The heirs who are protected are the descendants and the surviving spouse.

The “reserved share” represents the part of the estate, which the testator cannot dispose of freely. The calculation mechanism of the “reserved share” has been modified as from September 2018.

For children the reserved share is 50% (full ownership) and no longer depends on the number of children.

As a consequence, the reserved share for each child will be:

- $\frac{1}{2}$ of the estate if there is one child
- $\frac{1}{4}$ if there are 2 children

- $\frac{1}{6}$ if there are 3 children
- $\frac{1}{8}$ if there are 4 children, etc.

For the spouse:

The reserve is the usufruct on the half of the succession with at least a usufruct on the family house and its furniture.

When the deceased leaves a spouse and children, the reserved portions should be combined.

The freely disposable portion will be first and foremost charged with the spouse's usufruct.

If the testator does not respect the rules concerning the reserved share, the heirs will be entitled to claim that a legacy should be reintegrated into the estate or reduced in such a way that the reserved share can be fully reconstituted. Before making a will the testator should check this issue carefully, preferably with a notary.

5. What is the tax treatment (inheritance and gift tax) of legacies to non-resident public-benefit foundations?

Legacies to non-resident public-benefit foundations are in principle taxed at a higher rate, namely the rate applicable between third parties. They do not benefit from the reduced rate applicable to Belgian foundations. However, as a result of an infringement procedure by Europe the Belgian legislation has been amended in order to foresee an equal treatment for the donations and legacies to charities located in the EU or the EEA. Consequently, they benefit from the same reduced rate which is applicable to legacies or donations to domestic foundations.

VI. Trends and developments

- 1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? Any changes being discussed with regard to the free movement of trust structures resulting from the [Panayi Trust](#) and [Olsen and Others](#) cases?**

As a result of the jurisprudence Persche, Stauffer, and Missionswerk, the Belgian law has been changed in order to provide equal treatment for donors or testators making gifts or legacies to foundations located in another Member State or in the EEA. The Belgian law has also been adapted to provide equal treatment for income tax deduction of gifts to charities located in another member state or in the EEA.

As far as the exemption from corporate tax is concerned, it should be noted that branches of foreign non-profit organisations do not benefit from all the possibilities of exemption which are granted to Belgian organisations: Exemption can be granted to foreign organisations according to art 182 ITC but not according to art 181 ITC. This discrimination is in conflict with the Treaty of Rome and more in particular with the decision in the Stauffer case.

- 2. Has the fight against terrorism and financial crime led to the introduction in recent years of new laws/rules affecting the foundation sector (e.g. implementation of EU Anti Money Laundering Directive, or reactions to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:**

- Set up a public-benefit foundation
- Obtain permission to transfer funds across borders
- If able to transfer of funds across borders, has the process become more burdensome administratively
- Open a new bank account
 - Maintain a bank account
 - Fund certain activities
 - Fund certain regions/countries
 - Fund certain organisations (please explain the reason - foreign funding restriction?)
- Report to authorities/deal with administration - The completion of the UBO register, (postponed two times) gave rise to many questions which were unanswered at the time, but which fortunately for the most part have since been resolved.
 - Other

- 3. Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?**

Belgium was targeted by the FATF concerning the non-profit sector, which was considered as vulnerable for money laundering and terrorist financing. This implies that until the next evaluation cycle (2020), Belgium has to report annually on its efforts to comply with the FATF recommendations. Due to the governmental crisis and the COVID-19 issue, this process has been delayed.

- 4. Does the national law define/specify who is considered as a Beneficial Owner (BO) of a foundation?**

Yes: According to the Belgian law "ultimate beneficiaries" of a foundation include:

1. The members of the board of directors.
2. The persons who can represent the foundation.

3. The persons entrusted with the daily management of the foundation.
4. The founders.
5. The persons who are beneficiaries of the foundation, or when these persons have not yet been identified, the category of natural persons in whose main interest the foundation was established.
6. Any other natural person exercising ultimate control over the foundation by other means.

5. Does your country have a specific register for BO of legal entities/foundations or does the foundation/company/association register serve as a BO register?

Specific register: UBO register (see above).

6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?

a) Law revision in the pipeline

Attempts to change the law were made, among others, with a law proposal in 2019 stating that gifts of more than €3,000 should be mentioned by all associations and foundations in a register of incoming and outgoing donations, direct or indirect, from and to foreign countries. In the end, this proposal was not adopted.

b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?

c) Tendency towards more transparency requirements?

There is indeed a tendency to increase more transparency requirements, notably on the control of gifts.

d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?

e) Tendency to use alternative forms to classic public-benefit foundations

f) Other?

7. Public fundraising: Are there any specific laws that regulate fundraising and do they affect foundations?

No.

VII. Further information

Useful contacts

Francis Houben, [Legal & Tax Management SPRL](#), Avenue Marie-José 108, 1200 Brussels, Tel 0032 2 6727817

Ludwig Forest, [King Baudouin Foundation](#), 21 Rue Brederode, 1000 Brussels, Belgium, Tel 02 5490238

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VIII.About

Philanthropy Advocacy

The Dafne and EFC joint advocacy project “Philanthropy Advocacy” acts as a monitoring, legal analysis and policy engagement hub for European philanthropy. Its main objective is to shape the national, European and international legislative environment by implementing the European advocacy roadmap for a Single Market for Philanthropy.

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

Dafne brings together 30 national associations from 28 countries across Europe, representing over 10,000 public-benefit foundations, big and small, who want to make a difference in society. We have created an alliance for collaboration across philanthropy networks in Europe to address big philanthropy questions of our time in a coordinated and effective manner. We lead, strengthen and build the field for the common good in Europe. We are involved in four key areas: advocacy, peer exchange, communications and research. Our work is needs-based and future-oriented. We value ideas over hierarchy and believe in a truly collaborative approach.

www.dafne-online.eu

European Foundation Centre (EFC)

As a leading platform for philanthropy in Europe, the EFC works to strengthen the sector and make the case for institutional philanthropy as a formidable means of effecting change. We believe institutional philanthropy has a unique, crucial and timely role to play in meeting the critical challenges societies face. Working closely with our members, a dynamic network of strategically-minded philanthropic organisations from more than 30 countries, we:

- Foster peer-learning by surfacing the expertise and experience within the sector
- Enhance collaboration by connecting people for exchange and joint action
- Advocate for favourable policy and regulatory environments for philanthropy
- Build a solid evidence base through knowledge and intelligence
- Raise the visibility of philanthropy’s value and impact

www.efc.be

**Donors and Foundations Networks in Europe AISBL (Dafne) and
European Foundation Centre AISBL (EFC)
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