

2020

Legal Environment for Philanthropy in Europe

Estonia

COUNTRY PROFILE

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Organisations

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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?**

There is one legal type of foundation in Estonia, which operates on the basis of the Foundations Act passed in 1995. Philanthropic organisations can also operate in the form of a non-profit association.

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?**

A foundation may be established by any legal or natural person, regardless of its location or residence, until the achievement of the objective or for an indefinite period. The documents required for incorporation are the founding decision (may also be included in the will) and the articles of association, which must also be notarised.

The notary shall forward the founding documents electronically to the registry department of the county court, which shall decide on entry in the register within five working days. The state fee for entry in the register of the foundation is €58.

The registrar shall not enter a foundation in the register if its founding documents do not comply with the requirements of law or if the application for entry in the register is submitted within one year of making the founding decision. The registrar must give written reasons for the refusal.

Requirements of law:

- The name of a foundation shall clearly differ from the names of other non-profit associations and foundations entered in the register in Estonia.
- The name of a foundation shall not be misleading with regard to the objectives, scope of activity or legal form of the foundation.
- The name of a foundation shall contain the appendage "*sihtasutus*" (Foundation in Estonian)
- A foundation may have only one name.
- The name of a foundation shall be written in the Estonian-Latin alphabet.
- The name of a foundation shall not be contrary to good morals.
- If no member of the management board is located in Estonia, the name and address of the contact person must be notified to the register.

A founding decision shall include:

- The name and location of the foundation
- The names and residences or registered offices and addresses of the founders and their personal identification codes or registry codes

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.

- The sum of money or other assets, and their value, to be transferred to the foundation by the founders (not obligatory to transfer anything)
- The names, residences and personal identification codes of the members of the management board and supervisory board

The founders shall also approve the articles of association of the foundation as an annex to the foundation resolution, which must include, in addition to above:

- The objectives of the foundation
- The procedure for transfer of assets to the foundation
- The set of beneficiaries, except if all persons who are entitled to receive disbursements pursuant to the objectives of the foundation are beneficiaries
- The term of the foundation if it is founded for a specified term
- The distribution of the assets of the foundation upon dissolution of the foundation
- The procedure for appointment and removal of members of the management board and their term of office
- The number of the members of the management board which may be expressed as a specific number or a maximum and minimum number
- The procedure for appointment and removal of members of the supervisory board and their term of office
- The procedure for appointment and removal of auditors and their term of office
- The procedure for amendment of the articles of association
- Whether and under what conditions the founders have the right to dissolve the foundation
- The procedure for remuneration of the members of the management board and supervisory board
- The procedure for use and disposal of assets

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
- 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
- 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)

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

- The registry code and consecutive numbers of register entries
- The name
- The registered office and address
- Address of the location of the management board if it is in a foreign state

- The objective
- Information on the members of the management board
- The name or business name, personal identification code or registry code of the contact person specified in § 631 of the Commercial Code and the Estonian address for the service of declarations of intent addressed to the foundation and the procedural documents of the foundation
- Information on the trustee in the case of bankruptcy
- Information on liquidators
- The right of representation of the members of the management board and the liquidators if such right differs from the general rule
- Date foundation resolution was made
- The date of approval of the articles of association
- The beginning and end of the financial year
- The term of operation if the foundation is founded for a specified term
- The dissolution
- The merger or division
- The declaration of bankruptcy and termination of bankruptcy proceedings
- The deletion from the register
- Information on the depositary of documents of the liquidated foundation
- Beneficial owners

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

There is a small service fee for some data (e.g. contact details, annual report).

6. Is a minimum founding capital/endowment required?

No

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?

The foundation has no capital requirements, spend-down foundations are allowed.

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

Both the supervisory board and the management boards are mandatory.

- 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 supervisory board shall plan the activities of the foundation, organise the management of the foundation and supervise the activities of the foundation. A foundation must have at least three members of the supervisory board, usually appointed by the founders, but in practice the board often elects some of its own members. The procedure for electing members must be laid down in the statutes and no one may be elected for more than five years. However, there are no restrictions on re-election.

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

Members of a directing body (both supervisory and management) of a legal person shall perform their obligations arising from law or the articles of association with the diligence normally expected from a member of a directing body and shall be loyal to the legal person. In the event of a breach of these obligations, whether by act or omission, creditors may also pursue their claims against a member of the directing body in person.

In order to perform its tasks, the supervisory board has the right to examine all documents of the foundation and to audit the accuracy of accounting, the existence of assets and the compliance of the activities of the foundation with law and the articles of association.

The supervisory board has the right to obtain information concerning the activities of the foundation from the management board and to demand an activity report and preparation of a balance sheet from the management board. Every member of the supervisory board has the right to demand the submission of reports and information to the supervisory board.

- 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 rights of the founders are set out in the statutes, and although the founding rights cannot be transferred or subsequently acquired, the statutes may specify, for example, which persons will exercise the founding rights.

- 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?

A founder or the supervisory board may amend the articles of association only in order to take into account changed circumstances in accordance with the objectives of the foundation. The supervisory board may amend the articles of association of the foundation only if at least one of the following applies:

- All founders are deceased or dissolved
- Founders have failed to amend the articles of association in order to take into account changed circumstances within a reasonable period of time
- This right is granted to the supervisory board by the articles of association.

If the articles of association of a foundation must be amended due to changed circumstances, but the persons entitled to amend the articles of association fail to do so, a court may decide on amendment of the articles of association at the request of a founder, the supervisory board or an interested person.

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

A beneficiary or other person with a legitimate interest may demand information from a foundation concerning the fulfilment of the objectives of the foundation. The annual reports are public, albeit for a small fee (€2).

- 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?

A transaction with oneself or with legal entities related to oneself is considered a conflict of interest. The Foundations Act does not stipulate more than that a transaction concluded between a foundation and a member of the management board is void if the supervisory board does not agree to the transaction.

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

At the level of law, participation is not regulated. It is more a matter of statute or culture. In practice, the Executive Director often attends supervisory board meetings.

- 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?**

See 8c. However, the personal responsibility of a member of the governing body is very difficult to realise in courts.

No. Remuneration may be paid to members of the management board unless the articles of association prescribe otherwise. The amount of remuneration payable to a member of the management board and the procedure for payment shall be determined by a resolution of the supervisory board.

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?

All of the above, depending on the area of the breach and who is monitoring it.

- 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?**

Members of the management board have the right of representation under the law. Other representation rights can be granted by statutes or contracts.

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

Economic activities are not regulated by law. However, a foundation may use its income only to achieve the objectives specified in its articles of association.

- 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?**

No.

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?

Yes, they are permitted with two limitations: A foundation shall not be a partner of a general partnership or a general partner of a limited partnership; or manage a general partnership or limited partnership.

Yes, this is considered as an economic activity because the purpose is usually to receive dividend income.

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?

A foundation shall not grant loans to or secure the loans of founders or members of the management board or supervisory board, or of persons with an equivalent economic interest.

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, they are.

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

Lobbying/advocacy is not regulated, but the foundation cannot apply for charitable status if its main objective or principal activity is organising campaigns or collecting donations for or against a political party or election coalition or a person running for an elected or appointed office for the performance of public duties.

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

See 8f.

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
- Public-benefit/activity report
- Tax report/tax return
- Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members)
- Report on conflict of interest (self-dealing and conflict of interest breach cases)

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)?

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

The reports go to the appropriate authority. But, for example, the registry department does not read the annual reports, but the automated controllers just check whether the required parts are filled. The tax office also has algorithms for processing tax returns on a risk-based basis, but there is no other procedure of approving any of the reports.

- 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)?

The government publishes all annual reports in [business register](#) as well as [the tax form for charities](#).

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

A sworn auditor's review of the annual report is required when annual income or total assets exceed €15,000.

A full audit is compulsory if at least two of the indicators of the financial year exceed the following conditions:

- 1) Sales revenue or income €4,000,000
- 2) Total assets as of the balance sheet date €2,000,000
- 3) Average number of employees 50 people

Or at least one of the indicators of the financial year exceeds the following conditions:

- 1) Sales revenue or income €12,000,000
- 2) Total assets as of the balance sheet date €6,000,000
- 3) Average number of employees 180 people

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

Yes, the law imposes requirements on various auditors, professional examinations, oath of office, etc.

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
- No

- d) Is approval from the authority required for certain decisions of the governing board?

- Yes, formal approval is needed
- 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?

Failure to submit the annual report may result in a fine for both the foundation and the members of its governing bodies; and/or the foundation is eventually deleted from the register as inactive. Charitable status can be lost for 6 months if one is repeatedly late with annual reports or tax returns.

20. When and how does a foundation dissolve?

A foundation is dissolved:

- By a resolution of the founders if this right is prescribed for founders in the articles of association.
- By a resolution of the supervisory board in the cases prescribed in the articles of association. A resolution is adopted if all members of the supervisory board vote in favour.
- By a resolution of a person, body or agency to whom the right to dissolve a legal person in public law has been granted pursuant to law.
- Upon achievement of an objective prescribed by law, the articles of association or the partnership agreement.
- Upon expiry of a term if the legal person is founded for a specified term.
- By a court ruling on compulsory dissolution.

A legal person is dissolved by a court ruling at the request of the minister responsible for the area or any other person or agency so entitled by law (compulsory dissolution) if:

- The objective or activities of the legal person are contrary to law, public order or good morals
- The legal person was founded in material violation of the law or if the memorandum of association was entered into or the foundation resolution was adopted under circumstances due to which the memorandum or resolution is void, and the corresponding violation cannot be subsequently eliminated
- The articles of association of the legal person are contrary to law to a significant extent
- The legal person does not comply with the requirements established for the legal person by law
- The authority of the management board or a body substituting for the management board of the legal person terminated more than two years prior and a new management board or substituting body has not been elected

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?

Not in civil law.

According to tax law, maintaining charitable status requires that:

- The administrative expenses correspond to the character of its activity and the objectives set out in its articles of association
- The remuneration paid to the employees and members of the management or control body does not exceed the amount of remuneration normally paid for similar work in the business sector

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)?

No requirements.

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?

A foreign foundation may operate in Estonia without registration, especially if it is from the EU / EEA. For example, when a tax liability arises under Estonian law, a foreign foundation must also declare and pay taxes in Estonia. However, one cannot apply for grants, charitable status, etc. without registering.

A trust may act as a limited partnership and not as a foundation.

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

No limitations.

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

No restrictions, but some reporting obligations may apply under MLTF regulation.

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?

No.

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?)

The foundation must only submit descriptions of planned activities and a vision for the future, including an explanation of how the public interest is served. All other information is already available to the Tax and Customs Board from databases.

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

Most donors require an activity report and a financial report, which can vary widely in detail.

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

Not in detail on donors. Charities must report to the Tax Board the names and personal identification codes of natural persons who have received stipends/scholarships.

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?

No.

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.

Estonian law sees public interest and charitable purpose as different, although they are relatively similar. The requirement to act in the public interest is fulfilled by almost all foundations, while "charitable" means in the instructions of the Tax and Customs Board that, for example, products and services provided for a fee must be available/affordable, i.e. with a discount for the needy.

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):

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,	x			

ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination				
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</i>	All purposes are accepted besides three excluded			

<i>for tax privileges in your country</i>	types: business or commercial interest organisations, trade unions and political organisations involved in campaigns			
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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”?

Yes.

- 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?

Probably not. No such cases have been observed in practice.

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. Beneficiaries cannot be founders, board members or persons associated with them, unless the foundation is engaged in social welfare, a religious association or when a person belongs to the target group of the foundation and does not receive additional benefits as compared with other persons belonging to the target group.

- 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 must remain in the public-benefit sphere as long as the foundation has charitable status. If the status is waived and the articles of association are amended, there will be no restrictions on the use of the assets from that moment on.

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**?

No limits in civil law. The remuneration just has to be in reasonable proportion to the duties and economic situation of the foundation. If the economic situation of a foundation significantly deteriorates and further payment to a member of the management board of the fees established for or agreed upon with the member, or further allowing of other benefits to the member would be extremely unfair to the foundation, the foundation may require the decrease of the fees or benefits.

To have charitable status the remuneration paid to the employees and governing bodies cannot exceed the amount of remuneration normally paid for similar work in the business sector.

- 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)

Yes, up to the point that the benefits are not “monetarily appraisable” or with “consumption value”, which are not defined by law or by administrative practice.

- 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?

According to tax law, the administrative expenses of the association must correspond to the character of its activity and the objectives set out in its articles of association.

Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

- 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

Such expenses have not been defined in Estonia.

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.					
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.					
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.					
A foundation distributes a (small) part of its income to the founder or their family.					

N/A. Civil law does not regulate anything related to public benefit. It may be more a question of public image than a question of law.

- 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

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

In practice, there are no mechanisms to monitor these situations.

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes, if there is no such prohibition in the articles of association.

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, they are. No, there is no minimum length.

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.					

N/A. Civil law does not regulate anything related to public benefit status or distributions.

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.					

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

Yes, the target groups and nature of the activity do not depend on the location.

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)?

In principle, yes, in practice unclear. The Income Tax Act allows “transfer of assets for the achievement of the objectives of its charitable activities carried out in the public interest”, without distinction of legal form of the recipient.

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

There is no corporate income tax in Estonia for any legal entity. Mainly, the withdrawal of profits is taxed.

a) Grants and donations

Exempt

b) Investment income (asset administration)

Interest from fixed rate bonds

Equities

Income from leasing of a property that belongs to the foundation

Exempt

c) Economic activities (related/unrelated)

Income from running a hospital/museum/opera

Income from producing/selling books (e.g. art books sold by a cultural foundation)

Income from running a bookshop inside a museum/opera run by the foundation

Income from running a café in the hospital/museum run by the foundation

Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)

Income from intellectual property (e.g. royalties and licence fees)

Exempt

d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?

Exempt

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

It is considered as an economic activity, but it is still not taxed.

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

There is no capital gains tax.

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

VAT can only be recovered on expenses related to economic activities, but not on other activities that are not related to earning own income. There are no VAT exemptions or restrictions for public interest entities.

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

There is no capital tax.

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

Only VAT on certain asset classes if the foundation was subject to VAT and reclaimed VAT when initially purchasing the assets.

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

Land tax applies to everyone regardless of legal form or public-benefit status.

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

No. Estonian tax regulations concerning donations apply throughout the European Economic Area, but only tax benefits for donors apply across borders. A foundation not registered in Estonia is generally not subject to Estonian law either.

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?

No.

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?

No.

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?

No.

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?

The ceiling is up to €1200 and not over 50% of annual taxable income after other deductions such as training costs for oneself or one's children, or home loan interest.

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

Gifts and donations may be made in monetary or non-monetary form. The cost of a non-monetary gift or donation is the market price of the property, and in the case of sale of the property at a preferential price, the cost of the gift or donation shall be the difference between the market price and selling price of the property. Services provided free of charge or at a price below the market price are not deemed to be gifts or donations and their value is not deducted from income.

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?

Corporate donors can choose between two ceilings:

- 3% of the amount of the payments subject to social tax (salary fund) made by the taxpayer during the same calendar year
- 10% of the profits for the last financial year

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

Only monetary donations.

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

Only for foundations within the European Economic Area.

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?

No other systems.

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)?

The foundation can declare personalised donations, which are automatically entered in the income tax return of a natural person and do not require additional proof. If a private person manually adds donations to their declaration, the Tax and Customs Board may request additional proof. As a general rule, legal persons are not required to prove to whom they donated, but the tax form automatically calculates only whether the amount is within the exemption ceiling or the donor must pay additional tax.

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?

There is no regulation or public guidance on this, as cross-border donations are quite rare. In general, a donor must prove that the foreign-based organisation meets Estonian requirements for charitable status.

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

- Requesting money in public (street, door-to-door)
- Via TV and radio campaigns
- Via sms
- Crowdfunding

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

Generally, no, due to the fact that when donating through these channels, the identity of the donor cannot be identified. Telecoms companies do not provide the names and personal identification codes of persons who have donated to the foundation via phone. When collecting donations on the street or in crowdfunding, it is technically possible to collect the necessary personal data.

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?

When distributing property to private individuals, the foundation must know and monitor its limits or pay income tax in excess of them. This applies to:

- Material assistance granted to a natural person for subsistence, including financial assistance to the extent of the amount of average monthly expenses of a member of a household per calendar month according to the latest information disseminated by the Statistical Office.
- Souvenirs presented to participants in a permanent youth camp or youth project camp in the amount of up to €32 per participant in camp or project.
- Souvenirs presented at a sports event to the participants in the event, in the amount of up to €32 per participant in event.
- Goods transferred or services provided for the purposes of advertising, for a value up to €10, excluding value added tax.
- Scholarships and grants which are determined by way of public competition with regard to which a notice has been published in a national daily newspaper, local newspaper, website of the payer of a scholarship or grant, or website containing sectoral information. Scholarships and grants shall mean future-oriented benefits, which are paid for the promotion of the acquisition of knowledge or skills, development of competences and creative or scientific activities. Scholarships and grants shall not include payments which recognise or remunerate any activities, or which makes it such that a person who made the payment acquires the rights to the work.

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?

There are no limitations in the economic activities of the beneficiaries. There is no taxation of transferring the assets of a foundation to another legal entity for the achievement of the objectives of its charitable activities carried out in the public interest.

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

No.

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)?**

No inheritance tax.

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?**

N/A

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

N/A

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?**

N/A

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

N/A

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?**

The subject of cross-border donations within the European Economic Area was introduced into Estonian legislation in 2011 after the European Commission's infringement proceedings.

- 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
- Other

Not enough data yet.

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

Usually foundations are not considered as obliged entities, depending on their field of activity. The ML regulation applies to foundations when they are paid or they pay over €5,000 in cash or an equal amount in another currency, regardless of whether it is paid in a lump sum or by way of several linked payments over a period of up to one year. A number of diligence measures also apply.

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

Yes. If the foundation has not appointed beneficiaries, the members of the management board must be indicated in the register as BOs.

- 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?**

Data on BOs are kept in the general commercial register, but they must be entered separately and re-confirmed by the foundation when submitting its annual report.

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

Yes, civil law for foundations should be more flexible in the future: more freedoms to reshape the foundation (e.g. into other legal entities) and to decide more for themselves instead of having to follow detailed civil law (e.g. operating without supervisory board).

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?

No.

c) Tendency towards more transparency requirements?

No. The ongoing discussion is somewhat about reducing transparency in a way that small and non-public interest entities should no longer be required to submit an annual report or that it would be much simpler and shorter.

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

No.

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?

There is an ongoing but unfruitful debate on whether and how to increase the ceilings for tax incentives.

VII. Further information

Useful contact

Mall Hellam, [Open Estonia Foundation](#), Executive Director, mall@oef.org.ee

Selected law texts online

- [Foundations Act](#):
- [General Part of the Civil Code Act](#)
- [Income Tax Act](#)
- [Auditors Activities Act](#)
- [Investment Funds Act](#)
- [Commercial Code](#)
- [Money Laundering and Terrorist Financing Prevention Act](#)

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)
2020**



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