

# 2020

## Legal Environment for Philanthropy in Europe

# Italy

## COUNTRY PROFILE

By Gabriele Sepio

Studio Legale ACTA, Rome; and

Member of the Management

Board of Fondazione Italia Sociale

# Contents

- I. Legal framework for foundations ..... 3
- II. Tax treatment of foundations..... 11
- III. Tax treatment of donors of foundations..... 19
- IV. Tax treatment of beneficiaries ..... 22
- V. Gift and inheritance tax ..... 23
- VI. Trends and developments ..... 25
- VII. Further information ..... 28
  - Useful contacts..... 28
  - Selected bibliography ..... 28
  - Selected law texts online ..... 28
- VIII. About ..... 29
  - Philanthropy Advocacy ..... 29
  - Donors and Foundations Networks in Europe (Dafne) ..... 29
  - European Foundation Centre (EFC)..... 29

## 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?**

The Italian legislation does not provide a specific definition of a foundation. However, doctrine and jurisprudence define a foundation as a legal person regulated by the Civil Code and based on a patrimony aimed at accomplishing a specific purpose identified by the founder.

Therefore, the foundation must have its own assets, whose profits are destined for the specific purpose of social utility. As a legal entity, creditors can therefore only refer to the foundation's assets, because the foundation has got its own legal rights and obligations.

In order to pursue their missions, the Italian Law requires foundations to be autonomous organisations with legal personality. There are different types of foundations, according to the purpose and to the nature of the founder (i.e. corporate foundations, enterprise foundations, party political foundations, family foundations). Certain types of foundation are regulated by special laws or regulatory rules, such as university foundations, foundations of worship, lyrical foundations (governed by Legislative Decree no. 367/1997 and by Legislative Decree no. 345/2000, converted with modifications by Law no. 6/2001), foundations of banking origin (Law no. 218/1990 and Legislative Decree no. 356/1990) and cultural foundations (see Decree of the Ministry for Cultural Heritage and Cultural Activities of 27 November 2011).

Foundations that carry out activities in specific sectors of general interest (according to Art. 5 of Legislative Decree 117/2017) can adopt the qualification of "Third Sector Entity" (in Italian ETS – Ente del Terzo Settore), by registering in the National Register of the Third Sector (in Italian RUNTS – Registro Unico Nazionale del Terzo Settore).

Finally, the Italian jurisdiction also provides for other types of philanthropic organisations, such as philanthropic associations or voluntary organisations.

- 2. What purposes can foundations legally pursue?<sup>1</sup>**

- 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?**

The foundation must be established by public deed or by testamentary disposition.

As anticipated in the previous question, all foundations are required to obtain the recognition of legal personality. The procedure is set out by the Presidential Decree no. 361/2000, which provides the mandatory registration in the "Register of legal persons", following the formal approval by the State Authority (Prefecture or Regional authority). The following rules apply:

- Foundations carrying out activities at national level must request recognition from the Prefecture
- Foundations carrying out activities at regional level must apply for recognition from the Regional Authority

After the submission, the competent authority must verify compliance with the legal conditions and the adequacy of the patrimony to the pursuit of the purpose.

---

<sup>1</sup> 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.

Foundations that adopt the status of “Third Sector Entity” (i.e. ETS) can obtain legal personality by registering in the RUNTS (National Register of the Third sector). In this specific case, regulated by the Third Sector Reform, the notary is in charge of verifying the legal requirements to obtain legal personality (without any state authority’s approval).

**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)

With reference to the last point, foundations wishing to acquire the status of “Third Sector Entity” must register in the RUNTS (i.e. National Register of the Third Sector).

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

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
- Yes, amount:

In order to gain the recognition at national level, a minimum founding capital of €120,000 is generally required, while at regional level this varies according to the rules set by the region itself.

According to Third Sector Reform, foundations wishing to acquire the status of “Third Sector Entity” must have a minimum endowment of €30,000.

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

The minimum founding capital (or endowment fund) shall remain unchanged during 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

A supervisory board is not generally provided by the Civil Code, which was constructed within a system where the main control on foundations was directly under the state. Nevertheless, many "special" kinds of foundations (for instance, ONLUS, Foundations of the Third Sector, foundations of banking origin, music foundations) are obliged to have a supervisory 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 Italian Civil Code only requires that the statutes define rules for the administration of foundations. Nevertheless, in this case too, many specific laws provide particular duties according to different kinds of foundations, above all to assure administrators' honourableness and professionalism.

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

Board members must manage the assets of the foundation and allocate them for its purpose. According to the provisions of the Civil Code, administrators are liable towards the entity according to the mandate rules.

In the Third Sector foundations, administrators are liable to the foundation according to the rules laid down for the companies.

- 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 founder can revoke the constitution of the foundation before registration and before the start of its activity. The foundation's statutes may reserve specific powers in the control and administration to the founder (such as the appointment of the governing board and the supervisory board, or the approval of certain documents).

- 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 procedure for amending the statutes is ruled by the foundation's statutes themselves. Generally, amendments to the statutes are approved by the governing board, but approval of the founder may also be envisaged.

The governance rules of the foundation (including the powers of the founder and the governing board, and the relationships between them) are laid down by the statutes.

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

The law does not provide for specific obligations. Some types of foundations (such as Third Sector Foundations) are subject to transparency and information towards stakeholders (publication of financial statements, fees, etc.).

- 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?

In the Italian legislation, the conflict of interest is a legal condition that occurs when a high decision-making responsibility is entrusted to a person who has personal or professional interests in contrast with the impartiality required by this responsibility.

The administrator who has a conflict of interest must inform the governing board and refrain from participating in the resolutions regarding the operations of the foundation.

For Third Sector Foundations, Art. 27 of Legislative Decree 117/2017 refers to the company rules for the conflict of interest. Therefore, contracts concluded in the name and on behalf of the entity by subjects with conflicts of interest can be cancelled under request of the entity itself, if the conflict of interest was known or recognisable by the third party.

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

As a general rule, decisions in foundations are remitted to the governing board or to the founders' meeting, if required. For foundations that qualify as a social enterprise (see Legislative Decree 112/2017) it is mandatory to establish forms of worker engagement in the decision-making process.

**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?**

According to the Italian Civil Code, general standard of diligence requirements for board members are the same laid out by the mandate agreement, with reference to Art. no. 1710 (acting in good faith and diligence).

Third Sector Foundations' board members are subject to the same requirements provided for companies' board members, according to the provisions set out by Art. 2382 of the civil Code.

The statutes can provide additional requirements of professionalism, honourability and independence.

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

Yes, it does. According to the Civil Code, there are differences between voluntary and paid board members. In particular, any breach of duty of diligence for unpaid board members is judged with less strictness.

*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?*

Foundations are subject to the administrative oversight of the Italian Public Authority (i.e. Prefecture, Region or the Ministry of Labour and Social Policies for Third Sector Foundations), with regard to the following actions (Art. 25 of the Civil Code):

- Designation and replacement of board members
- Cancelling deliberations against the law
- Dismissal of board members and appointment of a special Commissioner, if it is proven that administrators do not act according to the statutes of the foundation or to the provisions set out by the law

**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 power of representation is up to the statutes of the organisation itself.

For instance, it can be attributed to the Chairperson of the foundation or, in the presence of a specific mandate, to one or more board members.

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

The foundation is allowed to carry out economic activities related to the mission defined by its statutes.

However, if foundations are under the Onlus tax regime, they are required to carry out activities provided by Art. 10 of Legislative Decree no. 460/1997.

**12. Is there any legal/fiscal framework for grant-makers 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?**

The foundation is allowed to carry out economic activities related to the mission defined by its statutes.

However, if foundations are under the Onlus tax regime, they are required to carry out activities provided by Art. 10 of Legislative Decree no. 460/1997.

**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?**

The Italian law does not explicitly prohibit a foundation from taking stakes in a company.

However, a foundation qualified as Onlus cannot be a major shareholder in limited liability companies.

Holding shares is not considered to be an economic activity in case it is a mere use of capital resources, aimed at gaining profits to be allocated to the achievement of the foundation's purpose.

Instead, the management and coordination of a commercial company could be considered as an economic activity, or a real holding company.

**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?**

Some kinds of foundations (i.e. foundations of banking origin, philanthropic entities) must set specific guidelines regarding asset management, in order to guarantee profitability and a prudent management.

Foundations of banking origin, for instance, cannot invest more than 15% of their assets in non-instrumental real estate, but the threshold can be exceeded for historic buildings.

**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)**

Foundations are not allowed to directly issue these financial instruments, because they are reserved to joint-stock companies, banks or financial intermediaries.

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

There are no limitations. However, as set out by Legislative Decree no. 124/2017, foundations with a political party involved are required to publish on their own website the statutes and the financial report by 15 July each year.

These documents are subject to a prior control of compliance and regularity by a specific Commission on transparency.

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

Amendment of the statutes must be adopted with the required quorum according to the statutes with a notarial deed.

In addition to this, any changes must be registered in the Register of legal entities and approved by the competent public authority (Prefecture or Region), according to Art. 4 of Legislative Decree no. 361/2000.

#### 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)?

Tax statements must be filed with the Italian Tax Authority (Agenzia delle Entrate), which carries out all the related checks.

For Third Sector Foundations only, financial statements must be filed to the RUNTS.

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

The financial statements are subject to control by the foundation's supervisory board and, if applicable, by the person in charge of the statutory audit (for example, auditing companies).

The Tax Authority is enabled to check tax returns.

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)?

Foundations of banking origin are required to publish their financial reports on their website.

Third Sector Foundations are obliged to file their financial reports to the RUNTS. Moreover, Third Sector Foundations having revenues exceeding €1,000,000 are required to file and publish on their website the social report as well.

Furthermore, Third Sector Foundations having revenues exceeding €100,000 are required to publish the remuneration attributed to directors and collaborators on the website.

Foundations and ONLUS having relationships with Public Authorities must publish on their websites information about the public contributions received (see Law no. 124/2017).

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

There is no legal requirement, but many foundations make use of external auditing firms.

Third Sector Foundations and Onlus that exceed certain size limits are required by law to appoint a person in charge of the statutory audit of the accounts (the task can be carried out by the supervisory board as well, if it does meet the necessary requirements).

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

The persons in charge of the statutory audit of the accounts must be registered by law in a special register.

## 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?

## 20. When and how does a foundation dissolve?

The foundation dissolves when the causes of dissolution provided by the article of association and the statutes are fulfilled. Other causes of dissolution are the achievement of the aim and, on the other hand, the impossibility to achieve the mission.

## 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?

No, there is not, but non-proportionate administration costs could be considered indirect distribution of profits, which is prohibited for foundations.

## 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)?

There are no specific legislative provisions.

**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?**

According to Art. 25 of Law no. 218/95, a foreign foundation is automatically recognised by Italian law if recognised in the country in which it is based. However, if the foundation has its administration in Italy or pursues its main purposes there, it is considered an Italian foundation and must be recognised in accordance with Italian national laws.

This automatic recognition does not work if the purposes of the foundation do not respect Italian public order or if there is any violation of the principle of reciprocity in the exercise of civil rights. More specifically, foreign Foundations operating or having their headquarters in Italy are required to submit a specific application to the Prefecture, together with specific documents.

Italy does not have domestic rules on trusts.

However, trusts created under foreign law are recognised and enforceable in Italy pursuant to the provisions of the 1985 Hague Convention on the Law Applicable to Trusts and Their Recognition, which has been ratified and implemented and is fully effective in Italy as part of the Italian legal system.

The Hague Convention was signed on 1 July 1985 and ratified in Italy with Law n. 364 on 16 October 1989 and entered into force on 1 January 1992.

**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?**

Foundations are allowed to conduct activities abroad, according to their statutes.

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

There are no particular restrictions.

**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?**

There is no explicit prohibition set by Italian civil law. However, the foundation is required to comply with the specific laws of the EU country.

## 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?)

Tax exemption assumptions vary depending on the type of foundation and income. As a general rule, to benefit from tax breaks, the annual tax return must be submitted.

Foundations qualified as Onlus (which benefit from an exemption regime for business income) must carry out the activity in specific sectors of social solidarity and must be registered in a special registry kept at the Italian Tax Authority (Agenzia delle Entrate).

Further requirements are envisaged for particular activities. For fundraising activities, for instance, Art. 143 of Presidential Decree 917/1986 excludes from taxation the funds received as a result of public collections occasionally carried out, also through donation of goods of modest value or services to subsidiaries, in conjunction with celebrations, anniversaries or awareness campaigns.

To benefit from this exemption, the foundation must draw up and keep a special report for each fundraising campaign.

The Third Sector Reform has introduced some specific exemptions.

For instance, foundations of the Third Sector which carry out scientific research activities or the "ex-IPAB" foundations which carry out health activities, pursuant to Art. 79 of Legislative Decree 117/2017 (concessions not yet entered into force at the moment). The entities that benefit from these exemptions must be registered in the RUNTS (National Register of the Third sector), after which they will have to file the financial statements and other information about the entity's administration.

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

Foundations receiving public contributions of an amount equal to or greater than €10,000 are required to disclose information about the grants received on their websites by 30 June of each year.

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

Foundations whose statutory purpose regards the protection, promotion and enhancement of artistic, historical and landscape heritage and scientific research, are required to report to the Tax Authority the amount of deductible grants received by individuals in the previous year.

This obligation should be progressively extended to all non-profit entities that receive donations for which the donor can benefit from tax breaks.

### 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?

There is a specific legislative definition of "public utility" for some types of non-profit entities, which can benefit from particular tax relief.

For entities with the qualification of ONLUS, there is a specific definition of "social solidarity purpose", related to the performance of the activity in particular sectors (social assistance, protection

of historical heritage, charities, scientific research of particular social interest) or to the condition of need or disadvantage which must characterise the beneficiaries of the statutory mission.

**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.**

No, there isn't.

**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, 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	x			

at building bridges between nations)				
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>				

## 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, they generally do. Onlus foundations, due to their particular tax relief regime, are required to pursue social solidarity purposes and cannot pursue individual purposes. The foundations of the Third Sector, which are recipients of some tax relief measures, must operate in specific sectors of general interest.

- 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?

It is possible to identify a specific category of beneficiaries of the activity in the statutes of the foundation, but the purposes must still be of general interest. Therefore, it is not possible to identify a closed circle of beneficiaries.

## 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.?

Foundations cannot distribute profits. Foundations that benefit from special tax relief are subject to some limits related to the remuneration of directors and workers, because it would be considered as indirect distribution of profits beyond a certain threshold, which is forbidden.

With reference to Onlus foundations, Art. 10 of Legislative Decree n. 460/1997, paragraph 6, lett. c provides that individual annual emoluments higher than the maximum compensation for the chairperson of the board of statutory auditors of public limited companies cannot be paid to the members of the administrative and control bodies, and that salaries paid to foundation employees cannot exceed by more than 20% those provided for the same qualification by national collective agreements.

With reference to Third Sector entities, Art. 8 of Legislative Decree no. 117/2017 prohibits paying directors, statutory auditors and anyone who holds corporate positions not proportionate to the

activity carried out, as well as to the responsibilities assumed and the specific skills, or in any case higher than those provided for entities operating in the same or similar sectors and conditions.

- 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?

In the event of dissolution of the foundation, the assets must be donated to another entity that pursues the same mission or to an entity identified in the statutes. In the case of Onlus foundations, the assets must be donated to another Onlus foundation or for purposes of public utility (subject to the favourable opinion of the Ministry of Labour and Social Policies).

In the case of a Third Sector Foundation, the assets must be donated to another Third Sector Foundation, according to the statutory provisions (subject to the favourable opinion of the RUNTS office) or, in the absence of statutory provisions, it will be donated to Fondazione Italia Sociale (more info on <https://www.fondazioneitaliasociale.org/>).

## 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**?

In general terms, the remuneration of board members is allowed, but subject to certain limits.

See response no. 9), letter a) for more information.

- 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)

With reference to fundraising campaigns, it is allowed to offer to donors goods or services for the grant received.

This exchange is considered non-commercial, by express law provision, only where the goods sold or the services provided are of modest value and the activity is carried out occasionally. In other words, it must be a "symbolic thanks" to the donor for their contribution to the foundation's mission (see Art. 143, DPR 917/1986).

- 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":

Yes, there are limits.

- 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

## 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				
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
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?

They are allowed to use their endowment for carrying out statutory activities.

- 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?

It all depends on what is defined in the statutes of the foundation.

- 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)?

For foundations of banking origin, Decree no. 153/99 provides that at least half of the profits of the year, net of all legal funds, must be granted in the following years, while, the Onlus is required to use its profits to pursue its statutory purposes.

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, it does not.

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 <sup>th</sup> 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 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.		x			

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

Yes, they are.

### 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)?

No, non-profit organisations that benefit from particular tax regimes have constraints on the allocation of their resources. For instance, Onlus foundations can give donations only in favour of other Onlus foundations or other non-profit organisations with public-utility purposes.

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

a) Grants and donations

Grants and donations are completely tax exempt in Italy, as they are not considered as income. In fact, according to Article 73 of the Italian Income Tax Code (Decree no. 917/86), non-profit organisations (which must not carry out business activities as their main purpose) are subject to corporate income tax, but the taxable income can derive only from “capital”, “real estate”, “business activities” if applicable, and “other income” as set out by law.

b) Investment income (asset administration)

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation

Profits from financial activities are considered as part of the income of non-commercial entities, such as capital gains or other financial income.

Income from leasing of a property that belongs to the foundation contributes to form the income of non-commercial entities as land income.

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)

Profits coming from commercial activities (such as the sale of books or T-shirts) contribute to form the income of non-commercial entities as corporate income. The earnings from royalties or license fees can contribute to form income as business income or as different income.

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

Investments in public-utility programmes are not expressly considered by law. Therefore, the earnings coming from such investments are taxed according to their nature (real estate, capital gains, income from commercial activities, other income), according to Article no. 8 of the Decree n. 917/86.

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

No, dividends or capital gains received by non-commercial entities are taxed as capital income or as different income (see next question), but not as business income.

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

Since January 2019, foundations pay a substitute tax of 26% on capital gains due to the sale of shares (both for “relevant” or “non-relevant” shareholdings).

On capital gains due to sale of treasury bonds, a substitute tax of 12.5% is applied.

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

No, it does not.

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

Since 2020, non-commercial entities are required to pay a capital tax on financial assets held abroad (IVAFE). In this case, a property tax of 0.2% is applied to the value of financial products held abroad.

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

Real estate transfers are subject, depending on the case, to VAT or registration tax. For free transfers, inheritance or donation tax may be applied. However, these taxes are generally borne by the buyer or beneficiary.

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

Foundations are also subject to local taxes on real estate (such as IMU and TASI). However, there is a tax exemption for properties used by non-commercial entities for carrying out non-commercial activities.

Foundations are also subject to a local tax on "productive activity" (so-called IRAP - Imposta regionale sulle attività produttive) and to a fee calculated on the basis of an estimate of the volume of waste generated (so called TARI).

**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:**

Currently, the majority of tax benefits provided by Italian law is referred to the Onlus foundations. The Italian Tax Authority states that foreign non-profit entities can be qualified in Italy as ONLUS, if they meet all the requirements of Art. 10, para. 1 of Decree no. 460/97 (Circolare 24/E of 26 February 2006).

- Statutes (translation required?) - Translation is 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? Documents providing evidence of the foundation's activity in the fields provided by Art. 10 of Decree no. 460/97, as well as of the fact that related commercial activities are residual for the foundation.
- Other

It should be noted that the Onlus qualification will soon be replaced by the Third Sector Entity definition, as soon as the Reform is fully implemented, but no clarifications have been provided by the competent public offices on the possibility for non-resident entities to adopt the ETS qualification.

**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?**

Foundations and non-resident, non-commercial entities are subject to taxation in Italy for income produced in the territory of the state. However, Italy has formed special treaties with many foreign states aimed at avoiding double taxation.

**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?**

Withholding taxes on capital income produced in the territory of the state are usually applied both for investments by resident and non-resident foundations. Non-resident foundations can recover part of the withholding tax if there is double taxation.

### 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?

The Italian legal system provides for different kinds of facilities according to the beneficiary's qualifications, to the purposes pursued by the foundation and to the nature of the donor. Specific discounts are available for donations to Third Sector Entities. In addition, increased facilities are provided to encourage the development of some activities which are particularly important for society (e.g. scientific research).

#### 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?

According to Art. 15 by TUIR, there is a system of deductions for money donations made to legally recognised non-profit associations and foundations, that carry out activities of cultural, artistic, social and educational interest. The maximum amount of the deduction is 19% of the charge supported.

The Third Sector Reform introduces significant changes in the tax benefits deriving from donations to Third Sector Entities (ETS) registered in the new National Register (RUNTS).

Art. 81 of the Third Sector Code (CTS) introduces the "social bonus", which is transitionally applicable from 1 January 2018 (and in any case up to the tax period following the RUNTS operating period) to Onlus entities, organisations of voluntary work and social promotion, and associations, as long as they are registered in the relevant registers provided by their respective specific rules.

The social bonus consists of a tax credit for money donations made by individuals or entities or companies, in favour of Third Sector Entities that have submitted a project to the Ministry of Labour and Social Policies to support the recovery of unused public buildings and movable and immovable property confiscated from organised crime and assigned to Third Sector Entities, which use them exclusively for carrying out activities of general interest (see Art. No. 5 of Legislative Decree 117/2017). The tax credit is equal to 65% of the donations made by individuals.

According to Art. No. 82, paragraph 1, free transfers in favour of ETS (including social enterprises set up in the form of a social cooperative or in another non-corporate capacity) are not subject to inheritance and donation tax.

Art. No. 83 of the Third Sector Code provides an IRPEF deduction equal to 30% of the value disbursed in favour of the Third Sector Entity (ETS), for a total amount not exceeding €30,000 in each tax period.

Therefore, tax benefits will be parameterised according to the type of goods being disbursed.

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

As already mentioned, the tax relief regime provided by the CTS's Art. no. 83 involves both money donations and in-kind donations. With reference to money donations, the deduction is allowed only if the payment is made through banks or post offices, as well as other traceable systems. Instead, the "normal" value of the in-kind donation is determined according to Art. 9 from TUIR.

#### 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?

Art. no. 100 from TUIR provides the IRES deductibility of the donations made to legal entities that pursue exclusively education, recreation, social and health care, worship, and scientific research as well as contributions and donations for a total amount not higher than 2% of the declared corporate income.

The Law 133/1997 provides a 30% deduction from the income tax of the money donation made in favour of populations affected by public calamity events or other extraordinary events made through

foundations, associations, committees and entities identified in the Prime Ministerial Decree of 20 June 2000.

Art. no. 81 from the Third Sector Code (already examined above) provides a tax credit equal to 50% of the amount disbursed by entities or companies, within the limits of 5 per thousand of annual revenues.

In order to determine the IRES amount, Art. no. 83 from the Third Sector Code provides a deduction of 10% of the total declared income for money and in-kind donations made to support Third Sector non-commercial entities.

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

As already mentioned, the tax relief regime provided by Art. 83, Third Sector Code, involves money and in-kind donations. Specific rules are provided for capital goods or goods produced or exchanged by companies. For capital goods, the quantification is made considering the residual tax value, i.e. the value of the asset not yet amortised at the time of the transfer. Otherwise, when the supply concerns goods or raw and ancillary goods, semi-finished and other movable goods (excluding instrumental ones), used in production, the quantification must take place according to the lower of the normal value of the asset, established by the TUIR rules previously exposed.

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

The Tax Authority's Circular n.24/E of 26/06/2006 provided that there are no constraints to recognise the Onlus status in favour of entities resident abroad and, therefore, the possibility that they are admitted to the relative facilitations. This Circular has not yet been updated according to the Third Sector Reform.

However, the principle of the European Court of Justice rulings should ensure that even the future donations to non-resident, non-profit entities that are "comparable" to Italian resident entities (and therefore meet the requirements to be considered as Third Sector Entities) are subject to the same treatment.

The Law n. 133/1999 provides that the money donations in favour of victims affected by public calamity events or other extraordinary events, even if they have occurred in other states, through foundations, associations and other entities are tax deductible.

#### **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?**

The Italian system generally provides the possibility to allocate 8% of the declared income to religious groups engaged in social and humanitarian missions. The law provides the chance to donate 5% of the declared income to a voluntary entity.

The Reform of the Third Sector has changed the five per thousand regulation of the IRPEF, identifying as beneficiary all the organisations registered in the National Third Sector Register (RUNTS). This rule will be effective from the year following the Register's activation; until that moment, the allocation of the five per thousand can be made only to support voluntary entities.

#### **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)?**

Only money donations made through banks, post offices or other traceable payment methods can take advantage of the facilities previously described (see Art. 23 of Legislative Decree 241/97). Therefore, in the case of bank transfer (bank/post) it will be necessary to show a bank receipt, while for payments by credit, debit or prepaid card, reference must be made to the bank statement issued by the company that manages them. It will be necessary to produce a receipt showing the liberal nature of the payment, the beneficiary and the purpose of the donation.

In-kind donations must be traced by a written document containing a bilateral declaration between the donor and the beneficiary.

**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?**

In the case of donations made to Onlus foundations residing abroad, the same rules for tax relief already examined are applied. For non-profit entities with a different nature, there isn't a specific regulation yet.

**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?

No. Tax relief is provided for small-scale donations made on the street or by text message. When donations are made through crowdfunding platforms, taxpayers must be in possession of:

- The payment receipt to enjoy the facilities provided (bank or postal, bank statement of the company that manages the credit card, debit card or prepaid card), or
- The receipt certifying the operation carried out on platforms made available by the intermediary or the crowdfunding collectors.

If it's not possible to derive the above information, in order to benefit from the tax facilities, the beneficiary must issue the receipt of the payment and a specific receipt showing the purpose of the donation.

## 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?**

The tax treatment depends on the nature of the grant provided by the foundation. Some types of grants (scholarships, for instance) could be subject to a withholding tax with reference to income tax purposes.

**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?**

It is possible to fund entities and foundations conducting economic activities, but the tax treatment may change based on the economic nature of the beneficiary. The legal/fiscal framework changes according to the purpose and the qualification of the beneficiary.

The funds supplied to legal entities for the exercise of commercial activities are subject to the so-called IRES – *Imposta sul Reddito delle Società* income tax.

The funds supplied to non-commercial entities carrying out non-commercial activities or fundraising purposes are exempt from tax.

The Third Sector Entities (whether they are commercial or non-commercial) are formally bound to use the goods received as a donation to fulfil their statutory activity for the exclusive pursuit of civic, solidarity and social utility purposes (see D.M. 28/11/2019).

Almost all non-profit associations are required to follow the so-called "EAS Model", by which the Italian Tax Authority (a.k.a *Agenzia delle Entrate*) acquires the most relevant tax information.

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

No additional provision is required if the funding comes from abroad.

## 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)?

In Italy gift and inheritance tax is regulated by the Decree n. 346/1990, while the Decree n. 117/2017, the so-called *Code of the Third Sector*, provides specific rules for non-profit organisations.

Transfers to foundations with public-benefit purposes and foundations of banking origin are not subject to inheritance and donation tax (see Art. 3 of Decree 31 October 1990, no. 346).

Transfers to non-profit entities pursuing civic, solidarity and social purposes, according to the definition provided by the *Code of the Third Sector*, are not subject to inheritance and donation tax (see Art. 82 of Decree 3 July 2017, no. 117).

In any other case, the recipient foundation is taxed at a rate of 8% (see Decree 31 October 1990, no. 346 and Art. 1, par. 47-54, of Decree 3 October 2006, no. 286).

Moreover, a share of the inheritance is reserved by law to the children and grandchildren (or other heirs, in specific cases) of the person who made the will.

### 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?

Inheritance and gift tax applies:

- With the 4% rate for successions and donations in favour of the spouse, children and other relatives in a straight line, only on the amount exceeding the deductible of €1,000,000 (therefore these categories of subjects are exempt from transfers of less than €1,000,000 in value).
- With the rate of 6% for successions and donations to brothers and sisters, only on the amount exceeding the deductible of €100,000 (therefore transfers of less than €100,000 in value are exempt from these categories of tax).
- With the rate of 6% for successions and donations to other relatives up to the 4<sup>th</sup> degree, related in a straight line, related in a collateral line up to the 3<sup>rd</sup> degree, without deductible (tax expenditure).
- With the rate of 8% for successions and donations in favour of all other (unrelated) subjects, without deductible (tax expenditure).
- With the rate of 4%, 6%, or 8% for successions and donations in favour of disabled people (based on the degree of kinship), only on the amount exceeding the deductible of €1,500,000 (regardless of the relationship).

The amounts that are deductible for tax purposes are calculated according to the following rules:

- On the full value of the donation; or
- On the value of the assets attributed to each beneficiary.

Moreover, the calculation must include the previous donations received by the same subject, as well.

The recent Italian Reform of the Third Sector has introduced a preferential taxation regime for donations made to Third Sector Entities, which is a common definition for associations, foundations, social enterprises, philanthropic entities and voluntary organisations.

Donations made to support entities admitted to the *National Third Sector Register*<sup>2</sup> (i.e. “Registro Unico Nazionale del Terzo Settore”), administered by the Ministry of Labour and Social Policies, are exempt from donations and inheritance tax (see Art. 82 of Decree 3 July 2017, no. 117).

---

<sup>2</sup> It is expected to enter into force in 2021.

The tax advantage is applied to organisations of the Third Sector, including social cooperatives, except for social enterprises constituted in other company forms.

To take advantage of this benefit, the recipient is required to use the assets just to meet the statutory activities, related to the pursuance of civic, solidarity and socially useful purposes.

Transfers to foundations with public-benefit purposes and foundations of banking origin are not subject to inheritance and donation tax (see Art. 3 of Decree 31 October 1990, no. 346). Other foundations are taxed with a rate of 8% (see Decree 31 October 1990, no. 346 and Art. 1, par. 47-54, of Decree 3 October 2006, no. 286).

There are no differences on a local basis.

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

No, there is not a threshold from gift and inheritance tax for donations/legacies to public-benefit organisations. They are totally exempt from this kind of tax (see Art. 3 of Decree 31 October 1990, no. 346 and Art. 82 of Decree 3 July 2017, no. 117).

### **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?**

According to the Italian law, a share of the inheritance is reserved to the spouse, descendants or ascendants, even against the will of the deceased.

More specifically, the spouse, in addition to the right to live in the family home, is entitled to half of the property of the deceased, reduced to a third or a quarter if the spouse competes with one or more children.

On the other hand, children (or possibly their descendants) are reserved:

- One half of the estate, in the one-child case
- Two-thirds of the estate, in the case of two or more siblings

In the absence of children, a third of the estate is reserved for the ascendants. This share is reduced to a quarter if the ascendants compete with the spouse.

If any donations made by the deceased when still alive should compromise the legal heir's rights, the donation would remain a valid and effective act anyway.

However, the subject who has suffered a decrease in his successor rights will be able to experience the so-called Action to reduce donations.

According to the provisions of article 559 of the Italian Civil Code, donations are reduced starting from the last one and gradually going up to the previous ones.

In any case, pursuant to Article 555 of the Italian Civil Code, donations will not be reduced until the value of the assets disposed by the will is exhausted. This means that the legitimate subject must first act for the reduction of the shares due to the heirs and legacies.

If the legitimate subject is still unsatisfied, they can act to reduce donations at a later date.

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

Generally, inheritance and gift tax applies:

- If the deceased or the donor was residing in Italy at the time of inheritance or gift
- To property and rights existing in Italy, if the deceased or the donor was residing abroad

Tax exemption for public-benefit purposes also applies to non-resident public-benefit foundations, subject to the reciprocity principle (see Art. 3 of Decree 31 October 1990, no. 346).

## 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?

No changes in Italy's legislation have been recently approved or are being discussed at the moment.

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

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

Foundations are not formally required to comply with the Anti-Money Laundering Directive.

However, as legal entities, they must provide a declaration to support the subjects who are required to comply with customer due diligence measures aimed at identifying the Beneficial Owners (*i.e.* banks, notaries, chartered accountants and lawyers).

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

According to Art. 20, Legislative Decree no. 231/2007, which regulates the Anti-Money Laundering law in Italy, in the case of private legal entities, the following are cumulatively identified as BO:

- Founders, if still alive
- Beneficiaries, if easily identified
- All those subjects who are legally entitled to represent the foundation, such as legal representatives or administrators

If the application of the above-mentioned rules fails, the Beneficial Owner is the natural person or persons to whom, ultimately, the direct or indirect ownership of the entity or its control can be attributed.

**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?**

According to Art. 21, Legislative Decree no. 231/2007, a specific section is provided in the Italian Registry of Business<sup>3</sup> (so called *Registro delle imprese*), to whom all the companies and private legal entities are required to communicate all data regarding their BOs.

Moreover, non-profit organisations are subject to specific registers, to whom they must communicate information about their legal representatives and administrators.

It must be observed that the current law provides as many registers as there are legal forms.

Thanks to the Third Sector Reform Law, these registers will soon be replaced by the introduction of the National Third Sector Register (the so-called RUNTS), to whom all the NPOs wanting to benefit from the “Third Sector Entities” status must sign up.

Its entry into force is expected to happen during 2021.

Lastly, recognised foundations and associations must sign up in the Register of the Legal Entities, held by local Prefectures and Regions (see D.P.R. no. 361/2000).

**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
- 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?
- 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?

The Delegation Law no. 106/2016 has introduced the Third Sector Reform project, whose mission is to attain a comprehensive revision of the legislation aiming at harmonising and simplifying the multiple fragmented regulations. The Third Sector Code (a.k.a. CTS – *Codice del Terzo Settore*) is an organic legislation corpus which regulates, on both tax and civil law levels, non-profit organisations carrying out activities of general interest for the pursuit of civic, solidarity or social-utility purposes.

Contextually, the National Register of the Third Sector was established.

It consists of six sections dedicated to particular types of Third Sector Entities (voluntary organisations, social promotion associations, philanthropic entities, social enterprises, mutual aid companies and associative networks) and a residual section dedicated to “other Third Sector Entities”.

For instance, associations (both recognised and non-recognised) and foundations not classified in the previous categories, as well as “other private entities different from companies” (see Art. 4 of CTS), will be placed into the section dedicated to “Other Third Sector Entities”.

The Reform contemplates an audit system in close collaboration between the Ministry of Labour and Social Policy and the public administrations involved.

---

<sup>3</sup> According to the Italian Law, it is a public electronic register in which all Italian companies and other kinds of entities carrying out business affairs are required to register.

The Third Sector Code provides an inner audit system within the organisation of the entity as well as an external audit exercised by a person not belonging to the entity itself.

The aim of the audit system is to meet many different purposes, such as:

- Checking the fulfilment of the obligations due to the National Third Sector Register's submission
- Verifying the existence of the legal requirements set by law

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

With specific reference to foundations, fundraising campaign discipline is regulated by Art. 7, Legislative Decree no. 117/2017, which provides the chance to act in a continuous and organised way, according to the guidelines provided by the Ministry of Labour and Social Policies.

Depending on the type of collection and how it is exercised, the tax regime applicable for direct taxes and VAT varies. In particular, only the revenues coming from public collections of occasional funds, also by offering goods and/or services of modest value to third parties, are not taxable for the purposes of direct taxes (see Art. 143, paragraph 3, of the TUIR and art. 79 of the CTS) and are excluded from the field of application of VAT and from any other tax (see Art. 2 of Legislative Decree no. 460/1997).

The general non-taxation of the amounts coming from the general public remains, even if they have been collected through fundraising events, without any consideration by the beneficiary entity, regardless of the public or private nature of the collection.

## VII. Further information

### Useful contacts

**Studio ACTA – Avvocati Commercialisti Tributaristi Associati**, Via dei Redentoristi, 9, 00186 Roma, Italy, Telephone: +39 06 89131373, Mail: [paola.mutti@actax.it](mailto:paola.mutti@actax.it)

### Selected bibliography

- SEPIO G., Fici A., Rossi E., Venturi (2020), Dalla parte del Terzo Settore, La riforma letta dai suoi protagonisti, p. 95 – 145, Editori Laterza, ISBN: 9788858138748
- SEPIO G., Pettinacci J. (2019), Le erogazioni liberali in natura a favore degli enti del Terzo settore, in *Il Fisco*, N. 14/2020, ISSN: 1124-9307
- SEPIO G., Ioannone I. (2019), Incentivi per le erogazioni liberali al Terzo settore: efficacia transitoria delle nuove norme in attesa del RUNTS, in *Il Fisco*, N. 38/2019, ISSN: 1124-9307
- SEPIO G., Ioannone I. (2019), La riforma del Terzo settore vista dai professionisti, in *Il Fisco*, N. 21/2019, ISSN: 1124-9307
- SEPIO G., Pettinacci J. (2019), La raccolta fondi nel Terzo settore: profili civilistici, fiscali e operativi, in *Il Fisco*, N. 17/2019, ISSN: 1124-9307
- SEPIO G., Garone M. (2019), La riduzione dell'IRES per gli enti non commerciali, tra ripristino dell'agevolazione e nuove prospettive, in *Il Fisco*, N. 10/2019, ISSN: 1124-9307
- FICI A. (a cura di), *La riforma del terzo settore e dell'impresa sociale. Una introduzione*, Editoriale scientifica, 2018, ISBN: 8893912457

### Selected law texts online

- [Ministerial Decree no. 28/11/2019](#), released by the Ministry of Labour and Social Policy,
- [Legislative Decree no. 117/2017](#), also known as “The Code of the Third Sector” (i.e. *Codice del Terzo Settore*)
- [Legislative Decree no. 112/2017](#), which regulates the social enterprise discipline
- [Delegation Law no. 106/2016](#)
- [Legislative Decree no. 231/2007](#), Anti-Money Laundering Law
- [Decree of the President of the Republic \(D.P.R.\) no. 361/2000](#)
- [Legislative Decree no. 460/1997](#)
- [Legislative Decree no. 346/1990](#)
- [TUIR – Testo Unico delle Imposte sui Redditi](#),

## 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](http://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](http://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](http://www.efc.be)

---

**Donors and Foundations Networks in Europe AISBL (Dafne) and  
European Foundation Centre AISBL (EFC)  
2020**



This work is licensed under a Creative Commons Attribution -  
Non Commercial No Derivatives 4.0 International License.

Quotation is subject to full identification of source. The named authors of this country profile bear all responsibility for the correctness and accuracy of the information provided. Dafne and EFC expressly disclaim any liability arising from the use of the information provided in this country profile.