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Legal Environment for Philanthropy in Europe

Luxembourg

COUNTRY PROFILE

By Audrey Lesperoy
Fondation de Luxembourg

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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?**

Foundations are governed by the Luxembourg Law on Non-Profit Associations and Foundations of 21 April 1928 (hereafter referred to as FA), amended in 1984, 1994, 2001, 2002 and 2008 (Loi du 21 avril 1928 sur les associations et les fondations sans but lucratif, telle qu'elle a été modifiée).

According to Art. 27.2 FA, foundations are establishments pursuing aims that are philanthropic, social, religious, scientific, artistic, pedagogic, related to sports, or in the field of tourism.

The purpose shall be pursued using the assets dedicated to the foundation upon its creation or later on. According to the FA, there is only one type of foundation, pursuing non-profit or public-benefit purposes. Art. 27.1 of the FA provides that the foundation enjoys legal personality. However if the foundation fails to prepare the publications required by the FA statute, its personality will not be effective against third parties, the latter being nonetheless entitled to avail themselves of such a personality if it is in their interest.

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?**

Foundations can be established by a deed executed by a notary or via a will (Art. 28 FA).

The setting up of a foundation requires approval by a Grand Ducal Decree/arrêté grand-ducal (Art. 29 FA). If such approval is not given, recourse can be made to the administrative court (tribunal administratif) (Art. 30 FA)

According to Art. 30 FA, the statutes of the foundation must cover the following points:

- The purpose or purposes for which the foundation was created
- The name and the legal seat of the foundation, which must be located within the Grand Duchy of Luxembourg
- The name, profession, domicile, and nationality of the foundation's directors and regulations regarding their subsequent appointment
- The destination of assets upon dissolution of the foundation

Once the foundation obtains approval by a Grand Ducal Decree, both the statutes and any later amendments (which are again subject to prior approval by Grand Ducal Decree) must be published in the Official Gazette/Mémorial, Recueil Spécial des Sociétés et Associations following the same procedure as the one set forth for commercial companies (Art. 32.1). All foundations must register in the register of commerce/registre de commerce et des sociétés. For this registration, a copy of the Grand Ducal Decree must be submitted. Such registration does not create a presumption of commerciality for a foundation (Art. 32.3, 32.3 FA).

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.

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 articles of association and information on board members and accounts.

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: No specific amount set by law, but in practice governmental approval of a foundation will only be obtained if it is found that the means which are at the foundation's disposal (and in particular its initial capital) are adequate for the activities to be pursued. Also, in practice, a foundation is unlikely to be approved if its initial capital is not at least €100,000.

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

There are no requirements nor specifications in that sense. Foundations are allowed to spend down their endowment, although that is not entirely in line with the definition of a foundation as set out in the law.

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

a) Is it mandatory to have a:

- Supervisory board
- Governing board

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

There needs to be a minimum of three board members. There is no maximum number of board members provided for in the law, but the articles of association may provide for a maximum.

Rules regarding the appointment, removal, and resignation etc. of board members are to be laid down in the articles of incorporation of the foundation.

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

The board members are in charge of the overall management of the foundation.

- 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 articles of a foundation may provide for certain rights in favour of the founder (such as, for example, the right to participate in the appointment of board members) but the law does not provide for any particular rights in favour of the founder. A fundamental change, such as, for example, the modification of the purpose of a foundation requires a change of the articles which cannot be made by the founder *qualitate qua* and, at any rate, requires governmental approval.

- 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?

If the founder has not determined the conditions under which the statutes may be amended, the latter may be only amended by agreement between the Minister of Justice and the majority of the board members. In any case, amendments will require approval by Grand Ducal decree.

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

- 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?

The law does not provide for any specific rights of beneficiaries.

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

There are presently no rules on conflicts of interest in the law.

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?

A foundation's liability is limited to the assets that have been contributed to it (Art. 38.2 FA). As a consequence of its legal personality, the foundation incurs civil liability for any acts committed by its directors or other organs representing it (Art. 39 FA). However, this does not prevent the members of these organs from being held personally liable according to common law. Except where they act wrongfully (according to tort law), the organs of a foundation (i.e. the directors), are not personally liable for the undertakings and commitments of the foundation. A reasonable duty of care and diligence is expected from board members.

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

This is not stipulated in the law as such, but case law traditionally makes this kind of distinction.

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

The foundation itself, interested parties or public authorities.

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?

Every foundation has a board of directors as its governing body, but it is up to the statutes to say who can represent the foundation towards third parties. If there is no specific provision in the statutes, the board as a whole would need to represent the foundation towards third parties.

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

Commercial and industrial activities are permitted but are taxed. However, the foundation may not have the primary goal of conducting commercial activities. There are a number of activities that may expose a foundation to income tax, such as trading, manufacturing, banking and insurance activities.

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?

There is no specific legal/fiscal framework foreseen. However, the foundation may not have the primary goal of conducting commercial activities.

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

There is no legal provision that would prevent a foundation from being a major shareholder.

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?

According to Art. 35 FA, foundations may own real estate only to the extent necessary for the pursuance of their purpose(s). Moreover, according to Art. 36 FA, donations or wills in favour of a foundation will be effective only if they conform to the provisions applicable to associations (ASBL) in such cases, namely Art. 16 FA, which requires authorisation by Grand Ducal Decree for such donations/wills to take effect. However, such authorisation will not be requested for donations/wills of a value not exceeding €30,000 or for donations that have been made by bank transfer from a bank in the EU or the European Economic Area. If such authorisation is not obtained, recourse can be made to the administrative court (*tribunal administratif*).

Furthermore, Art. 37 FA provides that the setting up of a foundation and donations/wills in favour of a foundation must not jeopardise the rights of the debtors and heirs entitled to the *réserve* of the founders, donor or testator. The latter are entitled to seek annulment of the donations/wills and even the dissolution of the foundation and liquidation of its assets.

There are no further limitations.

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)

There is no provision in the FA prohibiting such activities and there is no reason that they should not be authorised.

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

No, there are not such limitations as long as the purpose of the foundation is to serve the public interest and pursue one of the aims indicated in the law (see below).

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

If the founder has not specified the rules for amendment of the statutes, they may only be amended upon approval of the Minister of Justice and the majority of the current directors (Art. 31 FA). Any amendment is subject to approval by Grand-Ducal Decree and must be published in the Official Gazette.

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)?

The directors of foundations must submit accounts and the budget to the Ministry of Justice every year within two months of the closing of the accounts (Art. 34 FA). The annual accounts must be published within the same period in the *Mémorial*.

According to Art. 32bis FA, foundations' written acts (invoices, announcements, publications) must include the name of the foundation together with the word "foundation", the mention of the foundation's legal seat as well as the registration number in the *registre de commerce et des sociétés, Luxembourg*.

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

These are to be filed with the Ministry of Justice who would have the authority to check them.

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)?

Yes, in the Register of Commerce.

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

Presently the law does not require an external audit to be performed on the annual accounts of foundations.

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

N/A

19. Supervision: Which authority, what measures?

According to Art. 40 FA, the authority in charge of the supervision of foundations is the Ministry of Justice. The Ministry of Justice has to ensure that the assets of foundations are used for the

purpose(s) for which they were created. The district court (civil) of the place where the foundation is domiciled may, upon a request by either any interested third party or the public prosecutor, revoke the directors if they act imprudently or contrary to their obligations as set forth by the FA statutes; if they do not use the assets according to their destination as per the statutes; or if they use the assets in a way contrary to public policy and order. New directors are then appointed pursuant to the statutes or, if the court so decides, by the Ministry of Justice.

Furthermore, Art. 41 FA provides that the district court may, on request of a director, any interested third party or the public prosecutor, dissolve a foundation if it has become unable to accomplish the purpose(s) for which it was created.

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. In practice there seems to be hardly any active supervision other than to check whether annual accounts are filed.
- No

c) Are foundations subject to inspection?

- Yes
- No

See above.

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 - (save that governmental approval is required for any change of the articles of association)

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?

See above for the possibility that, upon a request of the Public Prosecutor, a foundation may have its directors revoked or be dissolved by the District Court.

20. When and how does a foundation dissolve?

A foundation may be dissolved by the civil court upon the request of a director, any interested third party or the public prosecutor, if it becomes unable to accomplish the purpose(s) for which it was created (Art. 41 FA). In such a case, the judge appoints one or more liquidators. After payment of the foundation's debts, the liquidated assets must be used according to the destination set forth in

the statutes. If this proves impossible, the assets will then be transferred to the Ministry of Justice, which will see that they are used for a purpose as close as possible to the purpose for which the foundation was originally created.

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?

Special statutory regulations concerning “administration costs” do not exist in civil/tax law. However administration costs should be deemed to be reasonable as a foundation cannot be established for the benefit of its board members or its staff (just as it cannot be set up for the benefit of the founder and/or his family).

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. See question 7.

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 foundation incorporated abroad is automatically recognised in Luxembourg subject only to the criterion that its activities do not represent a threat to public order and security. Furthermore, Luxembourg recognises the concept of trusts as ratified in 2003 in the Den Hague Convention of 1st July 1985, provided that the trust is not manifestly incompatible with public policy (Article 18, Hague Trusts Convention).

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

Yes.

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

No. However, a donation to a non-profit organisation which exceeds €30,000 in value is subject to the approval of the Minister of Justice, unless the donation has been made by bank transfer from a bank in the EU or the European Economic Area.

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

Yes, the FA expressly allows foundations established under Luxembourg law to transfer their registered office abroad, without thereby losing their legal personality provided that the state of their new registered office recognises the continuation of this legal personality.

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

According to the Luxembourg Law on Non-Profit Associations and Foundations of 21 April 1928 (hereafter referred to as FA), state-approved foundations are by definition bodies of public interest pursuing public-benefit purposes. As such, they are exempt from income tax (Art. 161.1 of the Income Tax Act), if they directly and exclusively pursue public-benefit purposes (including charitable and religious purposes). However, they remain taxable to the extent that they carry out industrial or commercial activities.

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?)

No specific requirements in place.

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

It depends on the scheme under which such state funds are received.

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 as per the law on foundations.

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 no definition properly speaking but rather an enumeration in the law on associations and foundations referring to "philanthropic, religious, scientific, artistic, pedagogic, social, sports or tourism" purposes as being eligible as public-benefit purposes.

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, tax law merely provides that foundations (as defined by the civil law on associations and foundations) which pursue "directly and exclusively cultural, charitable or public interest aims" are exempt from income tax, except income generated by a commercial or industrial activity. Other tax law provisions are formulated in a similar way.

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 (animal shelters excluded)			
Science, research and innovation	x			
Education and training	x			
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)	x			
Health, well- being and medical care	x			
Consumer protection		x		
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity			x	
Advocacy		x		
Advancement of religion	x			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

Note: There is no list of purposes eligible for tax exemption as such – whether, in a given case, any such purpose will indeed be recognised as amounting to a public-benefit purpose will depend on the manner in and the means by which it will be pursued so as to in practice benefit the public rather than some private interest.

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”?

Put like that, the question is difficult to answer under Luxembourg law. The foundation must serve the public interest and pursue one of the aims indicated above.

- 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?

No, not if it can be identified based on legal or family affiliations.

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.?

Board members can have their costs reimbursed. Normally, staff may be remunerated. But at any rate, a foundation cannot be established for the benefit of its board members or its staff (just as it cannot be set up for the benefit of the founder and/or the founder’s family).

- 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?

Such assets are to be used in accordance with what the statutes stipulate for this. (The statutes are subject to government approval). If for some reason this cannot be achieved, the assets are to be used for a purpose similar to the one for which the foundation has been incorporated.

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**?

See previous question.

- 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)

The question is whether the foundation pursues a public interest or not. Clearly what a donor/funder can receive must be an appropriately small token in relation to the size of the donation, otherwise the donor’s gift cannot be considered as such.

- 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”:

No, but the public-interest criteria will always apply.

- 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?

It is not simply a matter of the civil law “accepting” or “not accepting” these types of scenarios. In order to enjoy legal capacity, foundations need to be approved by the government and in this context the government no doubt enjoys a certain (possibly a considerable) amount of discretionary power to approve a foundation. It is up to the government to evaluate whether the envisaged scenarios can genuinely be viewed as serving a public interest. In this context, the government would clearly be anxious that no tax benefit can be obtained which exceeds the actual value of a donation. In practice, none of the scenarios envisaged below seems to exist in Luxembourg (except, possibly, in a way, for religious purpose foundations insofar as they may have among their aims the maintenance of the members of a convent).

	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?

Before approving a foundation (see above), the government seeks the view of the director of the tax administration who is thus somewhat influential when it comes to whether a foundation should be approved or not. Tax law further provides that a foundation is exempt from income tax only if it pursues "directly and exclusively cultural, charitable or public interest aims". Apart from that, (i) in most instances only donations in cash provide a tax benefit to the donor and (ii) though no such scenario would seem to have arisen in the past, the tax administration might, in the scenarios envisaged below, limit the tax benefit for the founder to the actual value of the conditional donation.

	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?

Yes, though that is not entirely in line with the definition of a foundation as set out in the law.

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, though there is no explicit provision in the law on this.

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

No.

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

No.

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

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

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

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

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

Non-profit activities abroad are allowed without putting the Luxembourg tax exemption at risk. A foundation may pursue activities partly or wholly outside of Luxembourg.

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

Yes, provided that they have the form of a Société d'Impact Sociétal (see below for explanation of the concept).

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

Once their creation has been approved by the Ministry of Justice through a Grand Ducal Decree, foundations are exempt from income tax (Art. 161.1 of the Income Tax Act), if they directly and exclusively pursue public-benefit purposes.

b) Investment income (asset administration)

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

Investment income is exempt from taxes provided it does not derive from a commercial or industrial activity and it is used for purposes related to the main objectives of the foundation.

Public-benefit organisations are not allowed to own more real property than is needed for the realisation of their statutory purposes (articles 15 and 35 of the law of 21 April 1928). Property income exceeding the usual asset management needs will be considered as commercial taxable income.

The organisation may hold and manage interest bearing financial assets without being taxed on such income if the assets constitute allocated funds or assets ("Zweckvermögen") in the sense of article 6 of the decree of 16 December 1941 (Verordnung zur Durchführung der §§ 17 bis 19 des Steueranpassungsgesetzes – Gemeinnützigkeitsverordnung).

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)

Income from activities deemed to be commercial or industrial (including major shareholding) is subject to the regular corporate tax rate of around 30% (the exact tax rate depending on the municipality in which the foundation's offices are located and in which the activities are carried out).

According to article 161 (1) n° 1 L.I.R., organisations pursuing directly and exclusively purposes related to worship, charity or public benefit are exempt from corporate income tax. Industrial or commercial activities are not taxable as long as such activities remain only a means to fulfil the purposes defined in the statutes and if such activities exceed the scope of an asset management.

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

As for income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities), it will be tax-exempt to the extent that such activities will not be deemed to be commercial.

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

See above.

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

There is no separate capital gains tax in Luxembourg. Capital gains are included in ordinary income and taxed or exempted accordingly.

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

Foundations are liable to input tax. They are generally exempt from output tax unless they regularly carry out an economic activity and qualify as “taxable persons” for the purpose of VAT legislation.

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

Foundations are exempt from net wealth tax if and to the extent that they directly and exclusively pursue public-benefit purposes, including charitable and religious purposes (paragraph 3 of the net wealth tax statute/loi concernant l'impôt sur la fortune/Vermögensteuergesetz).

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

N/A

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

Foundations are exempt from real estate property tax if they directly and exclusively pursue public-benefit purposes and the real estate is to be used for charitable purposes (paragraph 4 (3) b of the real estate tax statute/loi concernant l'impôt foncier/Grundsteuergesetz).

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

According to article 160 L.I.R. non-resident organisations are liable to corporate income tax in Luxembourg on behalf of their native income in the sense of article 156 L.I.R.

A personal tax-exempt status can be recognised for an organisation only if the tax administration (administration des contributions directes) can control and supervise the respect of the legal conditions.

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?

Yes. Luxembourg has double taxation agreements with 83 different countries, which can be found on the [Tax Administration's website](#).

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?

It depends on the tax legislation of the jurisdiction from which the income originates.

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?

Tax deduction.

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?

Donations from individuals and legal entities are eligible for a tax benefit in the form of a deduction from the donor's income tax. Donations to public-utility foundations are deductible up to an annual aggregate maximum limit of 20% of the taxable net income of the donor or €1,000,000, provided the donations have an aggregate value in excess of €120. Amounts donated in excess of these limits can be deducted during the two subsequent years under the same conditions and limits.

All public-benefit organisations to which gifts are tax-deductible are included in a list which is publicly available.

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

The donation must generally be made in cash directly to the charity (except for donations to national cultural funds and to cultural institutions or organisations via the funds, where a donation in kind is possible).

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?

Same tax treatment as for individuals – see above (Article 162 of the Income Tax Act, and Annex to the Grand Ducal Decree of 3 December 1969).

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

Same tax treatment as for individuals – see above (Article 162 of the Income Tax Act, and Annex to the Grand Ducal Decree of 3 December 1969).

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

On 20 July 2009 the Luxembourg Government issued a circular that extends tax incentives for Luxembourg resident tax payers if they give to recognised public-benefit organisations based in other EU countries, Iceland, Liechtenstein, Norway or Switzerland that have similar characteristics to their Luxembourg equivalents.

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?

None.

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 donor must provide a receipt indicating the donor's name, the date of the donation, and the voluntary basis of the donation.

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?

The donor has to present the same type of information as for national organisations. However, the donation should be verifiable and documented. Therefore, the tax authorities may ask the donor to provide supporting documents related to the payment and a certificate issued by the receiving organisation. This certificate is drawn according to a model provided by the tax authority. The model certificate, available online on the website of the tax administration, must be completed and signed by the beneficiary in German, English or French.

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?

There are no differences to standard donations (cash, wire transfer, online 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?**

See above and below, gift and inheritance tax. If the benefit qualifies as a donation, no other taxes are due.

- 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?**

See above and below, gift and inheritance tax. If the benefit qualifies as a donation, no other taxes are due.

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

N/A

V. Gift and inheritance tax

Gifts and inheritances received by the foundation are subject to a donation or inheritance tax, normally at a reduced rate of 4%. The tax does not apply to gifts or legacies by bequest that establish the foundation. Furthermore, gift tax is only due on registered gifts. Thus, informal gifts (so-called “*dons manuels*”) to charities are not subject to gift 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)?**

The recipient organisation.

- 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?**

Not-for-profit associations and public-utility foundations.

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

No.

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

Yes, forced heirship rules apply.

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

Provided that it can demonstrate that it is similar to a national public-benefit foundation, it will be subject to the same tax treatment.

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?**

Changes have been made in 2009 in order to adapt the fiscal legislation to the Persche judgment. In situations similar to the one in which the Stauffer decision was rendered, Luxembourg courts should treat foreign foundations equally to Luxembourg foundations (the structure of Luxembourg tax law being similar to the structure of German tax law).

- 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

Luxembourg has long been involved in the fight against ML / FT activities and takes care to mitigate the risks that arise in its jurisdiction. Luxembourg authorities undertake to uphold international standards and to apply best practices in the fight against ML / FT, and this jointly with their international partners as part of regular cooperation and through organisations and international forums. To this end, Luxembourg has implemented, during the past five years, a series of reforms to its legal framework and its institutional structure, including the 4th AML Directive (Directive (EU) 2015/849) and certain dispositions of the 5th EU AML Directive (Directive (EU) 2018/843) in order to face natural changes in the risks incurred, the increased complexity of activities and their perpetrators, and to apply more stringent common international standards which were agreed with its international peers. Today, Luxembourg has a strong and proactive regime against money laundering and combating the financing of terrorism (AML / CFT) through prevention, detection and prosecution activities. It has also put in place a comprehensive control regime covering all of its legal structures (including foundations) and institutional and competent authorities to mitigate the risks inherent to ML / FT that the country has identified.

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

No.

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

Yes.

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?

Yes, Luxembourg has a special register for BO of legal entities.

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

A bill of law no. 6054 was initiated in May 2009 for an overall reform of the legislation on associations and foundations. In respect of foundations, the law intended to introduce requirements such as a minimum endowment capital and independent external audit. It also intended to introduce much more detailed rules on governance, largely inspired by those presently prevailing for commercial companies. There has however been substantial opposition to many features of the law, mainly from the association sector. As of today it is difficult to forecast what will, at the end of the day, happen to this bill of law and when it is likely to be adopted in Parliament, if at all.

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?

Recently, with the introduction of the Beneficial Ownership register.

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

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

The Luxembourg legislator introduced in December 2016 a new legal framework for companies with a social or societal impact, la société d'impact sociétal (SIS). The societal impact company (société d'impact sociétal - SIS) is a legal form of business reserved for businesses active in the social and solidarity economy. The Law derogates from the provision of the civil code by virtue of which a commercial company is normally driven by the aim of procuring a financial benefit for its shareholders. As a consequence, a SIS may provide in its articles of association that it is not incorporated with the view to procure a financial benefit for its shareholders.

Societal impact companies whose share capital consists of 100% impact shares can benefit from income tax exemptions. In respect of the same companies, donors are entitled to the same fiscal advantage, which is also granted to foundations.

f) Other?

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

There are no specific laws that regulate fundraising.

VII. Further information

Useful contacts

Marc Elvinger, Avocat à la Cour, Luxembourg Bar, Elvinger, Hoss & Prussen (marcelvinger@ehp.lu)

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- [Loi du 19 décembre 2008](#)
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VIII.About

Philanthropy Advocacy

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

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

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

www.dafne-online.eu

European Foundation Centre (EFC)

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

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

www.efc.be

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



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