

GUIDE TOWARDS A SINGLE EU MARKET FOR PHILANTHROPY

How to become a true European foundation
in a (not yet) single market for Philanthropy?

The King Baudouin Foundation
in the European Union





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The growing interest in cross-border donations to support international causes and foreign charitable organisations has gained momentum among individuals, businesses, and organisations in Europe and worldwide.

Unfortunately, some Members of the European Union (EU) do not yet offer tax deductibility to donors who wish to support beneficiaries in other Member States.

This inequality in treatment of cross-border philanthropy should in our view be assessed against the fundamental freedoms guaranteed by the treaties of the EU (*cf.* European Court of Justice in cases such as Stauffer¹, Persche² and Missionswerk³).

As the free flow of capital is at the core of the EU's single market, it could be expected that the legal and practical application of this fundamental freedom, combined with the non-discrimination principle, would be ensured in the EU. The non-discrimination principle should facilitate cross-border philanthropic giving and investments throughout the EU Member States.

Supranational legal forms could also be considered to facilitate philanthropic engagement.

As part of the implementation of the action plan for the social economy, the European Commission adopted on 13 June 2023 a proposal for a Council recommendation on developing social economy framework conditions.⁴ This proposal includes guidance for a non-discriminatory taxation of charitable organisations and their donors as drawn from EU case-law.

The proposal suggests enabling framework conditions for social economy actors including foundations. It recommends that Member States consider stimulating tax incentives for the sector, including corporate tax exemptions and income tax incentives for donors. It gives specific attention to better facilitate public-benefit cross-border donations, for example, by issuing a standardised form of the recipient entity established in another Member State.

¹ Judgement of 14 September 2006, Stauffer, C-386/04, EU:C:2006:568.

² Judgement of 27 January 2009, Persche, C-318/07, EU:C:2009:33.

³ Judgement of 10 February 2011, Missionswerk, C-25/10, EU:C:2011:65.

⁴ <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&furtherNews=yes&newsId=10594>.

In the meantime, the King Baudouin Foundation (KBF) would like to draw an updated status of the single market for philanthropy in the EU.

In doing so, the KBF intends:

- to (try to) obtain recognition/approval/registration (Registration) of its Foundation in the different EU Member States (and to learn from the Registration process); and
- to share its experience from such Registration process with other non-profit organisations (NPO) and to share and promote its these learnings via an upcoming publication "*How to become a true European Foundation?*".

The KBF has engaged in this respect with law firms across the various EU Member States in a view to:

- undertake the Registration process of the KBF in each EU Member State (where deemed fit); and
- answer a questionnaire that should provide a general overview the current main legal and tax regulations for philanthropy in each EU Member State.

In doing so, the KBF has sought detailed guidance for navigating the Registration process in each EU Member State, including:

- contact information of the relevant (tax) authorities in each EU Member State; and
- the necessary steps to be taken to obtain Registration.

The KBF has primarily focussed on the possibility to undertake the Registration process itself in each EU Member State.

However, the KBF also wishes to share its experience and expertise as to such Registration process with the philanthropy sector at large, including:

- Is Registration possible in the relevant EU Member State?
- If possible, how to start the Registration in the relevant EU Member State?
- Was the Registration process a smooth, complicated or lengthy process?
- What is the period of validity of the Registration once obtained?

The KBF thus wishes to share the outcome of the various Registration processes with relevant stakeholders and will liaise in this respect the European Commission and European Parliament. Both institutions regularly reach out to the philanthropy sector for receiving input and practical guidance for fostering topics that are linked to the development of philanthropy.

The KBF's efforts are complementary to:

- the efforts undertaken by other institutions such as Philea, with whom the KBF collaborates. KBF aligns with Philea's vision for European philanthropy, as outlined in the European Philanthropy Manifesto ([European Philanthropy Manifesto - Philea](#)); and

- the survey on the cross-border activity of individual and corporate donors, and philanthropic organisations across the EU and wider Europe, launched by Philea and Transnational Giving Europe ([Philea and TGE launch survey on cross-border philanthropy in Europe](#)). This survey aims to assess the state of play on cross-border philanthropy and to collect case studies – both negative and positive cases – to build the evidence base for our policy makers wishing to create a single market for philanthropy ahead of the 2024 European elections. The research will also help to exchange and promote best practices within the philanthropic sector.

As the European partner of the borderless giving alliance Myriad (www.myriad.org), the KBF wishes to anticipate, prepare, and accelerate the move towards a single market for philanthropy in Europe.

By leveraging knowledge-sharing and advocacy efforts, the KBF strives to push for new legislation (if so required) that supports, enables and advances (cross-border) philanthropy in Europe.

Brussels, November 2023

The King Baudouin Foundation

Annex: Questionnaires providing a general overview the current main legal and tax regulations for philanthropy in each EU Member State.

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AUSTRIA⁵

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

Important remark: Please be advised that the Austrian government has recently (in October 2023) presented a draft bill regarding the non-profit regulations to the Austrian parliament (*Gemeinnützigkeitsreformgesetz 2023*). The new law has not yet entered into force and there are still changes in parliament possible until it is adopted and it may even not be adopted at all. Nevertheless, for the purpose of this memorandum, we chose to present the draft legislation, as it is unlikely that the existing law will continue to be in force.

The new law is expected to contain the following new relevant provisions:

- new Sec. 4a EStG regarding the requirements for donations from business assets to be recognised as business expenses;
- new Sec. 4b EStG regarding the requirements for certain donations for the purpose of providing income-producing assets to be recognised as business expenses for income tax purposes;
- new Sec. 4c EStG regarding the requirements of donations to the Innovation Foundation for Education (Innovationsstiftung für Bildung gemäß § 1 ISBG) for certain purposes to be treated as business expenses for income tax purposes; and
- new Sec. 18 Par. 1 No 7, 8 and 9 EStG regarding the requirements for donations within the meaning of Sec. 4a, 4b and 4c EStG to be treated as special (private) expenses for income tax purposes.

In addition, the following provisions may be relevant for the purpose of philanthropy (donations, gifts and contributions):

- Sec. 121a BAO regarding the obligation to notify certain gifts;
- Sec. 34 et seq BAO on the prerequisites for charitable, benevolent and ecclesiastical purposes (expected to be amended with the new law);
- Foundation income tax act (*Stiftungseingangsteuergesetz*) for the taxation of contributions to foundations and similar asset pools; and
- Real Estate Transfer Tax Act (*Gründerwerbsteuergesetz*) for the transfer of Austrian properties.

⁵ Answers provided by Cerha Hempel Rechtsanwälte GmbH (Vienna).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Yes, the Austrian tax law provides for individuals to treat certain donations made as deductible business expenses (*Betriebsausgaben*) or as deductible special (private) expenses (*Sonderausgaben*) for income tax purposes. Corporations may treat certain donations made as deductible business expenses.

There are no specific tax advantages for bequests (meaning that a person indicates a qualifying NPO as beneficiary of their will).

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Only certain donations to NPOs (i) that are either listed in the Austrian law (Art. 5a Par. 6) or (ii) that have been granted donation concession (*Zuerkennung der Spendenbegünstigung*) may be benefit from a tax benefit.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

In short:

The **draft law** prescribes numerous prerequisites for an NPO to be granted donation concession. The prerequisites in particular concern the legal form⁶, the purpose⁷ and other criteria such as the lack of profit motive, transparency with regard to use of funds and minimum existence period.

In detail, the prerequisites depend on the type of corporation that desires to be granted donation concession. For a foreign corporation (corporation within the meaning of Sec. 4a Par. 3 No 4 KStG), all requirements listed must be fulfilled.

In more detail:

The **following institutions** may be considered as beneficiary institutions for the fulfilment of the purposes as prescribed in Sec. 4a Par. 2 EStG:

- domestic private corporations (including domestic private foundations) (with legal personality under Austrian law) and (since 2023) comparable foreign private entities without legal personality under Austrian law within the meaning of Sec. 1 Par. 2 No 1 and 2 KStG (Sec. 4a Par. 3 No 1 EStG);
- public bodies (like municipalities, states) within the meaning of Sec. 1 Par. 3 No 2 KStG (Sec. 4a Par. 3 No 2 EStG);
- certain legal dependent institutions of territorial authorities essentially engaged in certain research or teaching tasks as well as legal entities in which either one or more

⁶ Draft Sec. 4a Par. 3 EstG.

⁷ Draft Sec. 4a Par. 2 EStG.

- either one or more regional or local authorities or one or more certain entities are participating in (Sec. 4a Par. 3 No 3 EStG);
- comparable foreign entities of an EU Member States or of a state with which comprehensive administrative assistance exists (Sec. 4a Par. 3 No 4 EStG).

According to Sec. 4a Par. 2 EStG the above institutions must fulfil one or more of the **following purposes**:

- charitable purposes (*gemeinnützig*) within the meaning of Sec. 35 BAO – in short, these purposes are those by the fulfilment of which the general public is directly promoted;
- benevolent purposes (*mildtätig*) within the meaning of Sec. 37 BAO – in short, these purposes are those which are aimed at supporting persons in need of help;
- the performance of scientific research tasks, the development and exploitation of the arts, or teaching tasks serving adult education, which relate to scientific or artistic teaching and which comply with the or artistic teaching and which are in accordance with the Austrian Universities Act 2002 as well as certain scientific and artistic publications and documentations connected therewith.

Donation concessions may only be granted if **the following additional conditions** are met:

- For corporations within the meaning of Sec. 4a Par. 3 No 1, 2 and 4 (which includes since 2023 comparable foreign private entities without legal personality under Austrian law) the following must be fulfilled:
 - the corporation is **exempt from unlimited corporate tax liability** pursuant to Sec. 5 No 6 KStG (these are corporations of Sec. 1 Par. 2 KStG that serve the promotion of charitable, benevolent or ecclesiastical purposes in accordance with Sec. 34 et seqq BAO);
 - the corporation or its predecessor organisation (organisational field with its own accounting area) has been **exclusively and directly serving the beneficiary purposes** (Sec. 4a Par. 2 EStG) for **at least one twelve-month business year** without interruption. If the corporation acts partly or exclusively as a fundraising body and the tax privilege is not lost only on the basis of Sec. 40a No 1 BAO, this shall be deemed to be direct pursuit of the purpose;
 - if the corporation engages in **economic activities** (with the exception of completely subordinate secondary activities) it does so exclusively in relation to economic activities which fall under Sec. 45 Par. 1, Sec. 45 Par. 2 or Sec. 47 BAO or which do not lead to the loss of preferential treatment under tax law pursuant to Sec. 44 Par. 2 or Sec. 45a BAO. These are the regulations under which a corporation that is a non-profit organisation in the sense of Sec. 34 et seqq BAO can engage in business activities to a very limited extent.
- For corporations within the meaning of Sec. 4a Par. 3 No 3 and 4 EStG (which includes comparable foreign entities of an EU member state) also the following must be fulfilled:
 - the **lack** of profit motive - except with regard to a subordinate business activity - is anchored in the legal basis;
 - the actual management complies with the requirements of the legal basis and the corporation only develops business activities to a subordinate extent;

- the **legal basis ensures** that **no pecuniary advantages** are granted to members or shareholders or persons close to them and that collected donations are used exclusively for the beneficiary purposes stated in the legal basis;
 - the corporation or its predecessor organisation (organisational field with its own accounting area) has served the beneficiary purposes specified in the legal basis for at **least one uninterrupted twelve-month financial year**.
- For all corporations the following must in addition be fulfilled:
- the corporation has made a credible case that measures have been taken to comply with the **data transmission obligation** pursuant to Sec. 18 Par. 8 EStG (transmittance of data on donations to the tax office) have been taken;
 - the **administrative costs** of the corporation in connection with the use of the donations shall amount to a **maximum of 10% of the donation income**, without taking into account the costs incurred for the fulfilment of the transmission obligation pursuant to Sec. 18 Par. 8 EStG;
 - in the **event of the dissolution** of the corporation or in the event of the discontinuation of the beneficiary purpose, the assets of the corporation may be, insofar as they exceed the paid-up capital shares of the members and the fair value of the contributions in kind made by the members, **only be used for the beneficiary purposes** in the legal basis;
 - **no association fine** within the meaning of the Austrian Association Responsibility Act (*Verbandsverantwortlichkeitsgesetz, "VbVG"*) has been imposed on the corporation or its predecessor organisation within the previous three years due to a judicially punishable act or an intentionally committed financial offence within the meaning of the Austrian Financial Criminal Act (*Finanzstrafgesetz, "FinStrG"*). Nor have any of its decision-makers or employees been convicted by a court of law of criminal offences for which the corporation is responsible under the VbVG or been convicted of intentional financial offences under the FinStrG (with the exception of financial administrative offences);
 - the corporation does not **systematically promote** the intentional commission of criminal offences methodically committed in its interest. In particular, promotion is given if the corporation uses funds for this purpose to a not merely subordinate extent of its donation income for the **payment of penalties** of the acting persons.

2.1.3. What does the recognition process look like?

The respective corporation needs to apply for the granting of donation concession electronically. The application needs to be submitted by a professional party representative pursuant to the Austrian Accountancy Profession Act (*Wirtschaftstreuhandberufgesetz*). The application needs to be accompanied by the applicable legal basis of the corporation.

For corporations that are obliged to have their financial statements audited by an auditor (either by law or by the articles of association), the existence of the prerequisites of Sec. 4a Par. 4 EStG as well as compliance with the applicable accounting regulations must **additionally be confirmed by an auditor** in the course of an audit as prescribed in the Austrian Commercial Code (*Unternehmensgesetzbuch*). This auditor's certificate must also be **submitted when the application is made**.

The Austrian Tax Office will then decide by means of a **notice** and will – if it approves - include the corporation in an **official list of preferential** donation recipients.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no statutory costs. The applicant will likely incur legal fees for assistance with the drafting and filing of an application.

2.1.5. What is the timeframe for the recognition process to be completed?

To be discussed with the tax office. We expect the process on average to take three to six months. Generally, a tax office has to decide on applications (like tax returns, appeals etc) within six months but there are not direct consequences for the tax office if it does not stick to this timeline.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Each year after being granted donation concession, the following applies:

- in order to maintain the preferential tax treatment for donations, the fulfilment of the requirements must be **reported annually within nine months** after the end of the business year by a professional party representative (pursuant to the *Wirtschaftstreuhandberufsgesetz*) to the Austrian tax office electronically (Sec. 4a Par. 5 No 4 EStG);
- in addition, corporations that are obliged to have their financial statements audited must provide the **confirmation by the auditor** (*cf.* 2.1.5.) each year within nine months. If the **legal basis** is amended, the current document is also to be submitted (Sec. 4a Par. 5 No 2 EStG);
- if the prerequisites for donation concession cease to apply or the timely reports pursuant are not submitted despite the granting of an appropriate grace period, the donation **concession will be revoked** by notice. The revocation will be entered in the list of preferential donation recipients with the date of the revocation notice;
- if a revocation is issued it may in some cases even be declared that a new application is not admissible for a **maximum period of three years**.

2.1.7. Is any specific legal form required for the Belgian NPO?

A foreign entity desiring to be recognised must be a comparable **foreign entity of an EU Member State** as per Sec. 4a Par. 3 No 4 EStG (*cf.* 2.1.2.).

Since 2023 Sec. 1 Par. 2 No 1 KStG also mentions “*comparable foreign entities*” but this provision was included for companies that have lost their legal personality in Austria (like e.g., a British Ltd.) and is likely not applicable for a Belgian foundation.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

A donation may be deducted as business expense (*Betriebsausgabe*) or special (private) expense (*Sonderausgabe*).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only certain donations to institutions that either recognised to be beneficial or that are prescribed by law may be deductible.

2.2.3. Which persons are eligible for tax advantages?

Donators can be individuals or corporations.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Corporations that are considered non-profit organizations within the meaning of Sec. 34 et seqq BAO can benefit from tax exemptions (e.g., exemption from unlimited corporate income tax liability).

In detail, the prerequisites are very strict and detailed. Guidance of the Austrian tax authorities regarding their interpretation of the rules may be retrieved from the (formally non-binding) guidelines on associations (*Vereinsrichtlinien*).

There is no certificate to be obtained. The exemption follows directly from the fulfilment of legal prerequisites.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)?

In short:

There are in particular the following provisions allowing deduction of certain donations for income tax purposes:

- Sec. 4a EStG regarding the deduction of **certain donations** as business expenses (*Betriebsausgaben*);
- Sec. 4b EStG regarding the deduction of donations for the purpose of **income-generating asset** endowments to certain foundations as business expenses (*Betriebsausgaben*);
- Sec. 4c EStG regarding the deduction of donations to the **Austrian Innovation Foundation for Education** (*Innovationsstiftung für Bildung*) as business expenses (*Betriebsausgaben*);

- Sec. 18 EStG on the deduction of donations in the meaning of Sec. 4a, 4b or 4c as **special (private) expenses** (*Sonderausgaben*).

In more detail:

Donations within the meaning of Sec. 4a EStG (donations from business assets) to institutions that have been granted donation concession (Sec. 4a Par. 3 EStG) or to institutions mentioned in Sec. 4a Par. 6 EStG may be regarded as business expenses **provided, they do not exceed 10% of the profit** before taking into account contributions in accordance with Sec. 4b and Sec. 4c EStG and before taking into account a profit allowance.

To the extent that deductible contributions exceed the maximum limit specified, they may be deducted as special (private) expenses in accordance with Sec. 18 Par. 1 No 7 EStG.

In addition, the following is required (Sec. 4a Par. 7 EStG):

- donations to the institutions that have been granted donation concession are only deductible if the list of the tax office (donation concession) shows a **valid recognition**;
- **membership fees are not deductible** to the extent of the fees payable by ordinary members in accordance with the articles of Association;
- donations to legal entities pursuant to Sec. 1 Par. 1 Austrian **Journalism Promotion Act** (*Publizistikförderungsgesetz 1984*) as amended are not deductible;
- benefits that are matched by a **consideration in a direct economic connection** are only deductible to the extent that the fair market value of the benefit is **at least twice the value of the consideration**. The part of the benefit corresponding to the fair market value of the consideration is not deductible;
- if **assets** are donated, the **fair market value** is to be recognised as a business expense; the residual book value is not to be additionally recognised as a business expense and the partial value is not to be recognised as operating income. Hidden reserves that were transferred to the donated asset are to be taxed subsequently;
- **donations to institutions mentioned** in Sec. 4a Par. 6 No 2 and 12 EStG (certain Kindergartens, volunteer fire brigade) are not deductible if they are made by a corporation within the meaning of Sec. 1 Par. 2 KStG, which is economically connected with the sponsoring body of this institution;
- upon request of the tax authority, the donation shall be evidenced by the **submission of a receipt**. At the request of the donor, the recipient of the donation shall provide a donation receipt.

Donations within the meaning of Sec. 4b EStG for the purpose of donating income-generating asset endowment to foundations under private law or to asset funds comparable thereto (foundations), which are exempt from unlimited corporate income tax liability pursuant to Sec. 5 No 6 KStG and pursue preferential purposes pursuant to Sec. 4a Par. 2 EStG, may be deemed to be business expenses if the following applies:

- in the business year, donations are deductible to the extent that they **account for 10% of the profit before** taking into account donations pursuant to Sec. 4a and Sec. 4c EStG and before taking into account a profit allowance;

- to the extent that consideration as a business expense is not possible, the donation may be deducted pursuant to Sec. 18 Par. 1 No 8 lit a to c EStG as a **special expense**;
- to the extent that a donation pursuant to Sec. 4b Par. 2 No 1 and 2 EStG cannot be taken into account, the donation may on application, be taken into account in the following **nine assessment periods** together with benefits of the of the respective year in accordance with Sec. 4b Par. 2 No 1 and 2 EStG;
- donations to legal entities pursuant to Sec. 1 Par. 1 Austrian Journalism Promotion Act (*Publizistikförderungsgesetz 1984*) as amended, are not deductible.

With respect to the recipient, Sec. 4b Par. 3 EStG prescribes the following:

- according to its legal basis, the foundation is obliged to use the income from the administration of the donated assets **exclusively for the beneficiary purposes** specified in the legal basis pursuant to Sec. 4a Par. 2 EStG at the latest at the end of the seventh year after the calendar year of the inflow of such income. The allocation of a maximum of 50% of the annual income to a reserve shall also be deemed to be use for these purposes;
- until the end of the second calendar year following the donation, the assets donated may only be used directly for the beneficiary purposes specified in the legal basis up **to an amount of 50%**;
- at the time of the donation, the foundation must be recognised as a beneficiary institution in the list (donation concession);
- if the donation is made at a time when the foundation or its predecessor organisation has not already served essentially directly beneficiary purposes pursuant to Sec. 4a Par. 2 EStG for at least one uninterrupted twelve-month financial year, the donation may nevertheless be deemed to be a business expense, if the requirements for the inclusion of the foundation in the list (donation concession) are met after the expiry of one calendar year from its establishment.

The foundation shall **pay a surcharge on corporate income tax** in the amount of 30% of the donated deductible amounts or the deductible fair market value of the assets donated, if it:

- fails to meet the requirements for inclusion in the list (donation concession) after the expiry of a twelve-month financial year from the date of its establishment; or
- uses the donated assets contrary to Sec. 4b Par. 3 No 2 (50% rule – see above); or
- is no longer shown in the list (donation concession) within five years after the donation.

If the amount prescribed cannot be collected by the foundation, the non-inclusion in the list shall be deemed to be a **retroactive event within the meaning of Sec. 295a BAO**.

- Sec. 4c EStG concerns donations to the Austrian Innovation Foundation for Education (*Innovationsstiftung für Bildung*);
- Sec. 18 Par. 1 No 7, 8 and 9 EStG concern donations mentioned above to be recognised as special (private) expense (*Sonderausgaben*). That means the donations that are mentioned above as business expenses may alternatively be deducted as private expenses.

2.2.6. Are there any restrictions (e.g., the amount, reserved share for protected heirs,...)?

Donations can be contested under several legal provisions e.g., by heirs or by creditors. If the donation is successfully contested, the tax deductibility will probably also cease (retroactively).

2.2.7. Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The draft law includes a special provision that says that benefits that are matched by a consideration in a direct economic connection are only deductible to the extent that the fair market value of the benefit is at least twice the value of the consideration. The part of the benefit corresponding to the fair market value of the consideration is not deductible.

Whether a payment or contribution fulfils the requirements to be regarded as a donation needs to be assessed on a case-by-case basis.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Not applicable, note that Austria does currently not levy inheritance taxes.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Yes, if the NPO is recognised as being beneficial by notice of the tax office (Sec. 4a Par. 3 EStG).

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is required for a foreign NPO to apply for donation concession (*Zuerkennung der Spendenbegünstigung*).

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Beneficial institutions can be foreign corporations of a member state of the EU or of a state with which a comprehensive administrative assistance exists (and that fulfil the other criteria as stipulated in Sec. 4a EStG).

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Yes, the same procedure to be followed. We estimate the cost of legal assistance to EUR 10,000-12,000 net.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, the law states that the foreign corporation must be comparable.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Not applicable.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

Yes, the list can be found under:

https://service.bmf.gv.at/service/allg/spenden/show_mast.asp.

Please note that the list includes only institution that have been recognised under the current legislation that is expected to be replaced.

4. CONCLUSION

It is possible for foreign institutions to be granted donation concession in Austria. However, the prerequisites are strict. It may thus be worthwhile to explore in more detail, whether KBF would qualify to be granted this status in Austria.

5. ADDITIONAL CLARIFICATIONS

5.1. IS THERE A LINK TO THE FORM FOR THE APPLICATION FOR THE DONATION CONCESSION? IF SO, CAN YOU SHARE THIS LINK?

The form mentioned in the draft Sec 4a Para 5 No 1 EStG is not yet available. We expect the form to become available only once the law has been adopted.

5.2. WHEN THE TAX AUTHORITY REQUESTS A RECEIPT TO DEMONSTRATE A DONATION, WHAT TYPE OF RECEIPT SHOULD THE NPO PROVIDE TO ENSURE FISCAL ADVANTAGES? IN WHAT LANGUAGE MUST THIS RECEIPT BE REDACTED?

The draft bill states that a donation to a recipient that **does not have a fixed local facility** in Austria must be evidenced by the donator by supplying a receipt (*Beleg*) at the request of the tax authority.

This receipt (*Beleg*) must contain the name of the receiving organisation, the name of the donor, the amount and the date of the donation.

At the request of the donor, a donation confirmation (*Spendenbegstätigung*) must be issued by a recipient of the donation who does not maintain a fixed local facility in Austria. In addition to the contents of a receipt, such donation confirmation must also state the address of the donor and the registration number under which the receiving organisation is entered in the list of beneficiary recipients. The confirmation can be issued for all donations made by the same donor in one calendar year.

There is currently no indication whether a receipt (*Beleg*) or donation confirmation (*Spendenbestätigung*) can be issued in any other language than German.

5.3. WHAT EXACTLY IS MEANT WITH THE “TRANSMISSION OBLIGATION” AS MENTIONED IN SEC 18 PARA 8 ESTG?

The draft bill states in Sec 18 Para 8 that donations to recipients that **have a fixed local facility** in Austria can only be considered as special expenses, if the recipient electronically transmits certain data via FinanzOnline.

From the wording of the law we understand that foreign organisations that do not have a local facility in Austria are not obliged to perform a data transmission. It is not clear however, why foreign organizations according to Sec 4a Para 4 No 3 lit a EStG must also make credible that measures have been taken to comply with the data transmission obligation pursuant to Sec 18 Para 8 EStG.

BELGIUM⁸

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations:
 - o Art. 145³³, 199 and 200 of the Income Tax Code (ITC92); and
 - o the Registrations Duties Code (legislation applicable per region: Brussels Region, Walloon Region and Flemish Region (*Vlaamse Codex Fiscaliteit*)).
- Tax advantages for bequests:
 - o Inheritance Tax Code (legislation applicable per region: Brussels Region, Walloon Region and Flemish Region (*Vlaamse Codex Fiscaliteit*)).
- The legal requirements for associations and foundations:
 - o Belgian code on companies and associations (CAC), in particular: Book 3 “*Associations and Foundations*”.
- The recognition process and requirements of NPOs:
 - o Art. 63/18/1 to 63/18/7 of the Royal Decree to the Income Tax Code (RD/ITC92).

The Belgian tax authorities provide on their website an overview in Dutch, French and German of:

- The recognition requirements:
 - o <https://financien.belgium.be/nl/vzws/giften/erkenning-vzws-stap-voor-stap>; and
 - o <https://financien.belgium.be/nl/vzws/giften/erkenningvoorwaarden>.
- The recognition process:
 - o <https://financien.belgium.be/nl/vzws/giften/aanvraagprocedure>.
- Qualifying gifts:
 - o https://financien.belgium.be/nl/vzws/giften/welke_giften.
- Tax benefits for individuals:
 - o <https://financien.belgium.be/nl/particulieren/belastingvoordelen/giften>.

For additional questions, the administration can be contacted directly at:

- giften@minfin.fed.be;

⁸ Answers provided by Liedekerke (Brussels).

- dons.dons@minfin.fed.be.

It is important to include:

- the name of your NPO;
- the enterprise number of your NPO (if any); and
- the phone number and the name of the contact person of the NPO (who is available during office hours).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers with respect to donations and bequests.

Donations to specific, eligible NPOs can grant the taxpayer a tax reduction (for individuals) or tax deduction (for companies) as well as reduced gift tax rates.

Bequests to specific eligible NPOs can benefit from a reduced gift tax rate.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to either Belgian entities listed by law⁹ or to Belgian non-for-profit organisations (*fondation* or A(I)SBL) that are recognised by the Minister of Finance (Recognised NPOs). After formal recognition, the Belgian Recognised NPOs will be included in (a regularly updated) list of recognised NPOs. The list can be found [here](#)¹⁰.

Even though foreign NPOs can as such not be recognised in Belgium, Foreign NPOs that are established in the European Economic Area (EEA) can, subject to conditions, be considered equivalent to a Belgian Recognised NPOs (Foreign Equivalent EEA NPOs). Foreign Equivalent EEA NPOs are entitled to the same tax advantages than Belgian Recognised NPO (*cf.* 3.).

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

An NPO that wishes to be recognised must:

⁹ Art. 145³³ ITC92: an overview of the entities listed in the law can be found on <https://financien.belgium.be/nl/particulieren/belastingvoordelen/giften#q2>.

¹⁰ An updated list can be found on <https://financien.belgium.be/nl/particulieren/belastingvoordelen/giften#q2> (most recent version as of 22 August 2023: <https://financien.belgium.be/sites/default/files/downloads/116-lijst-instellingen-20230822.pdf>).

- have legal personality¹¹;
- be established in Belgium¹²;
- pursue no gain of any kind, either for itself, its organs or its members¹³;
- spend less than 20% of its total revenue¹⁴ on overhead expenses and less than 30% on publicity and fundraising costs.¹⁵

Recognition is only available for Belgian NPOs performing specific activities¹⁶. Depending on the activity, additional specific requirements must be met. An overview of the activities and additional requirements can be found [here](#)¹⁷.

2.1.3. What does the recognition process look like?

The recognition process requires the Belgian NPO to establish a file with (i) an application request, (ii) a commitment statement, (iii) a copy of the articles of association or bylaws, (iv) a list of their directors, (v) a certified and signed copy of their accounts and budget, and (vi) a calendar of their activities and an operating report.¹⁸ The file and all associated documents must be sent to the Ministry of Finance.

The recognition request must be filed no later than 31 December of the year prior to the year the Belgian NPO wishes to be recognised and whereby the Belgian NPO has acquired legal personality since at least 3 months.¹⁹

A more detailed overview of the recognition process, and the specific requirements, can be found [here](#)²⁰.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Only Belgian NPOs can be recognised. There are no specific fees or costs payable vis-à-vis the Belgian administration that are related to the recognition process.

If third party assistance is requested (e.g., legal fees or consultancy fees), (legal or consultancy) fees payable to the third party may vary for assisting the NPO throughout the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

Although the Belgian administration aims to provide its report within 3 months²¹, in practice, the full application process will generally take up to at least 6 to 12 months.²²

¹¹ Art. 63¹⁸/1, §3 RD/ITC92.

¹² Ibidem.

¹³ Ibidem.

¹⁴ Art. 63¹⁸/7 RD/ITC92.

¹⁵ Circulaire nr. Ci.RH.26/567.400 (AOIF 16/2006) dd. 11.05.2006, p. 3-4.

¹⁶ Art. 63¹⁸/1, §1 RD/ITC92.

¹⁷ <https://financien.belgium.be/nl/vzws/giften/erkenningsvoorwaarden>.

¹⁸ Art. 63¹⁸/1 RD/ITC92.

¹⁹ Art. 63¹⁸/1, §5, Par. 1 RD/ITC92.

²⁰ <https://financien.belgium.be/nl/vzws/giften/aanvraagprocedure>; Art. 63¹⁸/1 RD/ITC92.

²¹ Circular nr. Ci.RH.26/567.400 (AOIF 16/2006) dd. 11.05.2006, p. 10.

²² Slide 14 see <https://11.be/sites/default/files/2023-03/infosessie-fiscale-attesten-4dePijler.pdf>.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

The recognition is valid for 2 years (initial recognition), 4 years (first renewal) or 6 years (as from the second renewal).

These periods can be shortened, if deemed fit.

For certain activities, these periods are limited to 3 calendar years.²³

2.1.7. Is any specific legal form required for the Belgian NPO?

Belgian NPOs can take the form of either foundations (*fondation*), or (international) non-profit associations (*A(I)SBL*).

These entities must fulfil all related formal requirements as set out in the Belgian code on companies and associations.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Belgium.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to Belgian Recognised NPOs or to Foreign Equivalent EEA NPOs, Belgian taxpayers can benefit from the following tax advantages with respect to donations:

- a tax reduction (for individuals) or tax deduction (for companies) for donations under certain conditions; and
- reduced gift tax rates for formal donations made via a notarial deed (e.g., immovable property).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donations made to Belgian Recognised NPOs or to Foreign Equivalent EEA NPOs can benefit from a tax reduction or tax deduction.

Reduced gift tax rates are available for donations made to Belgian Recognised NPOs or to Foreign Equivalent EEA NPOs.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax, gift tax and inheritance tax); and
- companies (corporate income tax and gift tax).

²³ Art. 63¹⁸/1, §§5 and 6 RD/ITC92.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

For individuals:

- individuals are entitled to a tax reduction of 45% of the donated amount of cash donations in their personal income tax;
- a reduced gift tax rate is available for formal donations enacted in a notarial deed;
- the applicable rates depend on the region where the donor has its tax residency:
 - o Brussels Region: 7%;
 - o Walloon Region: 7%;
 - o Flemish Region: 0%.

For companies:

- companies may be entitled to a tax deduction for the full donated amount in their corporate income tax;
- there is a special flat rate of EUR 100 for donations made to certain NPOs by certain NPOs in the Brussels Region, Walloon Region and Flemish Region.

NPOs must issue a tax certificate to the donor. This certificate must not be signed.

The certificate must include the following:

- a mention of “Quittance issued pursuant to Art. 145³³, § 1, second Par. of the Income Tax Code 1992”;
- the calendar year for which the certificate was issued;
- a serial number, preferably preceded by the mention “*Attestation number*”;
- the full identification of the NPO, i.e., statutory name, address of their registered office and their enterprise number, preferably preceded by the mention “*Enterprise number*”;
- the full identity of the donor and their address. For companies, this includes their enterprise number. For individuals, their national number can be mentioned;
- the amount of the donation and confirmation that the donation was done definitively and irrevocably. The amount must be written in such way that it cannot be forged, either by adding three asterisks or hashmarks before and after the amount (e.g., ‘***150*** EUR’ or ‘###150### EUR’), or by writing the amount in word form.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone’s grave)?

To obtain a tax deduction, the donation must meet the following conditions:

- donations must be made to Recognised NPOs or Foreign Equivalent EEA NPOs;

- donations must be done in cash (i.e., no donations in kind)²⁴;
- donations must be at least EUR 40 (per institution and per year); and
- the receiving NPO must issue a tax certificate.

The tax reduction of donations by individuals is limited to the lowest of 10% of their total taxable personal income²⁵ and EUR 176,890 (i.e., 45% of EUR 392,200²⁶). This amount is prorated based on the months the individual is subject to taxation in Belgium.

The tax deduction for companies is limited to 5% of their net profit with a maximum deductible amount of EUR 500,000. This amount is not indexed.

To obtain the reduced gift rates, the donation must meet the following conditions:

- the donation must be enacted in a notarial deed;
- the donation is made to NPOs, whether recognised or not; and
- it must be freely done, without consideration or charges.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Belgian tax resident individuals/testators can benefit from reduced inheritance tax rates for bequests made in their will to specific NPO that are located in the EEA.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Tax advantages are available for bequests to both Belgian Recognised NPOs and Foreign Equivalent EEA NPOs.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Bequests made to Belgian Recognised NPOs or Foreign Equivalent EEA NPOs can, subject to conditions, grant a higher tax advantage (*cf.* 2.2.4.).

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages are only available for individuals.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

There is a preferential system for bequests to charities, i.e., reduced inheritance tax rates. The applicable rates depend on the region where the testator had its tax residency:

²⁴ Exceptions exist for donations of works of art to specific NPOs or governmental bodies or donated goods in the context of the COVID19-pandemic.

²⁵ Immovable, movable, professional, and miscellaneous income, excluding income subject to a separate taxation based on Art. 171 ITC92.

²⁶ For tax year 2022, assessment year 2023. This amount is indexed every year.

- Brussels Region: 7% (if recognised) or 25% (if not recognised);
- Walloon Region: 7%;
- Flemish Region: 0%.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain the reduced inheritance rates, the bequest must meet the following conditions:

- the bequest must be made in a legally valid will;
- the bequest must be made to an NPO, whether recognised or not; and
- the bequest must be done freely, i.e., without consideration or charges.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations and bequests to Foreign Equivalent EEA NPOs are eligible for the same tax advantages as Belgian Recognised NPOs, provided that they are considered equivalent to a Belgian Recognised NPO, and, if applicable, are recognised in another EEA Member State in a similar manner, i.e., under the same conditions under which an NPO in Belgium is recognised.

The burden of proof lies with the taxpayer claiming the tax advantage.²⁷

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is not possible for EU or EEA-based NPOs to receive an official registration in Belgium to qualify for all tax advantages.²⁸

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

²⁷ Art. 145³³, §2 ITC92.

²⁸ Art. 63¹⁸/1, §3 RD/ITC92.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Donations to Foreign Equivalent EEA NPOs can benefit from all tax advantages, even if – a formal – registration is not possible for Foreign Equivalent EEA NPOs.

If deemed fit, a Foreign Equivalent EEA NPO could establish a (defense) file (in case any challenge of the tax benefits for beneficiaries were to occur) in which it already indicates how and why the Foreign Equivalent EEA NPO fulfils the requirements that would also apply for Belgian Recognised NPOs. The Foreign Equivalent EEA NPO could provide a copy of this file to the Belgian taxpayer or donor.

A taxpayer claiming the deduction for a cross-border donation should be able to positively evidence that (i) the foreign institution should be considered similar to a Belgian Recognised NPO and (ii) that the Foreign Equivalent EEA NPO has been licensed “*in a similar manner*” in its country of residence. This evidence can, upon a potential challenge by the tax authorities, then be provided to the tax authorities. To this extent, the donor should provide:

- a copy of the statutes of the foreign organisation (including the description of the charitable purpose);
- documents indicating that the organisation qualifies in its jurisdiction of establishment for receiving tax deductible gifts;
- documents indicating that the Foreign Equivalent EEA NPO can be compared, with respect to its activities, with one of the types of organisations listed by the Belgian income tax code.

The Belgian tax authorities of the donor’s jurisdiction will verify whether the evidence is sufficient.

Alternatively, if the Foreign Equivalent EEA NPO wishes to have full legal certainty, it can file an advance tax ruling request with the Office for Advance Tax Rulings (the so-called Ruling Commission) to receive a binding confirmation as to their qualification as a Foreign Equivalent EEA NPO. If the advance tax ruling were to provide for a limited validity in time as to qualification as a Foreign Equivalent EEA NPO (e.g., a 5-year period), then the qualification as a Foreign Equivalent EEA NPO would technically only be opposable to the Belgian tax authority during this limited period. However, if there were to be no changes as to the status or the activities of the Foreign Equivalent EEA NPO, there should as a matter of principle be no reason for the Belgian tax authorities to no longer accept the qualifying status of the Foreign Equivalent EEA NPO. In such case, the Foreign Equivalent EEA NPO could either rely on the previous advance tax ruling that is no longer valid, but which still offers comfort on an informal basis, or request a new advance tax ruling (if full legal certainty were to be required).

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

If an NPO is recognised as such in its home country, there is no requirement to prove the equivalence of its foreign legal form to domestic legal forms.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No. Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

An overview of all Belgian Recognised NPOs (i.e., NPOs recognised by law as well as NPOs specifically approved), can be found via:

<https://financien.belgium.be/nl/particulieren/belastingvoordelen/giften#2>²⁹.

No such list exists for Foreign Equivalent EEA NPOs, since these entities cannot formally register in Belgium.

4. CONCLUSION

Foreign Equivalent EEA NPOs qualify for the same tax advantages as Belgian Recognised NPOs, i.e., tax reductions for donations by individuals, tax deductions for donations by companies, reduced gift tax rates and reduced inheritance tax rates.

Foreign Equivalent EEA NPOs should fulfil the same requirements as Belgian Recognised NPOs. However, it is not possible for Foreign Equivalent EEA NPOs to receive an official registration in Belgium to qualify for all tax advantages. Should Foreign Equivalent EEA NPOs wish full legal certainty as to its equivalence with Belgian Recognised NPOs, an advance tax ruling can be requested from Ruling Commission.

²⁹ <https://financien.belgium.be/nl/particulieren/belastingvoordelen/giften#q2>.

BULGARIA³⁰

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- tax advantages for donations:
 - o Art. 22, paragraph 1, letter “k” of the Income Taxes on Natural Persons Act
 - o Art. 31, paragraph 1, item 14 of the Corporate Income Tax Act
 - o Art. 39, item 7 of the Value Added Tax Act
 - o Local Taxes and Fees Act
 - o Patronage Act (known in Bulgaria also as Financial Support for Culture Act)

- the legal requirements for associations and foundations:
 - o Non-Profit Legal Entities Act, Chapters II and III

- the recognition process and requirements of NPOs:
 - o Art. 23, paragraph 1, item 6 of the Income Taxes on Natural Persons Act
 - o Commercial Register and Register of Non-Profit Legal Entities Act
 - o Ordinance No. 1 of 14 February 2007 on Keeping, Storing and Access to the Commercial Register and the Register of Non-Profit Legal Entities

The Bulgarian Ministry of Finances provides on its website information as regards to the various tax regimes applicable in Republic of Bulgaria to both natural persons (individuals) and legal entities.

Links:

- tax benefits (relief) for individuals: <https://www.minfin.bg/en/827>
- tax benefits (relief) for corporate (entities): <https://www.minfin.bg/en/786>
- other tax questions and queries: <https://www.minfin.bg/en/770>

Questions, queries and further information may be sent, respectively can be requested from the Ministry of Finance at: feedback@minfin.bg

National tax authority (National Revenues Agency – “**NRA**”) can be contacted for questions and opinions at: infocenter@nra.bg

³⁰ Answers provided by Penkov, Markov & Partners (Sofia).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

By principle, Bulgarian individuals, as well as local legal entities, can benefit from certain tax advantages when donating to NPOs for public benefit.

As regards to bequests of individuals made in favour of such NPOs, however, local legislation does not envisage benefiting from tax relief and/or any other type of tax gifts with respect to the testator.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are granted when donations are made specifically to **Bulgarian-registered NPOs** (associations and foundations) categorized as NPOs for public benefit as per the local Non-Profit Legal Entities Act (“NPLEA”).

Additionally, these tax benefits also apply when donations are made to **foreign NPOs, established within member states of the EU or EEA**, recognized by law as equivalent to local NPOs for public benefit.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Legal entities in Bulgaria are qualified as NPOs for public benefit automatically upon their incorporation with the local Register of Non-Profit Legal Entities maintained by the Registry Agency. In this regard, follow-up recognition procedure to be carried out before another authority is not required.

In essence, in order for a legal entity to be qualified as a NPO for public benefit, it must:

- be incorporated/registered before the Bulgarian Register of Non-Profit Legal Entities as a non-profit entity which can be either an association or a foundation;
- conduct its activities for public benefit by using its property for the following one or more purposes that are legally approved³¹ and clearly stated in its bylaws:
 - development and strengthening of civil society, civil participation and good governance;
 - development and strengthening of spiritual values, health care, education, science, culture, engineering, technology or physical culture;
 - support for children, for people with disabilities and for individuals and communities at risk of social exclusion;
 - protection of human rights or the environment;
 - support of culture or specific cultural fields as per the Bulgarian Patronage Act;
 - other objectives defined by law (e.g. humanitarian aid and activities).

³¹ List, as per Art. 38 of NPLEA, is not exhaustive.

Foreign NPOs established in the EU or EEA, which carry out their activity for the same or identical purposes to the ones above, are considered by virtue of law equivalent to Bulgarian NPOs for public benefit.

Therefore, donations made to these NPOs serve by principle as a legal ground for tax relief for local individuals and corporate entities (including foreign ones)³².

2.1.3. What does the recognition process look like?

Both local and foreign individuals, as well as legal entities (incl. NPOs) may establish a local NPO for public benefit.

Registration procedure requires submitting a file before the local Register of Non-Profit Legal Entities Act consisting usually of documents, such as:

- application for initial registration;
- minutes incorporating decisions for incorporation of the NPOs, for designating legal representatives (management board of the NPO, consultation councils), etc.
- copy of the articles of association or act of incorporation which must clearly state the legally approved purposes qualifying the NPO as such for public benefit;
- specimen of the legal representative/s of the association/foundation;
- list of the founding members of the NPO (applicable only as regards to associations, but not with respect to foundations which do not have members);
- document certifying the property provided free of charge in particular to incorporation of foundations (e.g. statement for opened bank account where the initial cash contribution has been deposited).

Documents required by the national Register may vary depending on the type NPO which is being incorporated (association or foundation), and whether it is established by an individual or a legal entity.

It must be noted that there are more specifics with respect to the establishment of foundations, which may be incorporated by means of either act of donation (in writing and notarised by the founder's signature) or of a will/bequest (accompanied with death certificate of the testator before the Register).

Apart from this registration process, foreign NPOs may also decide to establish their own subsidiary (branch) in Bulgaria which is done by carrying out a similar to the above registration procedure before the local Register of the Non-Profit Legal Entities. **The sole requirement** is that that foreign NGO's operation's objectives do not conflict the public order and the law in the Republic of Bulgaria.³³

The registration of a subsidiary (branch) procedure is similar to the process of establishing a new entity. In this case, the parent NPO is required to provide a certificate of good standing, as well as a specific power of attorney in order to authorize a representative of the respective subsidiary.

³² Art. 22, paragraph 1, letter "k" of the Income Taxes on Natural Persons Act

³³ Art. 52, para 2 of the NPLEA

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

The amount of the state fee payable to the Registry Agency for establishment of NPO or of a subsidiary (branch) of foreign NPO is BGN 50 (approx. EUR 25), if application is submitted in person, or BGN 25 (approx. EUR 13), if filled electronically using a qualified e-signature.

Further fees as regards to legalization and translation of documents (e.g. COGS) to be presented before the Register may incur.

2.1.5. What is the timeframe for the recognition process to be completed?

Once all documents necessary for the registration are filed to the Register of Non-Profit Legal Entities, the registration officer completes the process of incorporations within 3 business days³⁴. Usually, registrations of new entities take place on the day following the submission of all the necessary documents.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

As per Bulgarian law there is no validity period for the existence of NPOs for public benefit.

2.1.7. Is any specific legal form required for the Bulgarian NPO?

Pursuant to Bulgarian law NPOs (incl. for public benefit) may exist under the form of either associations or foundations. The latter must comply with the local NPLEA.

Founders and/or members (applicable to associations only) of NPOs, as previously mentioned, can be both Bulgarian and foreign individuals or legal entities.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable as regards to Bulgaria.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

The individuals donating to NPOs established for public benefit, **excluding** the NPOs supporting the culture under the Patronage Act, are entitled³⁵ to receive tax advantage by decreasing the annual tax base with the amount of the donation, however such decrease may not exceed the total of **5 % (five percent)** of such **annual tax base**³⁶.

All natural persons, regardless of whether they are registered as patrons under the Patronage Act, enjoy tax advantages by decreasing the annual tax base with the amount of the **donation**

³⁴ Art. 19, para 2 of the Commercial Register and Register of Non-Profit Legal Entities Act.

³⁵ Art. 22, para. 1, letter “k” from the Income Taxes on Natural Persons Act.

³⁶ Consisting of the income from all sources acquired by the taxable person during the tax year, excluding the income that is tax-free under the law.

made with respect to the culture, however such decrease may not exceed the total of **15 % (fifteen percent)** of such **annual tax base**.

The Bulgarian legal entities donating to NPOs established for public benefit, **excluding** the NPOs supporting the culture under the Patronage Act, are entitled³⁷ to receive tax advantage by decreasing the annual accounting (net) profit with the amount of the donation, however such decrease may not exceed the total of **10 % (ten percent)** of their **annual accounting (net) profit**.

Donators – NPOs for public benefit, which are duly registered as patrons under the Patronage Act (with the register maintained by the Minister of Culture), are entitled to receive tax advantages by decreasing the annual accounting (net) profit with the amount of the donation, however such decrease may not exceed the total of **15 % (fifteen percent)** of their **annual accounting (net) profit**.

Additional registration with the Minister of Culture will be required in order the NPO to be recognized as a patron for purposes of enjoying specific tax relief. Apart from initial application for registration, patrons are required to submit documents prescribed by law, among which is a particular contract for donation to a beneficiary with statutory content. Relations between the patron and the beneficiary of gratuitous aid are provided under written contracts concluded with the NPOs supporting culture. Copies of these contracts are presented before the Minister of Culture. For the sake of completeness, organization supporting culture is subject of mandatory registration with the Minister of Culture.

However, one may note that the tax advantage in the amount of 10 % (ten percent) is applicable to the aggregate amount of the donations made regardless of the number of the donations to NPOs for public benefit.

2.2.2. Does it make a difference whether an NPO is recognised or not?

The tax advantages for donations made both by individuals and legal entities may be applied only in case the donations are made with respect to NPOs for public benefit, both Bulgarian-based and foreign equivalent NPOs.

2.2.3. Which persons are eligible for tax advantages?

There are no specific regulations stipulating any additional prerequisites in order an individual or legal entity to benefit from tax advantages when donating to NPOs for public benefit.

That said, both individuals and legal entities are eligible for tax advantages, without the necessity of meeting additional requirements.

³⁷ Art. 31, para. 1, point 14 from the Corporate Income Tax Act.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences?

Every NPO for public benefit established in Bulgaria is exempt from paying any tax on the donations it makes and receives.³⁸

No regional, provincial, cantonal or other differences are envisaged in the current legislation.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

2.2.5.1. There are no specific legal restrictions regarding the type of the donation in order the donor to be benefitting from tax advantages.

In the light of the above, the donation may represent provision of monetary funds (i.e. cash), real estate, movable property, company shares, securities, cession.³⁹

2.2.5.2. No restrictions regarding the amount of the donation made are provided for by the current Bulgarian legislation.

Notwithstanding the above, it is statutory stipulated that the annual donations made by individuals to NPOs for public benefit enjoy only 5 % (five percent) tax base deduction. Additionally, the amount of the donations made on annual basis may not exceed the overall income of the respective individual.

No restrictions for reserved share for protected heirs in case the donation is made while the donator is still alive are provided for in the current legislation.

2.2.5.3. In theory, it is possible for the donator to request the fulfilment of certain tasks in exchange for the donation, but such conditions set forth in the donation agreement are non-enforceable.

In this respect, the legislation provides for that a donation is null and void when it, or the single motive for which it was made, contravene the law or good morals, and also when the **conditions or burdens are impossible.**⁴⁰

In order to benefit from the tax advantages, the donators must prove the validity of the donation made before the National Revenue Agency when submitting their annual tax declarations, i.e. to provide a donation certificate and a certificate of good standing of the respective NPO for public benefit.

³⁸ Art. 49, para. 4 from the Local Taxes and Fees Act

³⁹ In case the donation is non-monetary, its value is equal to its purchase price in case it is acquired by the donating party 3-months prior to the date of donation at latest. In each other case, its value is equal to its market price.

⁴⁰ Art. 226, para. 3 of the Obligations and Contracts Act.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

No tax advantages are provided for in the current legislation regarding taxpayers when they indicate a NPO for public benefit as beneficiary of their will (bequest), since according to the Inheritance Act, the will is opened after the death of the testator, thus enters into legal force after this moment.

In the light of the above, the testator may not benefit from any tax advantages prior to his death.

2.3.2. Which NPOs are qualify to receive bequests with a tax advantage?

Every NPO for public benefit established in Bulgaria is entitled to receive donations by virtue of bequests and is exempt from paying any tax thereof.⁴¹

2.3.3. Does it make a difference whether an NPO is recognised or not?

The tax advantages for received donations (in benefit of the NPO) made from individuals by virtue of a bequest may be applied only in case the donations are made with respect to NPOs for public benefit.

2.3.4. Which persons are eligible for tax advantages (e.g. individuals, companies, etc.)?

No individuals are entitled to receive any tax advantage arising from making donations by virtue of bequests.

The legal entities are also not entitled to receive any tax advantages arising from making donations by virtue of bequests, since under the Bulgarian legislation they are unable to compile such bequests.

Nevertheless, NPOs for public benefit are exempt for paying any taxes on the donations they receive, regardless the mechanism of their receiving (i.e. by donation agreement or by virtue of a bequest).

2.3.5. What type of tax advantages are available if the conditions are met (e.g. a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

As stated above, the NPOs for public benefit are exempt from paying any taxes on the donations made and received by them.

Additionally, the NPOs for public benefit enjoy VAT free supply of foodstuff designated for donation within the framework of humanitarian activity carried out by them.

⁴¹ Art. 38, para. 1, point 2a of the Local Taxes and Fees Act; Art. 49, para. 4 from the Local Taxes and Fees Act.

In order to benefit from such VAT free supplies, the NPOs must be registered with a specific register for Food Banks in Bulgaria, as well as to meet certain other preconditions⁴².

No regional, provincial, cantonal or other differences are provided for in the current Bulgarian legislation.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

2.3.6.1. No legal conditions for bequests to obtain tax advantages are provided for in the current legislation with respect to the testators, since as stated, the latter are not entitled to such incentives.

Nevertheless, as indicated in 2.2.5.1. above, the donation may be made in any form and the receiving NPO for public benefit shall be exempt from paying taxes with respect to the donations received.

2.3.6.2. As regards the statutory reserved share for descendants and surviving spouse, we note that this institute is only applicable in case the bequest is made from an individual.

Moreover, the Inheritance Act stipulates the specific reserved shares of the protected heirs (descendants, parents and surviving spouse only), as follows:

- The reserved share for descendants (including adoptees), when the deceased has not left a spouse, shall be as follows: in case of one child or descendants thereof - 1/2 and in case of two or more children or descendants thereof, 2/3 of the estate of the deceased;
- The reserved share for the parents or the surviving one shall be 1/3;
- The reserved share for the spouse shall be 1/2, where he or she is the only heir, and 1/3 where the deceased has also left his or her parents. Where the deceased has left descendants and a spouse, the reserved share of the spouse shall be equal to the reserved share of each child. In these hypotheses the disposable share, in case of one child, shall be equal to 1/3; in case of two children, it shall be equal to 1/4; and in case of three or more children, it shall be equal to 1/6 of the estate.

The remaining amount of the estate of the deceased constitutes his/her disposable share, i.e. the latter is eligible for donation.

2.3.6.3. The testamentary dispositions may be made subject to a condition or encumbrance (including those in favour of NPOs for public benefit). That said, theoretically it is possible for the testator to request the fulfilment of certain tasks in exchange for the donation, but such conditions set forth in the will (testament) agreement are non-enforceable.⁴³

⁴² Which are stipulated in multiple legislative acts such as the Food Act, Value Added Tax Act etc.

⁴³ Art. 18, sentence 2 of the Inheritance Act provides for that the failure to comply with the burdens of the testament shall not entail the abolition of the testamentary disposition.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donation tax advantages are also available for donations made to NPOs for public benefit or foreign equivalent NPOs, established in another member state of the European Union or a state – party to the European Economic Area Agreement, notwithstanding whether the donations are made by individuals or by legal entities.⁴⁴

In this case, in order the respective person to be benefiting from the tax advantages, they must possess official legalized document, certifying the statute of the beneficiary of the donation, issued or certified by a competent authority in the foreign country (apostilled if necessary), accompanied by its Bulgarian translation, certified by sworn translator.

This document must be presented before the National Revenue Agency together with the submission of the annual tax declaration.

We note that the tax advantages of the respective NPO in benefit of which the donation has been made, shall be regulated by the tax legislation of the respective country of registration and the Bulgarian legislation shall not apply.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

While it is indeed possible, Foreign Equivalent NPOs established within the EU and EEA are not required to establish a new NPO or their own subsidiary in order for taxpayers to enjoy tax advantages when donating to them.

Foreign EU/EEA NPOs are recognized by virtue of law as equivalent to local NPOs for public benefit, provided they pursue the same or identical to the objectives for public benefit as envisaged in local law.

As regards to non-EU and EEA NPOs they will have to either establish their local subsidiary (branch) in Bulgaria or incorporate an entirely separate new legal entity (new NPO) in order for taxpayers to benefit from tax advantages.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Registration in Bulgaria (i.e. establishment of new NPO or local subsidiary/branch) is possible for all foreign NPOs, regardless of their place of incorporation and head seat. The single requirement for them as regards to establishing a subsidiary (branch) is that their operational objectives (purposes pursued) do not conflict with the public order and law in Bulgaria.

⁴⁴ Art. 31, para. 7 from the Corporate Income Tax Act; Art. 22, para. 5 from the Income Taxes on Natural Persons Act.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Yes, the same registration process must be followed as regards to local NPOs.

As per our estimate, the legal fees for establishment of new NPO will amount to **EUR 6000**, net of VAT, respectively incorporation of subsidiary of Foreign NPO is estimated to cost **EUR 4500**, net of VAT. Registration processes are carried out before the Commercial Register and the Register of Non-Profit Legal Entities.

Additional registration of the NPO as a patron under the Patronage Act will be related with additional legal fee of **EUR 1800**, net of VAT.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G. A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable. Registration is possible for both foreign EU/EEA and non-EU/EEA NPOs, including taxpayers may benefit from tax relief if they certify the foreign equivalent NPO status of the donation recipient.

In order for foreign NPOs to be recognized as equivalent to domestic NPOs for public benefit, the former must be established in member state of the EU or EEA.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, but this obligation is on taxpayers requesting tax benefits who must certify before the national tax authority that the recipient of the donation is in fact equivalent to domestic legal entity for public benefit. This is done by filing legalized document certifying the status of the recipient of the donation, issued or certified by a competent authority of the respective foreign state (usually in the form of COGS), and (ii) a translation of this document into Bulgarian by a sworn translator.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Foreign NPOs must be established in a member state of the EU or the EEA, and must perform their operational activity for the same purposes or identical to the ones stipulated as per local legislation.

We have provided the non-exhaustive list of those purposes in item 2.1.2 above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

No, there is no such list (official or not) of foreign equivalent NPOs.

4. CONCLUSION

Foreign equivalent NPOs (established in member states of EU and EEA) qualify for the same tax advantages as Bulgarian-registered NPOs for public benefit, i.e. local individuals and legal entities may both enjoy tax reductions for the donations made to such foreign NPOs.

Foreign equivalent NPOs do not have to register with the Bulgarian Register of Non-Profit Legal Entities (i.e. they are not required to incorporate a subsidiary or a separate new entity) in order for donators being tax residents for Bulgaria to receive tax advantages.

However, every foreign NPO (regardless of equivalent or not) has the opportunity to register a new NPO or a subsidiary in Bulgaria and to benefit from tax advantages themselves. Although the regulation of donations in favor of local, as well as EU and EEA-based NPOs introduces equal treatment, still in case of foreign NPOs there are some additional conditions to be observed (such as operational activity not to conflict local public order and law, including certifying equivalency status), which may cause certain complications. Therefore, it would be recommendable the respective foreign NPO to operate on the Bulgarian territory through either new entity or branch.

CROATIA⁴⁵

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for NPOs and its tax advantages with respect to the recognition process and other legal requirements for associations and foundations:

- the Associations Act (Official Gazette no. 106/2018, 98/2019, 151/2022);
- the Foundations Act (Official Gazette no. 74/2014, 70/2017, 98/2019, 151/2022);
- Art. 33-36 of the Act on Financial Operations and Accounting for Non-Profit Organizations (Official Gazette no. 121/2014, 114/2022) regulating the registration with the NPOs Register.

For additional questions regarding the recognition process, the administration can be directly contacted at:

- associations: natasa.fjucek@zagreb.hr;
- foundations: irena.selak-ilic@zagreb.hr;
- registration with the NPOs Register: ana.maljevac@mfin.hr or hajdica.filipcic@mfin.hr.

Tax advantages for bequests:

- Art. 46 of the Inheritance Act (Official Gazette no. 48/2003, 163/2003, 35/2005, 127/2013, 33/2015, 14/2019);
- Art. 9 of the Local Taxes Act (Official Gazette no. 115/16., 101/17., 114/22., 114/23.).

Tax advantages for donations:

- Art. 7 Par. 7 of the Profit Tax Act (Official Gazette no. 177/2004, 90/2005, 57/2006, 80/2010, 22/2012, 146/2008, 148/2013, 143/2014, 50/2016, 115/2016, 106/2018, 121/2019, 32/2020, 138/2020, 114/2022, 114/2023);
- Art. 15 Par. 2 of the Income Tax Act (Official Gazette no. 115/2016, 106/2018, 121/2019, 32/2020, 138/2020, 151/2022, 114/2023);
- Art. 26 Par. 6 of the VAT Ordinance (Official Gazette no. 79/2013, 85/2013, 160/2013, 35/2014, 157/2014, 130/2015, 115/2016, 1/2017, 41/2017, 128/2017, 106/2018, 1/2019, 1/2020, 138/2020, 1/2021, 73/2021, 41/2022, 133/2022, 43/2023);
- Art. 9 of the Local Taxes Act (Official Gazette no. 115/16., 101/17., 114/22., 114/23.).

⁴⁵ Answers provided by Divjak, Topic, Bahijarevic & Krka OD d.o.o. (Zagreb).

The following websites of the Croatian administrative authorities provide an overview in English regarding the recognition of both national and foreign associations and foundations:

- [Establishment and registration of associations - gov.hr](#);
- [Registration of foreign associations - gov.hr](#);
- [Ministry of Justice and Public Administration - Register of Foundations of the Republic of Croatia \(gov.hr\)](#);
- [Ministry of Justice and Public Administration - Register of Foreign Foundations in Croatia \(gov.hr\)](#);
- [Accounting in associations - gov.hr](#);
- [Associations in the tax and customs systems - gov.hr](#) (Gifts and Donations).

When contacting the administration, we advise you to include the following information:

- the name of the NPO;
- its registration number (if applicable); and
- its contact information.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

In Croatia, legal entities and natural persons (individuals) can receive tax advantages with respect to domestic donations and bequests.

Domestic donations made by either legal entities or natural persons can grant tax deductions in relation to corporate or personal income tax. In terms of gift and inheritance tax, donations are not taxable at all. Food donations can grant VAT (value added tax) advantages for legal entities that are in the VAT system.

Bequests made to legal entities or natural persons that are performing activities prescribed by special regulations are not taxable.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

In Croatia, all NPOs that are recognised in accordance with the national law are eligible to receive donations and bequests and can benefit from tax advantages. After formal recognition, NPOs must be registered with the Non-Profit Organizations Register (“*NPOs Register*”), operated by the Ministry of Finance (“*Recognized NPOs*”). The NPOs Register can be browsed [here](#)⁴⁶.

⁴⁶ Unfortunately, available only in Croatian language.

Foreign NPOs (from within or outside of the EEA) may also perform their non-profit activities in the territory of Croatia subject to registration with the Register of Foreign Associations/Foundations and subsequently with the NPOs Register (“*Foreign NPOs*”). Generally, Foreign NPOs and Recognized NPOs should be entitled to the same tax advantages; however, in lack of administrative decisional practice of the Tax Authority, and since the relevant legislation does not refer explicitly to foreign NPOs, a formal confirmation/opinion from the Tax Authority should be sought to confirm that.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

In Croatia, there is no single document regulating all substantive requirements for the recognition of all NPOs. Instead, each type of NPO has its own specific recognition requirements. Nevertheless, there are certain requirements that are common to all Recognised NPOs.

Therefore, Recognised NPOs must:

- be recognized in Croatia;
- not be recognised with the main goal of generating profit;
- open a bank account;
- be registered with an appropriate register (e.g., Associations Register/Foundations Register);
- be registered with the NPOs Register.

2.1.3. What does the recognition process look like?

The recognition process differs depending on type of NPO being registered, i.e., whether it is a recognition of a foundation or an association.

The request for a recognition of a foundation is submitted by the authorized representative of the foundation, and includes the following: (i) the Deed of recognition of the foundation, (ii) the decision on the appointment of person(s) authorized to represent the foundation, (iii) the decision on the appointment of members of the foundation's governing body, (iv) the confirmation of the executor of the will's status (if applicable), (v) a proof of funds paid for the recognition or other assets, indicating that the property designated for the foundation is the founder's property, (vi) an evaluation by an authorized court expert, (vii) the court registry excerpt or other registry excerpt if the founder is a foreign legal person, (viii) the statement regarding the authorization for using a particular foundation name (e.g., third person's name or name of an international organisation), and (ix) the Foundation's statute.

An association may be recognized by at least three founders. The request for a recognition of an association is submitted by the person authorized to represent the association and includes the following: (i) the minutes from the founding assembly, (ii) the Assembly's decision to initiate the recognition process with the Associations Register (if such a decision was not made at the founding assembly), (iii) the association's statute, (iv) the list of founders, (v) the names of the persons authorized to represent the association and the name of the liquidator, (vi) the court registry excerpt or other registry excerpt if the founders are foreign legal entities, (vii) a copy of the ID cards/passports of the founders, liquidator, and persons authorized to represent the association, (viii) notarized statements of the founders, liquidator and persons authorized to represent the association on the absence of obstacles

regarding the AML regime and child abuse (if applicable), (ix) a specific consent or approval from the competent authority for conducting specific activities (if applicable), (x) the notarized statement regarding the authorization for a particular foundation name (if applicable).

Upon the registration of the association/foundation with the Associations/Foundations Register, it must be registered with the NPOs Register within the following 60 days. The registration process includes filling out a simple form and submitting it to the Ministry of Finance. No other documentation is required.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no administrative fees for the recognition process, but there are legal, notarial and translation costs, as the documents required for recognition must be notarized and translated (by a sworn translator) into Croatian language. Moreover, the costs of the lease of premises and opening a bank account should be taken into consideration.

2.1.5. What is the timeframe for the recognition process to be completed?

Under the Associations Act and the Foundations Act, the recognition process takes up to 30 days if the request has been duly submitted. If some documents are missing in the application, the competent authority will request the applicant to provide the missing documents, and this may affect the 30-days deadline.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

The recognition of NPOs has no validity period, i.e., it does not require a renewal.

2.1.7. Is any specific legal form required for the Belgian NPO?

In Croatia, most Recognized NPOs are recognized in a form of an association (Cro. *udruga*) or a foundation (Cro. *zaklada*). However, no specific legal form is required for the Belgian NPO.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Croatia.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Taxpayers can only receive tax advantages if donations are made domestically, i.e., within Croatia. With respect to such domestic donations, under certain conditions prescribed by law, corporate taxpayers can benefit from tax deductions, while individual taxpayers can benefit from increase of his/her personal allowance. Moreover, donations are exempted from the gift tax if made in line with the requirements prescribed by the relevant legislation.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, tax advantages are only applicable if donations are made to Croatian Recognized NPOs and Foreign NPOs. On the contrary, if donations are made to a foreign NPO that is not registered in Croatia as explained under 2.1.1., tax advantages will not apply.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax, gift and inheritance tax); and
- legal entities (corporate income tax, value added tax under certain conditions, gift tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Tax advantages that can be granted to individuals and/or legal entities are only national, i.e., there are no regional or other differences.

For individuals:

An individual taxpayer may have his/her personal allowance increased by up to 2% of the taxpayer's income in the current year for which the annual tax return was submitted and the annual income tax assessed or special procedure for determining of annual personal income tax is conducted. Such a tax advantage is applicable for gifts in kind and in cash made in Croatia and transferred to transaction accounts of associations and other persons engaged in cultural, educational, scientific, health, humanitarian, sports or religious activities pursuant to special regulations. Exceptionally, the individual taxpayer's personal allowance shall be increased by the gifts above the stipulated value, provided that they are made for purposes determined by strategic projects according to special regulations or the strategy of the competent ministries based on a decision of the competent ministry adopted with the consent of the Government of the Republic of Croatia.

For legal entities:

A corporate taxpayer can benefit from tax deductions up to 2% of the revenues generated in the previous or current tax period in case of domestic donations made in a form of gifts in kind or cash to associations, public administration bodies, local and regional self-government units and other persons who perform activities related to cultural, scientific, educational, health, humanitarian, sports, religious, environmental, or other socially beneficial purposes. Exceptionally, from 1 January 2024, the tax deduction amount may exceed 2% of the revenues generated in the previous or current tax period, if granted pursuant to the decision of competent ministry adopted with the consent of the Government of the Republic of Croatia.

The companies that are VAT taxpayers can be relieved of the payment of VAT under certain conditions. Food donations (including animal food) are VAT deductible if made for the

purpose of preventing its destruction, protecting the environment, and helping end recipients, in accordance with a special regulation on food and animal food donations. Such donations will be tax deductible if made exclusively to NPOs to which the competent administrative authority has issued a decision authorizing the permanent collection and provision of humanitarian aid, and that are registered as intermediaries participating in the food donation chain. Tax deduction is up to 2% of the revenue or income from the previous year.

With respect to certificates, there is no prescribed obligation of the NPOs to issue certificates for donations. To receive a tax advantage, a donor must submit a decision on donation (if it is a company), the agreement on donation, or proof of payment to the bank account of the beneficiary, if a donation is in money. If a donation is in kind, a donor must submit the receipt for the transfer of goods, delivery note, or other authentic supporting documents.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain tax advantages, donations must be made in Croatia, thus, any donation that is made outside Croatia will not be subject to tax advantages. Donations can be made in cash and in kind (including assets, food, rights, and services).

The concept of donation in Croatia implies that there is no counteraction for made donation. If there was some sort of counteraction for received donation, such a donation would be treated as sponsorship that does not have the same tax advantages as donations.

For the restrictions in terms of the amount of tax deduction, *cf.* 2.2.4.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Croatian tax resident individuals/legal entities can benefit from reduced inheritance tax rates for bequests made in testators' will.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Generally, tax advantages are available for bequests to both Croatian Recognised NPOs and Foreign NPOs. However, since there is no administrative decisional practice of the Tax Authority and since the relevant legislation does not refer to foreign NPOs, it is advisable to obtain a formal confirmation/opinion from the Tax Authority.

2.3.3. Does it make a difference whether an NPO is recognised or not?

The Local Taxes Act does not distinguish between bequests made to Croatian Recognized NPOs or Foreign NPO. It only stipulates that bequests made to individuals and legal entities who perform activities in line with special regulations are exempt from gift and inheritance tax. Therefore, in our opinion, it does not make a difference whether the bequest is made to

a Croatian Recognized NPO or a Foreign NPO. However, for legal certainty, a formal confirmation/opinion should be requested from the Tax Authority.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages (for receiving a bequest) are available for individuals and legal entities provided that they are performing activities prescribed by special regulations, such as activities related to cultural, scientific, educational, health, humanitarian, sports, religious, environmental, or other socially beneficial purposes.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Pursuant to the Croatian Local Taxes Act, those who receive an inheritance or gift may be subject to an inheritance and gifts tax at the rate of 4%, but there is a preferential system for bequests made to individuals and legal entities provided that they are performing activities prescribed by special regulations.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain tax advantages, the bequest must meet the following conditions:

- the bequest must be made in a legally valid will;
- the bequest must be made for socially beneficial purposes and must be specified.

Under the Croatian Inheritance Act, a testator can make a bequest in a way that he/she instructs NPO to perform certain tasks in exchange for the bequest. Moreover, it should be noted that a testator can set up a foundation by its bequest.

Generally, there are restrictions for inheritance in terms of reserved share for descendants and surviving spouse. However, Croatian Inheritance Act explicitly prescribes that such restrictions do not apply in case of bequests made for socially beneficial purposes, i.e., to NPOs that are registered for the performance of such activities.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

In general, donations and bequests to Croatian Recognized NPO and Foreign NPO are eligible for the same tax advantages, provided that the Foreign NPO is validly registered in appropriate registers. In that regard, the burden of proof lies with the taxpayer claiming the tax advantage. However, Tax Authority may on case-by-case basis determine and assess whether donations and/or bequests to certain Foreign NPOs are eligible for receiving the tax advantages due to various factors e.g., received donations/bequests are transferred to third

parties that are not Croatian residents (general rule: tax advantages are applicable only to donations made in Croatia). Having in mind that there is no administrative decisional practice of the Croatian Tax Authority, for a definitive answer, it is advisable to obtain a written confirmation of the Croatian Tax Authority.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

As stated above, Foreign NPOs generally enjoy the same tax advantages as Croatian Recognized NPOs. The main condition is that Foreign NPOs are validly registered with the Register of Foreign Associations/Foundations and subsequently with the NPOs Register, which registrations are prerequisites to performing its activities in Croatia. There are no limitations regarding the place of establishment of the foreign NPO, i.e., all foreign NPOs can be registered in Croatia for the performance of their activities. However, with respect to benefiting from the same tax advantages as Croatian Recognized NPOs, due to lack of administrative decisional practice of the Tax Authority, it is advisable to obtain official opinion of the Tax Authority.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

All foreign NPOs can be registered in Croatia for the performance of their activities (*cf.* 3.1.).

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

The registration of Foreign NPOs is possible, but their registration process differs from that of Croatian Recognized NPOs. While Croatian Recognized NPOs are registered with Associations/Foundations Register, Foreign NPOs are registered with Register of Foreign Associations/Foundations and subsequently with the NPOs Register as well.

The documentation required for the registration with the Register of Foreign Associations/Foundations is similar to the documentation required for the registration with the Associations/Foundations Register, but also includes: (i) excerpt from the competent registry of the Foreign NPO, (ii) a decision on the Foreign NPO's activities in Croatia, (iii) a certified audit report on the NPO's performance in the previous fiscal year (for foundations). The respective documentation needs to be notarized and translated (by a sworn translator) into Croatian language. With respect to the registration process, *cf.* 2.1.3.

With respect to the registration costs, *cf.* 2.1.4. Moreover, the estimated price for legal assistance related to the respective registration process (including both registers) would amount to EUR 1,500 – 2,000 (VAT excluded).

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G. A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

There is no requirement to prove that the foreign legal form is equivalent to Croatian legal form of foundation and/or association. However, within the registration process, the foreign NPO must provide to the competent authority its incorporation act and the excerpt from the registries in which such foreign NPO is registered. Therefore, in case the legal form of foreign NPO is not 100% equivalent to Croatian legal form of foundation and/or association, it is possible that the competent authorities will seek additional clarifications.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Other than the ones already presented above, no.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

An overview of the NPOs Register (including Croatian Recognized NPOs and Foreign NPOs) can be found [here](#)⁴⁷. The NPOs Register is run by the Ministry of Finance.

Moreover, registries of Foreign NPOs, depending on their type (foundation or association) can be found [here](#)⁴⁸ and [here](#)⁴⁹. Registries for foreign foundations and associations are run by the Ministry of Justice and Public Administration.

4. CONCLUSION

Tax advantages are available only for domestic donations, therefore, any donations that are made outside Croatia will not be covered by tax advantages. Generally, a Foreign NPO enjoys the same tax advantages for its donors and bequests as a Croatian Recognized NPO, provided that the Foreign NPO is registered in all applicable NPOs registries.

There is no administrative decisional practice of the Croatian Tax Authority with respect to the applicability of the tax advantages in relation to the Foreign NPO, which makes it likely for the Tax Authority to assess and determine the possibility of receiving tax advantages on case-by- case basis. Therefore, for legal certainty as to the tax equivalence of Foreign NPOs and Croatian Recognized NPOs (for both donations and bequests), it is advisable to obtain an official standpoint from the Tax Authority.

⁴⁷ Ministry of Finance <https://banovac.mfin.hr/noprt/Index#rezultati>.

⁴⁸ Ministry of Justice and Public Administration <https://registri-npo-mpu.gov.hr/#!strane-zaklade>.

⁴⁹ Ministry of Justice and Public Administration <https://registri-npo-mpu.gov.hr/#!strane-udruge>.

5. ADDITIONAL CLARIFICATIONS

5.1. ARE THE SAME TAX ADVANTAGES ONLY AVAILABLE TO FOREIGN NPOS WITH REGARDS TO THEIR ACTIVITIES IN CROATIA, OR IS THE NPO ABLE TO PERFORM ACTIVITIES OUTSIDE OF CROATIA AS WELL?

With relation to this question, please note that as a general rule the tax advantages are available only for domestic donations, therefore, any donations that are made outside Croatia will not be covered by tax advantages. In that regard, the tax advantages of donations are available only for Foreign NPOs that are registered in Croatian Register of Foreign Associations/Foundations and subsequently with the NPOs Register.

Having this in mind, please note that if donations are made in good faith, i.e., the donor deems that the donation will be used within the Croatian territory, the tax advantages will apply. On the other hand, if the donation is not intended for use within the Croatian territory, and the donor is aware of this fact, the tax advantages will not apply.

CYPRUS⁵⁰

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- tax treatment for donations to approved institutions, as provided in articles 8 and 9 of the Cypriot Income Tax Law 118(I) 2002;
- the legal requirements for associations and foundations, as provided in article 26 of the Associations and Foundations and Other Related Matters Law of 2017 (104(I)/2017);
- the recognition process and requirements of NPOs, as provided in articles 46 of the Associations and Foundations and Other Related Matters Law of 2017 (104(I)/2017) and Articles 3(2), 3(4), 4(4), 5(4) of the Regulatory Administrative Act 309/2020

The Cypriot tax authorities provide on their website an overview in Greek of:

- the recognition requirements (are mentioned below in detail):
http://www.cylaw.org/nomoi/enop/non-ind/2017_1_104/full.html
- the recognition process for NPOs (are mentioned below in detail):
http://www.cylaw.org/nomoi/enop/non-ind/2017_1_104/full.html
- the recognition process for foreign NPOs (are mentioned below in detail):
http://www.cylaw.org/KDP/data/2020_1_309.pdf
- qualifying gifts:
 - o According to article 9 (1) (f) of the Cypriot Income Tax Law 118(I) 2002, subject to the provisions of subsection (2), in arriving at the taxable income of any person, all expenses incurred by that person wholly and exclusively in earning the income shall be deductible. These include donations or contributions made for educational, training or other charitable purposes to the Republic or Local Government Authority or to any charitable institution approved as such by the Council of Ministers:
- tax benefits for individuals:
 - o According to article 8 (13) of the Cypriot Income Tax Law 118(I) 2002, the income of a religious, charitable or educational institution of public character is exempted from tax.

⁵⁰ Answers provided by Chrysostomides Advocates & Legal Consultants (Nicosia).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers with respect to donations, according to the Cypriot Income Tax Law.

Donations or contributions made by individuals for educational or other charitable purposes to the Republic or a Local Government Authority (LGA) or to any charitable institution approved as such by the Council of Ministers, shall be tax deductible.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to charitable institutions approved as such by the Council of Ministers⁵¹. Such institutions, according to the Income Tax Law, can also include foreign EU or EEA based NPOs that fulfil all the necessary legal requirements⁵².

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

An NPO that wishes to be recognised must:

- have legal personality;
- be registered in Cyprus;
- pursue no gain of any kind, either for itself, its organs or its members.

Recognition is only available for Cypriot registered NPOs performing specific activities. Pursuant to Cyprus Law it is possible to register a foundation provided its main purpose is to achieve one or more of the purposes named in section 26(3) of the Associations and Foundations and Other Related Matters Law of 2017 (104(I)/2017). The activities and additional requirements are namely:

- the prevention or alleviation of poverty.
- the promotion of education.
- the promotion of health or the saving of life.
- the promotion of civic and community development.
- the promotion of the arts, culture, heritage or science.
- the promotion of amateur sports.
- the promotion of human rights, conflict resolution or reconciliation or the promotion of religious or ethnic harmony or equality and diversity.
- the promotion of the protection or improvement of the environment.
- the alleviation of needs arising from youth or advanced age, health problems, disability, economic hardship or other disadvantage.
- the promotion of animal welfare and protection.
- for any other reason for the benefit of the public generally or which is considered relevant to the purposes of paragraphs (a) to (j) above.

⁵¹ Article 9 of the Income Tax Law (118(I)/2002)

⁵² Article 46 of the Associations and Foundations and Other Related Matters Law of 2017

It is understood that it is not necessary that the pursuit or the purposes of the foundation be of a public nature or for the benefit of society at large, but it can benefit part of the society or particularly benefit one or more persons or purposes or persons within a group of persons.

2.1.3. What does the recognition process look like?

For the registration of a foundation, an application must be submitted to the Ministry of Interior, submitting the forms required by law. The NPO must file:

- a written application for the establishment of the foundation including the full names of the founders/trust commissioners/executors, the name of the foundation, the address of the registered office of the foundation, contact address, if different from the address of the registered office.
- the founding act and the statutes of the foundation, which must specify the name and purpose of the foundation, its seat, any emblem, the property to be dedicated, the names, addresses and contact details of the council members, as well as the manner of their succession and the statutes of the foundation.
- “Form: I4. Μέλη Διοικητικού Συμβουλίου Ιδρύματος”. For this form the following details of the Members of the Board of Directors of the Foundation are needed: full name, position, date of birth, id no, date of commencement and expiry of the term of office on the board of directors, address, email, phone number, occupation, if there is any professional relationship with the foundation.
- clean criminal record for each member of the Board of Directors issued in the last 3 months.

Once the foundation is registered with the Ministry of Interior, the council of the foundation can file an application to the Ministry of Finance and request to be recognised as a charitable foundation, for the purposes of Article 9 of the Income Tax Law. The following documents must be submitted to the Ministry of Finance (i) a letter from the council of the foundation, providing specific information on the non-for-profit purposes and activities of the foundation (ii) copies of the founding act and statute of the foundation (iii) copy of the certificate of registration of the foundation. latest financial statements.

All relevant forms can be found [here](#).

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are specific fees or costs payable to the Cypriot administration that are related to the recognition process:

- examination of an application for Foundation registration: €100,00
- examination of an application for registration of an international non-governmental organisation: €150,00
- issue of a certificate of registration: €5,00
- issue of a true copy of the Statutes: €5,00
- issue of a true copy of the certificate of registration: €5,00
- examination of an application for registration of an amendment to the Statutes: €10,00

- examination of a request for the issue of any other certificate, such as a certificate of composition of the organisation's Board of Directors: €5,00:

If third party assistance is requested, e.g. legal fees or consultancy fees payable to the third party may vary for assisting the NPO throughout the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

The formalities for granting registration approval under the provisions the Income Tax Law shall be processed without delay and in any case within three (3) months from the time of receipt of all required and duly completed documents accompanying the application for registration.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

According to article 53 of the Associations and Foundations and Other Related Matters Law of 2017 (104(I)/2017) the Council of Ministers may make regulations for the determination or regulation of any matter required to be determined or capable of being determined under this Act and generally for the better application thereof. In particular such Regulations may provide for the fixing of registration and renewal fees for the registration and renewal of registration of a club, foundation or federation and/or association.

2.1.7. Is any specific legal form required for the Cypriot NPO?

Cypriot NPOs can take any of the following legal forms:

- association
- foundation
- federation or union
- international non-governmental organisation (NGO)

These entities must fulfil all related formal requirements as set out in the Cypriot law on associations and foundations.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Non applicable in respect to Cyprus.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Cypriot resident taxpayers can benefit from a tax reduction for donations or contributions made for educational or other charitable purposes to the Republic or a Local Government Authority or to any charitable institution approved as such by the Council of Ministers.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, it does make a difference. The NPO must be recognised by the Council of Ministers according to article 9 of the Cypriote Income Tax Law 118(I) 2002 in order for the taxpayers to receive tax advantages when donating to that specific NPO.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to both individuals (personal income tax) and companies (corporate income tax), provided these persons are tax resident in Cyprus.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences?

For individuals, according to article 8 of the Cypriot Income Tax Law 118(I) 2002, income of a religious, charitable or educational institution of public character is exempt from tax. There are not any regional, provincial, cantonal or other differences regarding the available tax advantages.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The NPO must be recognised by the Council of Ministers but there are no other legal conditions or restrictions regarding the amount.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

In Cyprus there is no inheritance tax, so no taxes are applied on bequests. Please refer to the previous section of the tax benefits of a recognised, qualifying NPO.

2.3.2. Which NPOs are qualify to receive bequests with a tax advantage?

In Cyprus there is no inheritance tax, so no taxes are applied on bequests. Please refer to the previous section of the tax benefits of a recognised, qualifying NPO.

2.3.3. Does it make a difference whether an NPO is recognised or not?

No since in Cyprus there is no inheritance tax, so no taxes are applied on bequests.

2.3.4. Which persons are eligible for tax advantages (e.g. individuals, companies, etc.)?

Tax advantages are available to both individuals (personal income tax) and companies (corporate income tax), provided these persons are tax resident in Cyprus.

As stated above, in Cyprus there is no inheritance tax, so no taxes are applied on bequests.

2.3.5. What type of tax advantages are available if the conditions are met (e.g. a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Please see our previous response.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In Cyprus there is no inheritance tax, so no taxes are applied on bequests.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

According to article 46 of the Associations and Foundations and Other Related Matters Law of 2017 (104(I)/2017), a non-governmental organization, with legal personality in a state that has entered and ratified the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, in force in the Republic of Cyprus since 21.03.2003 under the provisions of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (Ratification) Law of 2003, may apply for recognition of the right to legal action in the Republic, provided that it submits all the documents establishing the legitimacy of its action, accompanied by a certificate issued by the competent state authority of the state concerned.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is possible for EU or EEA-based NPOs to receive an official registration in Cyprus and this is a requirement to qualify for tax advantages.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Registration is limited to NPOs from EU or EEA member states and does not extend to EFTA, UK or other foreign NPOs.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Yes, the same registration process must be followed as for domestic NPO.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G. A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

It is possible for a foreign NPO to register in Cyprus. Please see our previous response.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

It is not necessary for foreign NPOs to prove that the foreign legal form is equivalent to the domestic legal forms, provided that the legal form is recognised in the state of the foreign NGO itself.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No. There are no other legal limitations or requirements.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

So far there is one foreign NPO that was recognised whose details are the following:

- Register No.: LEF|DMKO|1
- Purpose: Preventing or alleviating poverty, the promotion of health or the saving of life
- Type of NGO: Foreign Country NGO
- Name: THE YIANIS CHRISTODOULOU FOUNDATION
- Legal Status of Operation: Approved
- Region: Nicosia
- Address: 6th FLOOR, CHARLES HOUSE, 108-110 FINCHLEY ROAD, LONDON NW3 5JJ
- First registration date: 01/07/2021O

There is one more foreign NPO that requested to be recognised but its recognition is still under examination, whose details are the following:

- Register No.: IIP|1206
- Purpose: To promote human rights, dispute resolution or reconciliation or to promote religious or ethnic harmony or equality and diversity
- Type of NGO: Foreign Country NGO
- Name: RADHA SOAMI SATSANG BEAS BRITISH ISLES
- Legal Status of Operation: Registration under examination/approved
- Region: Nicosia
- Address: KYRIAKOU MATSI AVENUE, 18, FLAT NO. 101, 1035 PALLOURIOTISSA
- First registration date: 27/10/2023 or 05/01/1000

4. CONCLUSION

Foreign EU or EEA-based NPOs can be subject to the same tax advantages as Cypriot Recognised NPOs, such as tax reductions for donations by individuals and tax deductions for donations by companies.

In order to be able to qualify for such tax advantages, foreign EU or EEA-based NPOs must fulfil the same requirements as Cypriot Recognised NPOs, as set out in the relevant Cypriot legislation.

On the other hand, NPOs with legal personality in a state that has concluded and ratified the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, may apply for recognition of the right to legal action in the Republic, provided that it submits all the documents justifying the legitimacy of its action, accompanied by a certificate issued by the competent state authority of the state concerned, to therefore be allowed to benefit from tax advantages in Cyprus.

CZECHIA⁵³

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Legal and tax framework:
 - o Act No. 89/2012 Coll., Civil Code, as amended, in particular Sec. 146, 303 – 418;
 - o Act No. 304/2013 Coll, on Public Registers, as amended, in particular Sec. 31 – 38a; and
 - o Act No. 586/1992 Coll., on Income Taxes, as amended, in particular Sec. 17a and 18a.

- Tax advantages for donations:
 - o Act No. 586/1992 Coll., on Income Taxes, as amended, in particular Sec. 4a, 19 and 19b (for donees) & 15(1), 20(3) and 20(8) (for donors)

- Tax advantages for bequests:
 - o Act No. 586/1992 Coll., on Income Taxes, as amended, in particular Sec. 4a(a) (individuals) and 19b(1)(a) (for companies).

Please note that in the Czech Republic, there is neither a gift tax, nor inheritance (bequest) tax, as these taxes were replaced by income tax as from January 2014.

According to Czech legislation, there is currently no recognition process, while Czech NPOs (typically association, foundation, foundation fund and institute) need to be (i) established and registered in Czech Commercial register for legal purposes and (ii) registered with Czech tax authorities for tax purposes.

Foreign institutions are obliged to register, if they either (i) establish a branch office (*odštěpný závod*) in the Czech Republic or/and if (ii) they become subject to Czech taxation (e.g., due to existence of a permanent establishment or employing staff for more than 183 days in the Czech Republic).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to both individuals and corporate taxpayers (companies) with respect to donations granted/received and bequests received.

⁵³ Answers provided by PRK Partners s.r.o. attorneys at law (Prague).

Donors may claim corporate income tax (if the donors are corporate income taxpayers) or personal income tax (if the donors are individuals) allowances in respect of qualifying donations made to legal entities (including eligible NPOs) and certain individuals if specific conditions mentioned in Czech tax legislation are met.

Donations received by legal entities qualifying as the so called “*publicly beneficial taxpayers*” that are tax-resident in the Czech Republic or tax-resident in another EEA member state, are exempt from Czech corporate income tax, if the funds received are or will be used for certain publicly beneficial purposes (identical to those that apply claiming tax base allowance (please see above).

Bequests are fully exempt from Czech income tax, i.e., from personal income tax for individuals and from corporate income tax for companies (including eligible NPOs). Bequests received by individuals which exceed CZK 5 million per annum must be notified to Czech tax authorities.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Income from bequests is exempt from Czech taxation. This exemption applies to all recipients (individuals, companies including NPOs).

Tax advantages are available for donations provided to Czech NPOs in line with their founding status. Foreign NPOs that are established in the European Economic Area (EEA) qualify for the same tax advantages, if their legal form, scope of activities and use of donation received are similar to those of Czech NPOs (*cf.* 3.).

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Not applicable.

2.1.3. What does the recognition process look like?

Not applicable.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Not applicable.

2.1.5. What is the timeframe for the recognition process to be completed?

Not applicable.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Not applicable.

2.1.7. Is any specific legal form required for the Czech NPO?

Czech law recognises “*Publicly beneficial status*” of legal persons as follows:

“A publicly beneficial legal person is a legal person whose mission is to carry out its own activities to contribute, in accordance with the forming juridical act, to achieving common welfare, if the decision-making of the legal person is significantly influenced only by persons with no criminal record, if it has acquired its property from fair sources, and if it uses its assets and liabilities economically for a publicly beneficial purpose.”

This definition, however, does not impair the ability of the founders of NPOs to define the purpose in other ways, e.g., as charitable or combined. If it does not interfere with the main purpose of the NPOs or if it is not prohibited by the founder of the NPOs, these persons may also conduct additional business activity.

Czech NPOs can take the form of association (*spolek*), foundation (*nadace*), foundation fund (*nadační fond*) or institute (*ústav*). Foreign NPOs can promote their activity directly or establish its Czech branch office (*zahraniční fundace*) of the non-profit organization established abroad.

These entities must fulfil all related formal requirements as set out in the Czech Civil code. The mere fact of a charitable or public benefit purpose does not bring special requirements in the general statutory regulation of NPOs. Thus, these persons must also comply with the ordinary requirements of the law. However, in the case of public benefit foundations, the distribution of its assets upon liquidation is specifically addressed, which must be transferred to another public benefit entity.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Czech Republic.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to Czech NPOs or to foreign (EEA) NPOs which are equivalent to Czech NPOs, Czech taxpayers can benefit from the following tax advantages with respect to donations:

- a tax base reduction up to 15% of the total tax base (for individuals) or corporate tax base reduction up to 10% of the total tax base (for companies) for donations under certain conditions;
- the above-mentioned limits were increased to 30% of the total tax base for tax periods from 2020 to those ending on or before 28 February 2023 (due to war in Ukraine).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Not applicable, there is no recognition process in the Czech Republic.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax); and
- companies (corporate income tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

For individuals:

Donations provided to legal entities and government bodies based in the Czech Republic, other EU member states, Iceland or Norway for the purpose of financing science, education, culture, sport, charity and recovery from natural disasters, and further to individuals who operate schools or medical facilities, facilities for protection of abandoned animals or threatened species, are deductible up to 15% of the individual's tax base (for tax periods from 2020 to 2022 increased to 30%), after deduction of other allowances (e.g. tax losses). The minimum value of a gift reducing the individual's tax base is CZK 1,000 or 2% of the individual's tax base.

For companies:

The same general purpose-driven conditions as for individuals apply – see above for companies, however, the maximum deduction is limited up to 10% of the company's tax base (for tax periods from 2020 to those ending on or before 28 February 2023 increased to 30%) and the minimum value of a gift reducing the company's tax base (i.e., value of the donation) is CZK 2,000.

Specific rules with respect to deductibility of donations apply to the so called publicly beneficial taxpayers.

No regional, provincial, cantonal or other differences exist.

The donee (NPO) must issue a tax certificate (i.e., a confirmation of the donation receipt) to the donor. The certificate/confirmation must include at least the following requirements:

- the full identification of the donee (NPO), i.e., statutory name, address of their registered office and their ID number (*IČO*);
- the full identity of the donor and their address. For companies, this includes their ID number (*IČO*). For individuals, their birth number or date of birth can be mentioned;
- form and value of the donation (either amount in cash or description of donation provided in non-monetary form);
- purpose, for which the donation was provided;
- date of provision.

Donation agreements would usually meet the requirement of the tax receipt. Upon request of the donor, the donee must confirm to the donor that he has made use of the donation in accordance with its stated purpose.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To be able to obtain a tax base allowance/reduction in respect of the donation provided, the donation must meet the following conditions:

- donations must be made to companies (including Czech NPOs or foreign (EEA) equivalent NPOs) or to selected individuals (operating schools or medical facilities, facilities for protection of abandoned animals or threatened species);
- donations can be provided in cash or in kind;
- donations must be consumed by the donee in line with purpose for which they have been provided by the donor;
- donations must be at least CZK 1,000 (per institution and per year) in case of an individual or CZK 2,000 (per institution and per year) in case of a company; and
- the receiving individual/company (including NPO) must issue a tax confirmation of donation received.

The maximum amount of donations to be deducted from the tax base by individuals is limited to 15% of their total tax base (with the temporary limit increase as noted above).

The maximum amount of donations to be deducted from the tax base by companies is limited to 10% of their total tax base (with the temporary limit increase as noted above).

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Czech tax resident individuals/companies (testators) can benefit from income tax exemption applicable to all income received from bequests made in their will (there is no inheritance tax in the Czech Republic). The same applies to Czech tax non-resident individuals/companies (testators) receiving Czech source bequests subject to relevant double tax treaty provisions.

Income from bequests received by individuals which exceeds CZK 5 million per annum must be notified to Czech tax authorities within the deadline for filing annual Czech personal income tax return, otherwise penalties may apply.

Otherwise, testators do not receive any tax benefit from indicating a qualifying NPO as the beneficiary of their will.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Tax advantages (exemption from corporate income tax) are available for bequests to all Czech and foreign legal entities (including NPOs).

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable, there is no recognition process in respect of NPO in the Czech Republic.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages (exemption from income tax) are available for income from bequests to all Czech and foreign individuals as well as to all Czech and foreign legal entities (including NPOs).

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

There is only one tax advantage in the form of full tax exemption applicable all bequest recipients (testators).

No regional, provincial, cantonal or other differences are available.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

No specific legal conditions for bequests to obtain tax advantages (i.e., tax exemption) apply. Income from bequest exceeding CZK 5 million received by the individual testator is subject to a notification duty as mentioned above.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Income from Czech sourced bequests received by foreign legal entities (including NPOs) are exempt from Czech corporate income tax.

Donations made to foreign equivalent EEA NPOs are eligible for the same tax advantages as Czech NPOs, provided that they are considered equivalent to a Czech NPO.

The burden of proof lies with the taxpayer claiming the tax advantage.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Foreign (EEA) equivalent NPOs are generally entitled to benefit from all available Czech tax advantages under the same conditions as Czech NPOs regardless of whether they are officially registered for tax purposes in the Czech Republic or not. Registration for tax purposes is only required if the NPO has a permanent establishment or employs its employees for more than 183 days in the Czech Republic, otherwise tax registration is neither possible, nor required.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.1.3. If it is not (yet) possible to register, what are the alternatives (e.g., a defence file proving equivalence) for the foreign NPO?

Donations made to foreign (EEA) equivalent NPOs can benefit from all tax advantages under the same conditions as Czech NPOs, even if – a formal – registration is not possible/required for these foreign (EEA) equivalent NPOs.

A taxpayer claiming the tax base deduction for a cross-border donation should be able to prove that (i) the foreign institution is considered equivalent to a Czech NPO and (ii) that the foreign (EEA) equivalent NPO has been licensed “*in a similar manner*” in its country of residence. This evidence can, upon a potential challenge by Czech tax authorities, then be provided to the tax authorities. To this extent, the donor should provide:

- a copy of the statutes of the foreign organisation (including the description of the charitable purpose);
- documents indicating that the organisation qualifies in its jurisdiction of establishment for receiving tax deductible donation;
- documents indicating that the foreign (EEA) equivalent NPO can be compared, with respect to its activities, with one of the types of organisations available in the Czech tax legislation.

The Czech tax authorities of the donor’s jurisdiction will verify whether the evidence is sufficient.

In order for the foreign (EEA) equivalent NPO (publicly beneficial taxpayer for Czech tax purposes) to claim corporate tax exemption with respect to the donation received, the foreign entity could establish a (defence) file (for case of any challenge by Czech tax authorities) in which it already indicates how the received funds are consumed in line with the beneficial

purpose of the foreign entity. The foreign (EEA) equivalent NPO might be asked to provide a copy of this file to the Czech donor.

3.2. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, this might be required by Czech tax authorities. This would usually be proven by the statute of the NPO.

3.3. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No.

3.4. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

No, we are not aware of any.

4. CONCLUSION

Foreign (EEA) equivalent NPOs (public beneficial taxpayers for Czech tax purposes) qualify for the same tax advantages as Czech NPOs, i.e., tax base reductions for donations by individuals, tax base deductions for donations by companies, corporate tax exemptions with respect to donations received and consumed in line with their publicly beneficial status and corporate tax exemptions with respect to Czech source bequests received.

Foreign (EEA) equivalent NPOs (public beneficial taxpayers for Czech tax purposes) should fulfil the same requirements as Czech NPOs. However, it is not possible/required (or even necessary) for them to receive an official registration in the Czech Republic to qualify for all tax advantages.

5. ADDITIONAL CLARIFICATIONS

5.1. REGARDING THE TAX CONFIRMATION OF DONATIONS RECEIVED FOR TAX DEDUCTION, DOES THE CERTIFICATE NEED TO BE WRITTEN IN CZECH?

Generally, the tax confirmation of donation for tax deduction can be issued in foreign language, however, Czech language translation would be required for individuals claiming tax deduction by means of his/her personal income tax return (because the confirmation of donations provided represents obligatory enclosure of the personal income tax return) or for corporations claiming tax deduction from the tax base in case of future tax audit (if any). Therefore, it is recommended to issue the tax confirmation in Czech language or in bilingual version.

5.2. IS IT POSSIBLE TO RECEIVE ANY LEGAL CERTAINTY WITH REGARDS TO THE TAX CONSEQUENCES, SUCH AS BINDING TAX RULINGS, FOR FOREIGN ENTITIES?

According to specific provisions of Czech tax legislation, it is possible to apply for binding tax rulings in specific cases only, e.g., in case of transfer pricing between related parties, determination of permanent establishment tax base, method of allocating expenses that cannot be allocated to taxable revenues or binding assessment of the proportion of expenses associated with the operation of real estate used partly for non-business activities. These tax rulings are subject to stamp fee of CZK 10,000 per request and are generally legally binding. Otherwise, it is possible to submit a methodical query to Czech financial directorate, which is generally professionally assessed and answered in the form of written non-legally binding opinion.

DENMARK⁵⁴

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The primary current legal and tax regulations for philanthropy in Denmark are the following:

- Legal requirements for foundations and self-governing institution:
 - o The Danish Foundations Act (fondsloven).
- Tax regulations for foundations and self-governing institutions covered by the Danish Foundations Act or not covered by the Danish Corporation Tax Act:
 - o The Danish Fund Taxation Act (fondsbeskatningsloven).
- Tax liability and tax advantage for associations:
 - o The Danish Corporation Tax Act (selskabsskatteloven) Art. 1, (1), (6) as well as 3, (2) and (3).
- Tax advantage for donations and bequests:
 - o The Danish Tax Assessment Act (ligningsloven) Art. 8 A, as well as Art. 12.
- Exemption for estate tax:
 - o The Danish Estate Tax Act (boafgiftsloven) Art. 3, (2).
- Announcement 2018-12-19 No. 1656 regarding approval, etc., in accordance with Sec. 8A, subsection 2, and Sec. 12, subsection 3 of the Tax Assessment Act for charitable and non-profit associations, foundations, institutions, etc., and religious communities domiciled in this country or another EU/EEA country.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Individuals and corporate taxpayers can enjoy tax benefits when making donations. Donations to qualified non-profit organizations may result in a tax deduction for the taxpayer.

NPOs may qualify for exemption of estate tax.

2.1. QUALIFYING NPOS

⁵⁴ Answers provided by Kromann Reumert (Copenhagen).

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

NPOs qualify to receive donations and bequests if they are charitable organizations or otherwise non-profit.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Approval under Art. 8A and 12, (3) of the Tax Assessment Act, of charitable and non-profit associations, foundations, institutions, etc., requires that their purpose or behaviour do not oppose or undermine democracy or fundamental rights and human rights. Approval also presupposes that the following fundamental conditions are met:

- the funds are used for the benefit of a group of individuals that is not geographically or otherwise limited to a population base of fewer than 35,000;
- the number of donors from the EU/EEA annually exceeds 100;
- each individual donor must have contributed a minimum of DKK 200 during the year to the specific charitable and non-profit association, foundation, institution, etc.;
- it must by declaration be stated whether, in the preceding calendar year, one or more gifts from the same foreign donor, totalling more than DKK 20,000, were received;
- the annual gross income or assets (equity) exceed DKK 150,000.

Associations that are independent legal entities must, in addition to meeting the conditions described above, fulfil the following conditions:

- the association's board should not predominantly consist of self-perpetuating members;
- the association must have over 300 paying members in the EU/EEA, and the membership fee should be of a size that covers the association's usual administrative expenses;
- the association is not a member of an already approved parent organization. However, this condition does not apply if the applying association is a national-level organization.

Approval under Art. 12, (3) also requires that the NPO uses its funds for:

- humanitarian purposes, meaning alleviating human suffering;
- research, meaning scientific investigation and inquiry;
- environmental protection, meaning combating water, air, and soil pollution, including the protection of endangered animal and plant species;
- a religious community.

Furthermore, it is a condition for approval that the following fundamental conditions are stated in the bylaws:

- the purpose must be charitable or non-profit, meaning that the funds can only be used to support a broader group of individuals who are in financial need or facing difficult economic circumstances, or for a purpose that is generally perceived as beneficial within the population and benefits a larger community;

- liquidation proceeds or surplus upon dissolution must be directed to another association, foundation, institution, etc., or a religious community domiciled in this country or another EU/EEA country, which has a charitable or otherwise non-profit purpose;
- the association, foundation, institution, etc., or the religious community must be domiciled in this country or another EU/EEA country, which means that the majority of governing bodies and the main office should have their headquarters in this country or another EU/EEA country.

2.1.3. What does the recognition process look like?

Application for approval under Art. 8A, and/or Art. 12, (3) of the Tax Assessment Act must be submitted digitally.

The following must always be enclosed with the application:

- signed and dated bylaws;
- the most recent financial statements. If the association is newly established, instead submit documentation of assets or annual gross income;
- documentation that the fundamental conditions described above in Sec. 2.1.2., bullets 2-4 regarding approval under Art. 8A and 12, (3) can be met;
- foreign associations, foundations, institutions, etc., and religious communities domiciled in other EU/EEA countries must attach documentation that they are approved in the country where they are domiciled as charitable or non-profit associations, foundations, institutions, etc., or as religious communities, for example, through an income tax exemption declaration. Foreign associations, foundations, institutions, etc., and religious communities must meet the same objective rules as Danish associations, foundations, institutions, etc., and religious communities.

Approvals take effect from the calendar year in which the application is received, provided that the application is received by the Tax Authority no later than October 1. Approval is conditional on the association, foundation, institution, etc., or the religious community being established, the general statutory requirements for bylaw content being met, and all the conditions, described above Sec. 2.1.2. are met at the time of the application. For newly established associations, foundations, institutions, etc., and religious communities, approval can take effect from the time of establishment at the earliest.

Approval is effective until it is specifically terminated and does not need to be renewed every year. The Tax Authority publishes an annual list of approvals under Art. 8A and 12 (3) of the Danish Tax Assessment Act.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no payable fees to the Danish Tax Agency. Costs related to third party assistance may occur.

2.1.5. What is the timeframe for the recognition process to be completed?

There is no official timeframe for the recognition process, which depends on the workload of the Danish Tax Agency.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

The approval remains in effect until it is explicitly terminated and does not require annual renewal.

2.1.7. Is any specific legal form required for the Belgian NPO?

We assume this question relates to Danish NPOs.

Danish NPOs can take the form of either foundations (fonde) or non-profit associations (foreninger) and must be registered as such with the Danish Business Authority.

Foundations must fulfil the formal requirements as set forth in the Danish Foundations Act.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Taxpayers donating to recognized NPOs in Denmark may obtain a tax deduction under certain conditions.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, the tax advantage only applies for donations to recognized NPOs.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available for individuals and businesses.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Tax benefits for donations and gifts to charitable or otherwise non-profit organizations depend on whether the donations are provided as ongoing payments or in other forms. Donations as ongoing payments are subject to Art. 12, (3) of the Danish Tax Assessment Act. Donations, which are not ongoing payments are subject to Art. 8 A of the Danish Tax Assessment Act.

For individuals, the deduction for ongoing payments subject to Art. 12, (3) of the Danish Tax Assessment Act may not exceed 15% of the individual's personal income, plus positive capital income. However, if the ongoing payment does not exceed DKK 15,000, a full deduction is allowed.

For companies and other taxable institutions, the deduction for ongoing payments subject to Art. 12, (3) in the Danish Tax Assessment Act may not exceed 15% of the company's taxable income. However, if the ongoing payment does not exceed DKK 15,000, a full deduction is allowed.

For donations to NPOs subject to the Danish Tax Assessment Act Art. 8 A, the donor may deduct up to DKK 17,700 (2023).

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Deduction for donations subject to Art. 8A and 12, (3) of the Danish Tax Assessment Act required the following conditions to be met:

- the recipient of the gift is approved by the Danish Tax Authority as eligible to receive gifts;
- the association, etc., must report the payment to the Tax Authority in accordance with the rules and regulations.

The donation must not be considered payment for goods or services.

Ongoing payments subject to Art. 12, (3) of the Danish Tax Assessment Act further requires the following:

- There is a written commitment where the giver commits for an indefinite period (e.g., for the lifetime of either the giver or the recipient). This commitment cannot be transferred to a new beneficiary. However, the obligation can be time-limited but typically not for a period shorter than ten years.
 - The payments are both due and paid;
 - the recipient of ongoing payments is responsible for ensuring that the commitment agreements are upheld and collecting any arrears through legal means if necessary;
 - the obligation to provide ongoing payments cannot be unilaterally terminated by the obligated party;
 - the obligation to provide ongoing payments must not be part of an employment contract;
 - the obligation to provide ongoing payments must not be linked to a reciprocal benefit to the extent that it could be construed as payment for a service or be so closely associated with a service that it effectively becomes one. In other words, the ongoing payments should be made without any direct expectation of

receiving a specific service or benefit in return, ensuring that they truly serve a charitable or non-profit purpose.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Charitable organizations may qualify for an exemption from estate tax.

Furthermore, it is not un-common for testators to allocate a part of their estate to a charitable organization and arrange for the organization to cover the estate tax on the remaining part intended for the beneficiaries as part of tax planning strategies.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

NPOs qualified for exemption of estate tax are NPOs which are charitable or otherwise non-profit.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Recognized NPOs as described above under 2.2. will also be considered charitable or otherwise non-profit for the purpose of exemption from estate tax.

However, non-recognized NPOs may still qualify for exemption from estate tax. The decisive factor is that the NPO is considered charitable or otherwise non-profit.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

There are no estate tax advantages as such for individuals granting inheritance to an NPO other than the tax planning strategy described above 2.3.1.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

The NPO may qualify for exemption of estate tax.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The inheritance must be bequeathed through a will.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Yes.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Associations may be recognized as a foreign NPO.

A registration is possible but not required. If the foreign NPO registers in Denmark, it must register as a domestic association (separate from the existing foreign NPO) or as a foreign business according to existing rules on foreign businesses. It is not possible to register specifically as a foreign NPO.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Registration as a foreign business is not limited to EU or EEA member states.

Advantages for bequests are not limited to EU or EEA member states.

Recognition as an NPO for tax purposes in relation to gifts and donations are limited to EU and EEA member states.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Registration as a foreign business:

- a separate registration process applies compared to domestic NPOs.

Recognition for tax purposes in relation to gifts and donations:

- in addition to the documentation for domestic NPOs, foreign NPOs in the EU/EEA must document that they are recognized as charitable organisations in their member states;
- NPOs outside the EU/EEA must contact the Danish Tax Agency to obtain exemption for estate tax.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Non-recognized NPOs can, in connection with a specific inheritance, apply for estate tax exemption as a charitable or otherwise non-profit institution. In this context, they may also request to be included on the next list of charitable or otherwise non-profit foundations, associations, institutions (for EU/EEA NPOs).

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

The foreign NPO must prove that it is recognized as a charitable or otherwise non-profit institution in its member state.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

Yes, see: <https://info.skat.dk/data.aspx?oid=2061734&chk=218928>.

4. CONCLUSION

Danish tax law favours gifts, donations, and bequests to charitable or otherwise non-profit organizations.

A distinction is made between ongoing payments and one-time donations as well as bequests.

Regarding the tax benefits for ongoing payments and one-time donations, it is crucial that the organization obtains approval as charitable or non-profit. The application must be submitted by no later than October 1st of the relevant calendar year.

Exemption from inheritance tax under the Estate Tax Act does not require prior approval.

5. ADDITIONAL CLARIFICATIONS

5.1. CAN YOU PROVIDE THE DIGITAL APPLICATION FORM TO THE DANISH TAX AGENCY, AND CONFIRM IT REQUIRES SUBMISSION OF SIGNED BYLAWS, RECENT FINANCIAL STATEMENTS, AND WHICH SPECIFIC CRITERIA NEED TO BE MET?

The digital application form may be accessed through this link: <https://skat.dk/en-us/help/forms/03-tax-declarations/donation-form-for-charitable-organisations-information-on-amounts-donated-etc>.

The application form for 2023 will be available from January 2024.

The specific criteria, which must be met are described in section 2.1.3 in the questionnaire.

5.2. WHEN REPORTING PAYMENTS TO THE TAX AUTHORITY, WHAT IS THE REQUIRED FORMAT, AND DOES IT NEED TO BE IN DANISH? IS ENGLISH AN ACCEPTABLE LANGUAGE? IS THERE A SPECIFIC CERTIFICATE TO PROVIDE TO THE TAXPAYER (DONATOR)?

The associations must report the annual donations by submitting a form:

Donation form for charitable organisations – information on amounts donated etc. - Skat.dk.

The form must contain information on number of donors donating gifts of minimum DKK 200, number of fee-paying members, total amount donated, etc.

The form will be available from January 2024 and must be submitted no later than 31 May in the following year.

English is generally acceptable.

Furthermore, the association must report donations through the Danish Tax Agency's self-service system (TastSelv Erhverv). The reporting must be made no later than 20 January in the following calendar year.

ESTONIA⁵⁵

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations and grants:
 - o Art. 19 (6), 27, 49 of the Income Tax Act.
- The legal requirements for associations, foundations:
 - o the Non-Profit Associations Act;
 - o the Foundations Act;
 - o the Churches and Congregations Act.
- The recognition process and requirements of NPOs:
 - o Art. 11 of the Income Tax Act.

The Estonian tax authority provides on its website in Estonian:

- an overview of the recognition requirements:
[https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule/nimekirja-taotlemine](https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule/nimekirja-taotlemine;);
- an overview the tax benefits related to Recognised NPOs:
<https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule>.
- The list of Recognised NPOs:
<https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule/nimekirjas-olevad-uhingud>.

For additional questions, the administration can be contacted directly at: ariklient@emta.ee.

A contact phone number should be included in the e-mail.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individual and corporate taxpayers with respect to donations.

⁵⁵ Answers provided by Cobalt Law Firm (Tallinn).

Donations to specific, eligible NPOs can grant individual taxpayers a tax deduction. For corporate taxpayers, donations to eligible NPOs are exempt up to a limit (*cf.* 2.2.1.).

A special exemption has been established in support of the sovereignty of Ukraine, whereby donations to eight NPOs set out by Art. 61 (66) of the Income Tax Act are exempt from corporate income tax.

Bequests do not benefit from any tax advantages and are generally non-taxable.

2.1. QUALIFYING NPOs

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to Estonian resident non-profit associations, foundations, and religious associations that are recognised by the Tax and Customs Board (**Recognised NPOs**). After formal recognition, the Estonian Recognised NPOs are included in a list, published on the website of the tax authority. The list can be found by selecting “*Tulumaksusoodustusega ühingute nimekiri (XLSX)*” on the following website:

<https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule/nimekirjas-olevad-uhingud>.

Even though foreign NPOs are not included in the official list, Foreign NPOs established within the European Economic Area (EEA) can, subject to conditions, be considered equivalent to Estonian Recognised NPOs (Foreign Equivalent EEA NPOs). Foreign Equivalent EEA NPOs are entitled to the same tax advantages as Estonian Recognised NPO (*cf.* 3.).

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

An NPO that wishes to be recognised must:

- be a resident non-profit association, foundation or religious association;
- operate in the public interest;
- operate for charitable purposes, offering goods, services of other benefits primarily free of charge or in another non-revenue seeking or publicly accessible manner;
- not distribute its assets or income or grant benefits to its organs or its members or persons associated therewith;
- upon dissolution, transfer its assets to another Recognised NPO or a public entity;
- have its administrative expenses correspond to its activity and the objectives set out in its articles of association;
- not pay remuneration to its employees or organ members which exceeds the remuneration usually paid for similar work in the business sector.

The requirements of operating in public interest and having charitable purposes are often interpreted strictly, thereby limiting the recognition of NPOs which only benefit a specific non-indigent group of society. The tax authority has published a guideline on its interpretation of “*public interest*” and “*charitable purposes*”, available only in Estonian (<https://www.emta.ee/media/764/download>). To make an assessment, the tax authority may

request additional information or evidence from the NPO depending on its activity and characteristics.

2.1.3. What does the recognition process look like?

The recognition process requires the Estonian NPO to file an application form to the Tax and Customs Board and include a list of founders as well as members of the NPO. The application form is available in Estonian at: <https://www.emta.ee/media/725/download>.

The application is reviewed within 30 days and recognition is granted on the first day of the month following the decision of approval.

Recognition will be refused if the NPO:

- does not operate in accordance with its articles of association;
- has been formed less than six months prior to filing for recognition or has never submitted an annual report (which can be substituted with a midterm report submitted directly to the tax authority);
- does not use revenue received from economic activity primarily for charitable purposes and in the public interest;
- is engaged in advertising or promoting the goods or services of an associated person, except for as a service under market terms;
- has tax arrears, without an agreement on the payment schedule;
- has repeatedly failed to duly submit reports, tax returns or delayed payment of tax;
- is being terminated or had bankruptcy proceedings brought against it;
- is engaged in supporting business or the representatives of a profession;
- is a trade union or a political association.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no direct costs related to the recognition process of NPOs, i.e., state fees or levies. The cost of third-party assistance (e.g., legal or consultancy fees) may vary as the amount of work required throughout the recognition process depends on the applicant.

2.1.5. What is the timeframe for the recognition process to be completed?

Applications are reviewed within 30 days.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Recognition is granted for an indefinite period and does not require renewal, however, Recognised NPOs are subject to the constant supervision of the tax authority. The tax authority may revoke recognition in case it detects that a Recognised NPO fails to meet any applicable requirements. If the inconformity can be rectified, the tax authority generally first issues a warning and revokes recognition only if the inconformity is not corrected within 30 days.

Recognition can be revoked if the NPO fails to meet any substantive requirement specified in question 2.1.2.; or if there are grounds for refusal specified in question 2.1.3.

2.1.7. Is any specific legal form required for the Estonian NPO?

Estonian NPOs can take the form of non-profit associations (in Estonian: *mittetulundusühing*, abbr. *MTÜ*), foundations (in Estonian: *sihtasutus*, abbr. *SA*), or religious associations (in Estonian: *usuline ühendus*).

The entities must fulfil all related formal requirements as set out in the regulation on their type of legal entity. Outside of specific rules, religious associations are subject to the regulation for non-profit associations.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to Estonian Recognised NPOs or to Foreign Equivalent EEA NPOs, Estonian taxpayers can benefit from the following tax advantages with respect to donations:

- resident individuals can deduct donations, whether monetary or non-monetary, from their taxable income (on non-monetary donations, the market price of the asset is deductible);
- resident corporate entities can make tax exempt donations, whether monetary or non-monetary, up to a threshold (under a traditional corporate income tax system, this would be classified as a deduction, however as Estonia does not have traditional corporate income tax and tax is only due on distributing profits, an exemption is provided instead – donations are generally taxed (equated to profit distributions) but exempt up to a limit when made to eligible NPOs).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donations made to Estonian Recognised NPOs or to Foreign Equivalent EEA NPOs can benefit from the tax deduction or tax exemption.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax); and
- corporate entities (corporate income tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

In addition to the tax advantages provided to donors, Recognised NPOs receive the following tax advantages:

- scholarships and grants issued in open competitions by recognised NPOs are tax exempt;
- recognised NPOs are not taxed on transferring assets to another person if done for charitable purposes and in the public interest;
- recognised NPOs are not taxed on transferring assets to other Estonian Recognised NPOs or Foreign Equivalent EEA NPOs;
- recognised NPOs are not taxed on providing social assistance, i.e., subsistence income;
- recognised NPOs are not taxed on gifts issued in youth camps or sport events, provided that the gift value does not exceed EUR 32 per beneficiary.

There are no regional differences with respect to the tax advantages for Recognised NPOs or their donors.

There are no formalities such as tax certificates or attestations, however, Recognised NPOs may be required to substantiate the grounds for applying the exemptions and should thus keep documentary evidence.

Recognised NPOs must file a yearly report to the tax authority on received donations (naming donors and the donation amounts), and a separate yearly report on the use of the donations and other income.

Donors need not acquire any certificate to benefit from the tax advantages. Individual taxpayers apply the deduction on their annual tax return (unless the Recognised NPO failed to declare the donation, the deduction should be included automatically). Corporate taxpayers declare donations to Recognised NPOs as tax exempt on their monthly tax returns. Documents evidencing payments must be kept but are not presented to the tax authority without a request (the donation can usually be verified by the receipt of the donation being declared by the Recognised NPO).

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Tax advantages apply if the donation meets the following conditions:

- the donation is made to a Recognised NPO or Foreign Equivalent EEA NPO;
- the donation is made in cash or in kind, i.e., by gifting an asset with a monetary value (if an asset is transferred at a discounted price, the discount amount can be classified as a donation), whereas free work or services are not deemed a donation;

- the donation must be declared by the donor and the Recognised NPO.

Deductions of an individual based on donations, training expenses, and housing loan interest (the right to deduct housing loan interests will cease from 2024) share a combined annual limit, which is the lower of two figures: (i) EUR 1,200; or (ii) 50% of the income of the taxpayer taxable in Estonia, after the deduction of business-related expenses.

Corporate entities can make donations without incurring income tax up to a limit which is chosen by the taxpayer from two figures: (i) 10% of the profits of the donor in the previous financial year; or (ii) 3% of certain payments subject to social tax (in particular, salary payments) made by the donor during the same calendar year.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

No tax advantages are available as Estonia has no inheritance tax.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

There is no advantage to being a Recognised NPO, as Estonian legal persons are generally not taxed on receiving a bequest (profits are not taxed before distribution).

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations to Foreign Equivalent EEA NPOs are eligible for the same tax advantages as Estonian Recognised NPOs, if it is supported by sufficient evidence that the Foreign Equivalent EEA NPO meets the requirements applicable to Estonian Recognised NPOs.

The burden of proof lies with the taxpayer claiming the tax advantage.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

The recognition process of Estonian NPOs is not applicable to Foreign Equivalent EEA NPOs and Foreign Equivalent EEA NPOs do not receive official registration in Estonia.

3.2. IF REGISTRATION IS POSSIBLE, IS IT LIMITED TO NPOs FROM EU OR EEA MEMBER STATES OR IS THIS POSSIBILITY EXTENDED TO EFTA, UK AND/OR ALL FOREIGN NPOs?

Not applicable.

3.2.1. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.3. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

While official registration is not possible, Foreign Equivalent EEA NPOs can benefit from the tax advantages of Recognised NPOs upon sufficient evidence of their compliance with the requirements being presented. Foreign NPOs incorporated outside the EEA, on the other hand, are unable to qualify for any of the benefits available to Recognised NPOs.

There is no formal process for recognising Foreign Equivalent EEA NPOs. The application form used by domestic NPOs to apply for recognition is not intended for non-residents, however, essentially the same information as contained in the application should be presented by a Foreign Equivalent EEA NPO (in a free form defence file) to evidence its equivalence. In practice, the local authorities have also provided *ad hoc* forms for foreign NPOs to fill in depending on what information, evidence, or confirmations the authorities deem necessary after the initial recognition request. The submission by a foreign NPO should include a copy of its statutes, which should indicate its charitable nature.

Upon sufficient evidence being presented, the tax authority should inform the applicant that it accepts to treat the Foreign Equivalent EEA NPO as eligible for tax advantages. As opposed to Estonian Recognised NPOs, there is formal list to verify recognition status. However, particularly if the Foreign Equivalent EEA NPO requested recognition and

provided evidence (as opposed to a donor), the tax authority should give notice of any deficiencies or circumstances which would cause it to revise its previous decision.

Alternatively, if the Foreign Equivalent EEA NPO wishes to have legal certainty, it may be possible to file an advance tax ruling request with the Estonian Tax and Customs Board to receive binding confirmation as to it qualifying as a Foreign Equivalent EEA NPO in the context of a specific transaction (e.g., donation). This may be justified particularly on expecting a single significant donation from an Estonian resident company, to ensure the application of tax exemption. An advance ruling is only valid in respect of a particular transaction, e.g., donation, which must be actual and not theoretical, and is thus not legally binding for any previous or following transactions (e.g., donations). Nevertheless, if there were no changes following a positive ruling regarding a single donation, the tax authority should principally have no reason to dispute its prior assessment (but could still do so).

3.4. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

If an NPO is recognised as such in its home country, there is no requirement to prove the equivalence of its foreign legal form to domestic legal forms.

3.5. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No, legal limitations have been set out above.

3.6. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

Estonian Recognised NPOs are included in a list, published on the website of the tax authority. The list can be found by selecting “*Tulumaksusoodustusega ühingute nimekiri (XLSX)*” on the following website: <https://www.emta.ee/ariklient/registreerimine-ettevotlus/tulumaksusoodustusega-uhingule/nimekirjas-olevad-uhingud>.

No such list exists for Foreign Equivalent EEA NPOs, since these entities cannot formally register in Estonia.

4. CONCLUSION

Foreign Equivalent EEA NPOs qualify for the same tax advantages as Estonian Recognised NPOs, i.e., individual donors receive tax deductions, donations by companies are tax exempt, and the NPO may provide tax exempt scholarships and grants. The other tax advantages available to Estonian Recognised NPOs, i.e., tax exemptions, would usually not benefit a Foreign Equivalent EEA NPO by virtue of it being a non-resident and consequently not subject to Estonian taxation. On the other hand, a Foreign Equivalent EEA NPO could also benefit from the tax exemptions if it holds a permanent establishment in Estonia (which is taxed similarly to an Estonian resident).

Foreign Equivalent EEA NPOs should fulfil the same requirements as Estonian Recognised NPOs. However, it is not possible for Foreign Equivalent EEA NPOs to acquire official

registration. Foreign Equivalent EEA NPOs are entitled to the same tax advantages as Estonian Recognised NPOs upon submitting sufficient evidence to the Tax and Customs Board regarding their compliance with the requirements applicable to Estonian Recognised NPOs. There is no formal recognition procedure, and the advantages are provided on an *ad hoc* basis. Should a Foreign Equivalent EEA NPO require legal certainty as to its equivalence with an Estonian Recognised NPO in respect of a specific transaction, an advance tax ruling can be requested from the tax authority.

5. ADDITIONAL CLARIFICATIONS

5.1. COULD YOU PROVIDE THE AD HOC FORM(S) MENTIONED FOR CLAIMING TAX ADVANTAGES IN ESTONIA?

First, to clarify regarding the ad hoc forms, we have not identified any specific recurring form, but rather questionnaires submitted to individual foreign applicants by the tax authority. To provide an example from the past year, the following questions were submitted to a foreign NPO seeking tax advantages in Estonia:

- Is your organisation listed as a charity with tax benefits (for income tax) within the EEA? Is this list accessible somewhere online?
- Does your organisation operate in the public interest?
- Does your organisation operate for charitable purposes, offering goods, services, or other benefits primarily free of charge or in another non-revenue seeking or publicly accessible manner?
- Does the organisation distribute its assets or income, grant monetarily appraisable benefits to its founders, members, members of the management or controlling body, persons who have donated to the organisation during the last twelve months or to the members of the management or controlling body of such persons or any persons associated with such persons?
- Upon dissolution of the organisation, shall the assets remaining after the satisfaction of the claims of the creditors be transferred to an association entered in the list (of recognised NPOs) or to a legal person governed by public law?
- Do the administrative expenses of the organisation correspond to the character of its activity and the objectives set out in its articles of association?
- Does the remuneration paid to the employees and members of the management or control body of the organisation exceed the amount of remuneration normally paid for similar work in the business sector?
- Does the organisation operate in accordance with its articles of association?
- Does the organisation use the revenue received from economic activity primarily for the purposes provided for in point (ii) and (iii) in this list?
- Is the organisation engaged in advertising the goods or services of a founder or donor, or promotion of the professional activity or business of a person in the target group?
- Does the organisation have tax arrears for which no payment schedule has been arranged?
- Is the organisation being terminated or having bankruptcy proceedings been brought against it?
- Is the organisation engaged in business support or mainly in support of the representatives of some profession or a trade union or political association? An

association is deemed to be a political association if it is a political party or election coalition or if the main objective or the principal activity of the association is organising campaigns or collecting donations for or against a political party or election coalition or a person running for an elected or appointed office for the performance of public duties.

For the sake clarity, these questions were provided after the foreign NPO had already submitted its request and provided some information. The ad hoc forms are used by the tax authority to collect additional information which it deems necessary for qualifying a foreign NPO for tax advantages.

5.2. REGARDING THE YEARLY REPORTS ON RECEIVED DONATIONS AND THEIR USE, WHAT FORMAT SHOULD THESE REPORTS TAKE, AND IS IT MANDATORY TO PROVIDE THEM IN ESTONIAN?

Second, as to the yearly reports, Estonian recognised NPOs must use fixed declaration forms:

- INF 4 for declaring the receipt of donations;
- and INF 9 for declaring the use of donations.

Both forms are only available in Estonian (see attached). The INF 4 form requires listing the name and identification no. or registry code of each donor, next to the sum of their yearly aggregate donations. The INF 9 form requires declaring (allocating) yearly aggregate expenditure and revenue under the categories provided in the form (section I); issues of tax-exempt scholarships, declared separately for each recipient (section II); profit distributions to associated parties (section III); as well as a description of the most important activities carried out in the public interest during the year (section IV). There are no specific rules for foreign equivalent NPOs and thus the tax authority can require them to fill out the same forms (i.e., in Estonian).

FINLAND⁵⁶

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations and bequests:
 - o Sec. 57 of the Income Tax Act (in Finnish: *Tuloverolaki*, 1535/1992, as amended, Income Tax Act) regarding donations made by corporations;
 - o Sec. 98 a) of the Income Tax Act regarding donations made by individuals and estates;
 - o Sec. 2 of the Inheritance and Gift Tax Act (in Finnish: *Perintö- ja lahjaverolaki*, 378/1940, as amended, Inheritance and Gift Tax Act) regarding the NPO's liability to pay inheritance and/or gift tax in Finland on the donations and bequests it receives.

- The legal requirements for associations and foundations:
 - o Associations Act (in Finnish: *Yhdistyslaki* (503/1989, as amended));
 - o Foundations Act (in Finnish: *Säätiölaki* (487/2015, as amended)).

- The recognition process and requirements of NPOs:
 - o Sec. 57 of the Income Tax Act;
 - o Sec. 98 a) of the Income Tax Act;
 - o Sec. 2 of the Inheritance and Gift Tax Act.

The Finnish Tax Administration (FTA) provides further guidance and general overview in Finnish and Swedish on their website of:

- The recognition process and requirements of NPOs in respect of the Sec. 57 of the Income Tax Act:
 - o The Finnish Tax Administration's guidance on donation deduction in corporate taxation (in Finnish: *Lahjoitusvähennys yhteisöverotuksessa*, <https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48721/lahjoitusv%C3%A4hennys-yhteis%C3%B6verotuksessa/>).

- Tax benefits for individuals:
 - o The Finnish Tax Administration's guidance on donation deduction in personal taxation (in Finnish: *Lahjoitusvähennys henkilöverotuksessa*, https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/48559/lahjoitusvahennys_henkiloverotuksess/).

- List of NPOs recognised by the FTA for the purposes of the Sec. 57 of the Income Tax Act:

⁵⁶ Answers provided by Roschier, Attorneys Ltd. (Helsinki).

- List of associations, foundations and associated funds recognised by the Finnish Tax Administration for the purposes of Sec. 57 of the Income Tax Act (https://www.vero.fi/tietoaverohallinnosta/verohallinnon_esittely/tietosuoja-jajulkisuus/verotuksen_julkiset_tiedo/muut_julkiset_tiedo/verohallinnon_nimeamat_lahjoituksen_saa/).
- Tax benefits for NPOs in respect of inheritance and gift tax:
 - https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/47858/perinto_ja_lahjaverotus_kansainvalisiss5/;
 - <https://www.vero.fi/syventavat-vero-ohjeet/ohje-hakusivu/47999/verotusohje-yleishy%C3%B6dyllisille-yhteis%C3%B6ille3/>.

For additional questions the FTA may be contacted directly by telephone: + 358 (0)29 497 048.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individual and corporate taxpayers with respect to donations and to estates also with respect to bequests. Donations and bequests to specific, eligible NPOs can grant the taxpayer a tax deduction. Additionally, an NPO may be exempted from inheritance and gift tax on the donations and bequests it receives.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to NPOs specified in the Sec. 57 and Sec. 98 a) of Income Tax Act.

In respect of individual and estate donors such NPO can be a publicly financed university, other higher education institute receiving public funding or an associated university fund. The donation and/or bequest is to be made to promote science or art.⁵⁷

In respect of a corporation donor such NPO can be a state, a publicly financed university or other higher education institute receiving public funding, or an associated university fund, and the donation is to be made to promote science, art or the Finnish cultural heritage. In addition, a NPO qualifying for a tax advantage can be an association, a foundation or a fund associated to such, whose actual purpose is to support science or art or preservation of the Finnish cultural heritage.⁵⁸ The donation must be made for such purposes.

⁵⁷ Sec. 98 a) of the Income Tax Act.

⁵⁸ Sec. 57 of the Income Tax Act. We are not aware, if requirement of "Finnish" has ever been challenged based on the EU freedoms, but this could be considered.

Additionally, for a corporation donator to benefit from a tax advantage, the association, foundation and associated fund must be recognised by the FTA (Recognised NPOs). After a formal recognition, the recognised NPOs will be included in (a regularly updated) list of Recognised NPOs. The list can be found [here](#).⁵⁹ Such recognition process does not concern states, publicly financed universities, other higher education institutes receiving public funding or an associated university funds.

In respect of the tax benefits available based the Income Tax Act, foreign NPOs that are established or situated in the European Economic Area (EEA) can, subject to the aforementioned conditions, be considered equivalent to Finnish NPOs. Donation and bequests to EEA NPOs are entitled to the same income tax advantages as the Finnish NPOs.⁶⁰

In respect of inheritance and gift tax, if the recipient of a bequest is an ideological association or other community, institution or foundation, whose purpose is not to generate financial benefits to its participants through its activities and which has a scientific, artistic, public education, national defence or domestic Finnish business life or other public benefit purpose, donations and bequests made to such NPO are exempted from gift and inheritance tax in Finland. Under certain circumstances also a foreign NPO may qualify for such inheritance and gift tax benefit.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

A Recognised NPO must be an association, foundation or an associated fund established in the EEA. In order for a NPO to be recognized, the actual purpose of the NPO must be to support science or art or preservation of the Finnish cultural heritage.

2.1.3. What does the recognition process look like?

A NPO that wishes to become a Recognised NPO must apply for a recognition in writing from the Eastern Finland's tax office within the FTA with a free-form application. The recognition is applied electronically in FTA's MyTax online service portal. If the applicant is not able to use the MyTax online service portal, the application can also be sent by post or be submitted via a tax office. Before deciding on the recognition, the FTA Bequests an opinion on the matter from the Tax Exemption Board for Donations. The FTA may grant a decision on the recognition (Recognition decision) for a maximum of five years at a time.

The following documents must be attached to the application as a copy:

- register extract of foundation register or association register or a proof of submission of the rules of the foundation or association to the applicable register;
- rules of the association or foundation;
- two most recent financial statements, i.e., income statement, balance sheet and auditor's report or the report of the operations inspector;
- annual report;
- current budget; and
- operating plan.

⁵⁹ Sec. 57 of the Income Tax Act.

⁶⁰ Sec. 57 and Sec. 98 a) of the Income Tax Act.

The application can be sent to the following address by post:

Itä-Suomen verotoimisto
PL 1
00052 Vero
Finland

Both the applicant and the Tax Recipients' Legal Services Unit has the right to appeal the Recognition decision issued by the FTA. The appeal should be made to the competent Administrative Court within 60 days from receipt of the decision.⁶¹

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Recognition decisions are subject to a fee of EUR 425. The fee is charged also on rejected applications.

2.1.5. What is the timeframe for the recognition process to be completed?

The recognition process generally takes from six to twelve months.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

A Recognition decision can be granted for a maximum of five years at a time. A Recognised NPO may apply for the Recognition decision to be renewed by submitting a new application in accordance with the process described in item 2.1.3. above.

The FTA can revoke the recognition decision if the Recognised NPO does not meet the conditions set in the Recognition decision or if its actual purpose is no longer to support science or art or preservation of the Finnish cultural heritage.

2.1.7. Is any specific legal form required for the Belgian NPO?

There are no specific legal form requirements for Belgian NPOs as long as they meet the requirements set out in item 2.1.1. and can be deemed equivalent to Finnish NPOs that qualify for a tax benefit. Should a Belgian NPO wish to become a Recognised NPO, it should be an association or a foundation (or an associated fund) and have a form of activity that can be equated with a Finnish equivalent.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

The donors and NPOs may apply for an advance tax ruling from the FTA on whether the donation, bequest and/or the NPO meets the conditions set out in the law for tax advantage prior to making or accepting such donation and/or bequest.

⁶¹ The Tax Recipient's Legal Services Unit's appeal period of 60 days begins from the date when the Recognition decision was made.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making a donation to a NPO specified in item 2.1.1. above (including Recognised NPOs), a donator liable to income tax in Finland can benefit from the following tax advantages with respect to donations:

- a corporate taxpayer can claim the donation to be deducted from its taxable income under certain conditions; and
- a natural person or estate can claim the donation to be deducted from their pure earned income under certain conditions.

2.2.2. Does it make a difference whether an NPO is recognised or not?

In respect of donations made by corporations to associations, foundations or funds associated to such, the NPO should be a Recognised NPO. However, no such status of recognition is required if the NPO is a state, a publicly financed university, other higher education institute receiving public funding or an associated university fund.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals and estates (earned income tax); and
- corporations (income tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

For individuals:

- a natural person and estate may claim a cash donation of at least EUR 850 up to a maximum of EUR 500,000 made to a publicly funded university or other higher education institute located in the EEA, or to an associated university fund, for the purposes of promoting science or art to be deducted from their pure earned income;
- such donation is not taken into account when confirming an earned income loss for the tax year in question;
- the amount of deductible donation is calculated on a qualified NPO basis i.e., in case the individual or estate has made donations to several qualified NPOs during the tax year in question, they can claim each donation meeting the above requirements to be deducted resulting a higher deduction than EUR 500,000 in total;
- the information of the donated amount and the recipient of the donations may be included in the pre-filled income tax return of the individual and estate, but the taxpayer should review the pre-filled information and make any corrections required. Should there be no pre-filled information of the donation, the taxpayer should claim the donation to be deducted in their income tax return and provide the FTA with an appropriate clarification of the donations made during the tax year;

- individual taxpayer may also request that a tax-deductible donation is taken into account in their tax card for the purposes of tax withholding during the tax year.

Universities and other higher education institutes must annually provide the FTA with information of the tax-deductible donations made by individuals and/or estates. The universities and other higher education institutes must inform the FTA of the amount of the donation and the donator. Such information should be provided as an annual notification electronically via the FTA's electronic reporting portal.

For corporations:

- a corporate taxpayer can claim a cash donation of at least EUR 850 up to a maximum of EUR 250,000 made to a state, a university or other higher education institute receiving public funding, or an associated university fund, situated in the EEA for the purposes of promoting science, art or preservation of the Finnish cultural heritage to be deducted from its taxable income;
- additionally, a corporate taxpayer can claim a cash donation of at least EUR 850 up to a maximum of EUR 50,000 made to a Recognised NPO to be deducted from its taxable income;
- the amount of deductible donation is calculated on a qualified NPO basis i.e., in case the donator has made donations to several qualified NPOs during the tax year in question, it can claim each donation meeting the above-mentioned requirements to be deducted resulting a higher deduction than EUR 250,000 and/or 50,000 in total;
- a corporate taxpayer must attach an appropriate clarification of the donations it has made during the tax year to its corporate income tax return.

A Recognised NPO must annually provide the FTA with information of the tax-deductible donations it has received, the donators, the clarification of the purpose to which the donations have been used, the Recognised NPO's annual report, income statement and balance sheet. The Recognised NPO may provide such information as part of its annual income tax return. In case the Recognised NPO is not liable to file an income tax return in Finland, the information may be provided in a free format to the FTA. The Recognition decision may provide more detailed information of submitting the information to the FTA.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

For an individual or estate donator to obtain a tax deduction, the donation must meet the following conditions:

- donations must be made to a publicly financed university, other higher education institute receiving public funding, or an associated university fund, located in the EEA for the purposes of promoting science or art;
- donations must be cash donations. Donations given as assets other than cash are not tax-deductible;

- donations must be made in the monetary limitations defined above in item 2.2.4. (calculated annually on recipient basis);
- donation must be a gratuitous performance which does not require any counter-performance;
- in order for an individual taxpayer and estate to deduct the donation in their income taxation, the taxpayer must attach an appropriate clarification of the donations made during the tax year to their income tax return and claim the donation as tax deductible (unless already included in the pre-filled tax return correctly); and
- the recipient university and other higher education institute must provide the FTA with information of the tax-deductible donations made by individuals and/or estates. The universities and other higher education institutes must inform the FTA of the amount of the donation and the donator. Such information should be provided as an annual notification electronically via the FTA's electronic reporting portal.

For a corporation donator to obtain a tax deduction, the donation must meet the following conditions:

- donations must be made to a NPO specified in item 2.1.1. (including Recognized NPOs) located in the EEA for the purposes of promoting science, art or preservation of the Finnish cultural heritage;
- donations must be cash donations. Donations given as assets other than cash are not tax-deductible;
- donations must be made in the monetary limitations defined above in item 2.2.4. (calculated annually on recipient basis);
- donation should be a gratuitous performance which does not require any counter-performance;
- in order for a corporate taxpayer to deduct the donation in its corporate income taxation, the taxpayer must attach an appropriate clarification of the donations made during the tax year to its corporate income tax return and claim the donations as tax deductible; and
- in respect of donations made to Recognised NPOs, Recognised NPO must annually provide the FTA with information of the tax-deductible donations it has received, the donators and the clarification of the purpose to which the donations have been used, as well as the Recognised NPO's annual report, income statement and balance sheet. The information can be given, for example, as an attachment to an income tax return or in other format in case the Recognised NPO is not liable to file an income tax return in Finland. The Recognition decision may provide more detailed information of submitting the information to the FTA.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

An estate may be able to claim a cash bequest of at least EUR 850 up to a maximum of EUR 500,000 made to a publicly funded university or other higher education institute located in the EEA, or to an associated university fund, for the purposes of promoting science or art to be deducted in the estate's income taxation for the year of the death. However, although certain Finnish universities have promoted availability of such tax benefit of a bequest in their public websites, the FTA has recently questioned its legitimacy. Currently there seems

to be certain difference of opinions within the FTA in this respect, and thus, an individual bequeathing cash to a qualified NPO is recommended to confirm the availability of the income tax benefit prior to making such will.

In general, the beneficiary under a will is liable to inheritance tax in Finland as well as a grantee liable to gift tax on a gift it has received. However, if the recipient of a bequest is an ideological association or other community, institution or foundation, whose purpose is not to generate financial benefits to its participants through its activities and which has a scientific, artistic, public education, national defence or domestic Finnish business life or other public benefit purpose, a bequest made to such NPO is exempted from gift and inheritance tax in Finland.⁶²

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

In respect of income tax, a publicly funded university or other higher education institute located in the EEA, or an associated university fund are qualified in respect of the income tax advantage, if the donation is made for the purposes of promoting science or art.

With regard to inheritance and gift tax, an ideological association or other community, institution or foundation, whose purpose is not to generate financial benefits to its participants through its activities and which has a scientific, artistic, public education, national defence or domestic Finnish business life or other public benefit purpose is qualified for the inheritance and gift tax advantage. Bequests made to foreign NPOs located in the EEA are eligible for the same tax advantages as the Finnish NPOs, provided that they fulfil the same requirements as the Finnish NPOs. Foreign NPOs outside the EEA may also be deemed to meet the said conditions to the extent they have a connection to Finland⁶³ and their purpose and activities do not exclusively serve a foreign state's interests.

2.3.3. Does it make a difference whether an NPO is recognised or not?

No, it does not when it comes to tax benefits specified in item 2.3.1. above i.e., an estate's possibility to claim a tax deduction on a bequest and a NPO's eligibility for inheritance and gift tax exemption on a bequest. There is currently no recognition process in place in Finland for tax benefits specified in item 2.3.1. above. However, an advance tax ruling may be applied for from the FTA to confirm whether a bequest meeting the conditions set out in the law entitles the estate to the income tax benefit and/or whether a NPO is deemed to meet the conditions set out in the Inheritance and Gift Tax Act.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages are only available to estates⁶⁴, and to qualified NPOs in respect of inheritance and gift tax as specified in item 2.3.1.

⁶² Sec. 2 of Inheritance and Gift Tax Act.

⁶³ According to the Finnish tax praxis foreign NPOs registered abroad that do not have connections to Finland cannot be deemed as non-profit organizations in Finland (KHO 1959-I-21, KHO 1973-II-595).

⁶⁴ As mentioned in item 2.3.1, the legitimacy of a tax benefit in the income taxation of an estate based on a bequest has been questioned, and thus an individual bequeathing cash to a qualified NPO is recommended to confirm the availability of the income tax benefit prior to making such will.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

An estate may claim a cash bequest of at least EUR 850 and up to a maximum of EUR 500,000, which has been made for the purposes of promoting science or art to a publicly funded university or other higher education institute located in the EEA, or to an associated university fund to be deducted from its pure earned income in the income taxation of year of the death.

Qualified NPOs as specified in item 2.3.1. above are exempted from Finnish inheritance and gift tax on bequests made to them.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

For an estate to obtain an income tax deduction, the bequest must meet the following conditions:

- donations must be made for the purposes of promoting science or art to a publicly funded university or other higher education institute located in the EEA, or to an associated university fund;
- donations must be cash donations. Donations given as assets other than cash are not tax-deductible;
- donations must be made in the monetary limitations defined above in item 2.3.1 (calculated annually on recipient basis);
- donation must be a gratuitous performance which does not require any counter-performance;
- in order for an individual taxpayer (i.e., estate in this respect) to deduct the bequest donations in their income taxation, the taxpayer must attach an appropriate clarification of the bequest donations to their income tax return and claim the bequest donation as tax deductible. The information of the donated amount and the recipient of the donations may be included in the pre-filled income tax return of the estate, but the taxpayer should review the pre-filled information and make any corrections required; and
- the recipient university and other higher education institute must provide the FTA with information of the tax-deductible bequest donations. The universities and other higher education institutes must inform the FTA of the amount of the donation and the donator. Such information should be provided as an annual notification electronically via the FTA's electronic reporting portal.

In order *for a NPO* to obtain a tax advantage in respect of inheritance gift and taxation, the NPO must meet the following conditions:

- the NPO is an ideological association or other community, institution or foundation, whose purpose is not to generate financial benefits to its participants through its

- activities and which has a scientific, artistic, public education, national defence or domestic Finnish business life or other public benefit purpose;
- foreign NPO may be deemed to meet the said conditions to the extent it has a connection to Finland⁶⁵ and its purpose and activities do not exclusively serve a foreign state's interests, or it is situated in the EEA.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations and bequests made to foreign NPOs located in the EEA are eligible for the same tax advantages as Finnish NPOs, provided that they fulfil the same requirements than the Finnish NPOs. In respect of the inheritance and gift taxation, foreign NPOs outside the EEA may also be deemed to qualify to the extent they have a connection to Finland⁶⁶ and their purpose and activities do not exclusively serve a foreign state's interests.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

A foreign NPO situated in the EEA is entitled to apply for the status of a Recognised NPO similarly as a Finnish NPO. A foreign NPO (also outside the EEA) may apply for an advance tax ruling from the FTA to confirm whether it is deemed to meet the conditions set out in the Inheritance and Gift Tax Act to benefit from the tax advantages. Further, the donators may apply for an advance tax ruling from the FTA on whether the donation or bequest meets the conditions set out in the law for income tax advantage prior to making such donation or bequest.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Only NPOs located in the EEA can apply for the status of a Recognised NPO. A foreign NPO (also outside the EEA) may apply for an advance tax ruling from the FTA to confirm whether it is deemed to meet the conditions set out in the Inheritance and Gift Tax Act to benefit from the tax advantages. Further, the donators may apply for an advance tax ruling from the FTA on whether the donation or bequest meets the conditions set out in the law for income tax advantage prior to making such donation or bequest.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

The recognition process to apply for the status of Recognised NPO is the same for Finnish and foreign NPOs. We would recommend requesting fee estimates separately for each recognition process.

⁶⁵ According to the Finnish tax praxis foreign NPOs registered abroad that do not have connections to Finland cannot be deemed as non-profit organizations in Finland (KHO 1959-I-21, KHO 1973-II-595).

⁶⁶ According to the Finnish tax praxis foreign NPOs registered abroad that do not have connections to Finland cannot be deemed as non-profit organizations in Finland (KHO 1959-I-21, KHO 1973-II-595).

Advance tax ruling procedure is the same for Finnish and foreign NPOs although small practical differences may occur. We would recommend requesting fee estimates separately for each advance tax ruling procedure.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

The donors and foreign NPOs may apply for an advance tax ruling from the FTA on whether the donation, bequest and/or the NPO meets the conditions set out in the law for a tax advantage prior to making or accepting such donation and/or bequest.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

In order for a donor or foreign NPO to be able to benefit from the tax advantages they should be able to prove that the NPO in question meets the requirements set out in the law for such tax advantages. Recognised NPO's form of activity should be equivalent to Finnish association or foundation. Universities and other higher education institutes should equate to the Finnish universities or other higher education institutes.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Not applicable.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

An overview of all Recognised Finnish and foreign NPOs can be found via:
https://www.vero.fi/tietoa-verohallinnosta/verohallinnon_esittely/tietosuoja-ja-julkisuus/verotuksen_julkiset_tiedo/muut_julkiset_tiedo/verohallinnon_nimeamat_lahjoitukset_saa/.

4. CONCLUSION

Foreign NPOs located in the EEA fulfilling the same requirements as Finnish NPOs qualify for the same tax advantages as Finnish NPOs in Finland, i.e., tax deductions for donations and bequests by individuals, estates and corporations.

Foreign NPOs situated in the EEA, and also outside of the EEA under certain conditions, qualify for the same inheritance and gift tax advantages as the Finnish NPOs.

Should a NPO wish full legal certainty whether it is deemed to meet the conditions set out in the Inheritance and Gift Tax Act to benefit from the tax advantages, the NPO may apply for an advance tax ruling from the FTA. The donors may apply for an advance tax ruling from the FTA on whether the donation or bequest meets the conditions set out in the law for income tax advantage prior to making such donation or bequest.

5. ADDITIONAL CLARIFICATIONS

5.1. IF USING THE MYTAX ONLINE SERVICE PORTAL IS NOT POSSIBLE, SHOULD THE APPLICATION DOCUMENTS BE SENT IN FINNISH WHEN APPLYING BY POST OR THROUGH A TAX OFFICE?

The application to become a Recognised NPO may be submitted in Finnish, Swedish or English to the FTA. The FTA may request a Finnish or Swedish translation to be provided if the application is submitted in English.

5.2. WHAT SPECIFIC DETAILS SHOULD BE INCLUDED IN THE ANNUAL REPORT TO THE FINNISH TAX ADMINISTRATION (FTA) REGARDING DONATIONS, AND SHOULD IT BE IN FINNISH?

A Recognised NPO should provide the FTA annually with the name and business identification number of the donator, amount of the tax-deductible donation and a description of the intended use of the donation. Additionally, a Recognised NPO should provide the Finnish Tax Administration annually with its annual report (i.e. generally a document describing the Recognised NPO's operations and activities during the financial year and future plans), income statement and balance sheet for the year in question. The FTA may provide specific instructions of the information to be provided in the Recognition decision. The information may be provided in Finnish, Swedish or English.

In respect of tax-deductible donations from individual taxpayers and estates, the universities and other higher education institutes should annually provide the FTA with the name and personal identification number of the donator, year of the donation and amount of the donation (in euro). Such information should be provided to the FTA electronically via their electronic reporting portal as an annual notification. (The descriptions of the annual notification are currently available in Finnish and Swedish)

5.3. HOW SHOULD THE TAXPAYER ASK FOR TAX DEDUCTION IN ITS TAX REPORT?

In the corporate taxpayer's annual corporate income tax return there is a specific section for the donation (amount in euro) made to a Recognised NPO. Individual taxpayers should claim the deduction in their annual income tax return. In the tax return form, there is a specific section to which the individual taxpayer should fill-in the name of the recipient and amount of the donation in euro.

FRANCE⁶⁷

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages are the following:

- Tax advantages for donations:
 - o Art. 200⁶⁸, 238 *bis*⁶⁹ and 978⁷⁰ of the FTC;
 - o Art. 795 and 795-0 A of the FTC⁷¹.
- Tax advantages for bequests:
 - o Art. 795 and 795-0 A of the FTC.
- Legal requirements for associations and foundations:
 - o Law of July 1, 1901; Law no. 87-571, July 23, 1987; Art. 910 of the French civil code;
 - o Law no. 2003-709, August 1, 2003; Decree no. 2007-807, May 11, 2007.
- Process of approval of the Foreign (i.e., non-French) Equivalent European Union ("*EU*") or European Economic Area ("*EEA*")⁷² NPOs:
 - o Art. 1649 *nonies* of the FTC⁷³;
 - o Art. 46 AW bis to 46 AW quarter, Appendix III of the FTC⁷⁴;
 - o Art. 46 *quindecies* QA to 46 *quindecies* QC, Appendix III of the FTC⁷⁵;
 - o Art. 313 BP, 313 BQ and 313 BQ bis, Appendix III of the FTC⁷⁶;
 - o Art. 281 K to 281 M, Appendix III of the FTC⁷⁷.

The French authorities provide on their website an overview of:

- The recognition requirements and process:
 - o [https://www.service-public.fr/particuliers/vosdroits/F31023#:~:text=Une%20fondation%20reconnue%20d'utilit%C3%A9,une%20cause%20d'int%C3%A9r%C3%AAt%20g%C3%A9n%C3%A9ral](https://www.service-public.fr/particuliers/vosdroits/F31023#:~:text=Une%20fondation%20reconnue%20d'utilit%C3%A9,une%20cause%20d'int%C3%A9r%C3%AAt%20g%C3%A9n%C3%A9ral;);
 - o <https://www.service-public.fr/particuliers/vosdroits/F1131>;

⁶⁷ Answers provided by Gide Loyrette Nouel A.A.R.P.I. (Paris).

⁶⁸ Donations made by individuals.

⁶⁹ Donations made by companies.

⁷⁰ Real estate wealth tax.

⁷¹ Transfer tax.

⁷² Please note that EEA NPOs are in principle only eligible when they are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

⁷³ Personal income tax, corporate income tax, real estate wealth tax as well as transfer tax upon donations and bequests.

⁷⁴ Personal income tax.

⁷⁵ Corporate income tax.

⁷⁶ Real estate wealth tax.

⁷⁷ Transfer tax upon donations and bequests.

- <https://www.service-public.fr/particuliers/vosdroits/F31016#:~:text=Une%20fondation%20d'entreprise%20est,%2C%20sportif%2C%20familial%20ou%20culturel.>
- Tax benefits for individuals:
<https://www.service-public.fr/particuliers/vosdroits/F426;>
- Tax benefits for companies:
<https://entreprendre.service-public.fr/vosdroits/F22263.>

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to French-resident individuals and French corporate taxpayers⁷⁸ with respect to donations and bequests.

Donations made to eligible NPOs may grant the taxpayer tax reductions as regard personal income tax, corporate income tax, real estate wealth tax as well as transfer tax exemptions.

As non-French tax residents are liable to French real estate wealth tax with regard to their real estate assets located in France, they are eligible to the French real estate wealth tax reduction, provided the conditions are met⁷⁹.

Bequests to eligible NPOs may be exempt from French transfer tax.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

In order for the donations and bequests to benefit from a tax advantage, French NPOs must be recognised as "*public utility*" entities. Such entities can either be set under the form of foundations ("*fondations reconnues d'utilité publique*") or associations ("*associations reconnues d'utilité publique*").

Lists of recognised associations and foundations are published and updated several times a year (and can be found via the following links:

- [https://www.data.gouv.fr/fr/datasets/associations-reconnues-d-utilite-publique/;](https://www.data.gouv.fr/fr/datasets/associations-reconnues-d-utilite-publique/)
- [https://www.data.gouv.fr/fr/datasets/fondations-reconnues-d-utilite-publique/.](https://www.data.gouv.fr/fr/datasets/fondations-reconnues-d-utilite-publique/)

Foreign NPOs cannot benefit from such recognition. However, those which pursue an aim of general interest and established within the EU or EEA⁸⁰ can be regarded as comparable

⁷⁸ Including French permanent establishments of foreign companies since they are liable to French corporate income tax.

⁷⁹ BOI-PAT-IFI-40-20-10-10, 08/06/2018, no. 10.

⁸⁰ Please note that EEA NPOs are only eligible when they are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

to a French public-utility NPO, provided that certain requirements are met⁸¹. In such case, Foreign Equivalent EU or EEA NPOs are entitled to the same tax advantages than French ones. The benefit of tax advantages for donations and bequests to Foreign Equivalent EU and EEA NPOs is in principle subject to an approval of the French Ministry⁸² (3. *below provides a more detailed information on the approval process*).

A list of approved Foreign Equivalent EU and EEA NPOs and more detailed information on the eligible donations and bequests made to these NPOs is published and updated on a regular basis (<https://www.impots.gouv.fr/liste-des-organismes-europeens-agrees>).

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Firstly, to be recognised as a public-utility NPO, an association or a foundation must pursue an aim of general interest and be a French tax resident.

An entity is deemed to be a general interest entity if the three (3) following cumulative conditions are met⁸³:

- its activity is non-profit making;
- its management is devoid of any personal interest⁸⁴;
- it does not defend the interest of a closed circle of beneficiaries.

Specifically, an association must also fulfil the following criteria to be recognised as a public-utility NPO:

- have a national influence;
- have at least 200 members and an actual activity and associative life;
- be democratically run, which must be reflected by its Art. of association; and
- be financially sound⁸⁵.

It should be noted that tax advantages are exclusively available for donations and bequests made to public-utility NPOs which carry out one of the activities exhaustively provided by law⁸⁶. In this regard, the public-utility NPO must, alternatively:

- carry out activities of a philanthropic, educational, scientific, social, humanitarian, sporting, family or cultural nature; or
- contribute to the enhancement of artistic heritage, the protection of the natural environment or the dissemination of French culture, language and scientific knowledge; or
- take concrete action to promote press pluralism.

⁸¹ Amending Finance Law n° 2009-1674 for 2009, Art. 35: personal income tax, corporate income tax and wealth tax; Amending Finance Law n° 2014-1655 for 2014, Art. 61: transfer tax.

⁸² Art. 200, 4 bis of the FTC; Art. 238 bis of the FTC; Art. 795-0 A of the FTC; Art. 978 of the FTC.

⁸³ BOI-IR-RICI-250-10-10, 10/05/2017, no. 90 et seq.

⁸⁴ I.e., the management is non-profit minded, and no advantage is obtained by the members or the founders.

⁸⁵ I.e., a minimum annual income of EUR 46,000, public subsidies of less than half the budget and positive results over the last three (3) fiscal years.

⁸⁶ Art. 200 of the FTC; Art. 238 bis of the FTC; Art. 795, 2° of the FTC; Art. 978 of the FTC.

Although it is not mandatory to exclusively carry out one of the above- mentioned eligible activities, the following requirements must be met:

- the entity must mainly carry out a non-profit activity provided by law;
- the donations and bequests must directly and exclusively be allocated to the eligible non-profit activity. In the event of a tax audit, the NPO must be able to prove that the donation or bequest granted with the tax advantages has been fully allocated to one of the eligible activities.

2.1.3. What does the recognition process look like?

NPOs must be recognised by the French authorities as public-utility entities.

(a) Public utility foundations

The founder must seek the so-called "*reconnaissance d'utilité publique*" authorisation *via* a decree issued by the French Ministry of Interior ("*Ministère de l'Intérieur*"). It can either be established through a private deed during the founder's life or through a will.

The documents are filed with the "*Bureau of Associations and Foundations*", which consults the ministries relevant to the contemplated objectives as well as the French Supreme Administrative Court ("*Conseil d'Etat*").

The *Bureau* drafts the decree to be executed by the French Ministry of Interior. Once the decree is signed and published into the French Official Gazette ("*Journal Officiel*"), the NPO receives its legal personality. Its statutes of association must be based on the "*Model Statute of association for Public Utility Foundations*"⁸⁷.

(b) Public utility associations

The founders must also seek the so-called "*reconnaissance d'utilité publique*" authorisation, by following the process above described. The statutes of association must be based on the "*Model Statute of association for Public Utility Associations*"⁸⁸.

It should be noted that the process of recognition as a public-utility association differs in the French region of Alsace-Moselle.

A more detailed overview of the recognition process and the requirements can be found here⁸⁹.

⁸⁷ Which can be found here: <https://www.service-public.fr/particuliers/vosdroits/R31090>.

⁸⁸ Which can be found here: <https://www.service-public.fr/particuliers/vosdroits/R34366>.

⁸⁹ Public utility recognised foundations:

<https://www.service-public.fr/particuliers/vosdroits/F31023#:~:text=Une%20fondation%20reconnue%20d'utilit%C3%A9,une%20cause%20d'int%C3%A9r%C3%AAt%20g%C3%A9n%C3%A9ral.;> Public utility recognised associations: <https://www.service-public.fr/particuliers/vosdroits/F1131>.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Only French NPOs can be recognised as public-utility entities. There are no specific fees or costs payable vis-à-vis the French authorities that are related to the recognition process.

If third party assistance is requested (e.g., legal fees or consultancy fees), (legal or consultancy) fees payable to the third party may vary for assisting the NPO throughout the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

In principle the recognition process generally takes up to 4 to 6 months but there is no legal timeframe.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no validity period for the public-utility recognition.

2.1.7. Is any specific legal form required for the Belgian NPO?

A Foreign NPO cannot be recognised as a public-utility NPO in France. However, donations and bequests made to a Belgium NPO may - subject to certain requirements - give rise to tax advantages. For that purpose, the Belgium NPO must be comparable to a French NPO, notably in terms of legal form (*cf.* 3.).

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to French public-utility NPOs or to Foreign Equivalent EU and EEA⁹⁰ NPOs, French resident taxpayers can - subject to certain conditions - benefit from the following tax advantages:

- an income tax reduction;
- a real estate wealth tax reduction; and
- a transfer tax exemption.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes. French NPOs must be recognised as public-utility entities. Otherwise, donors cannot benefit from the said tax advantages.

⁹⁰ Please note that EEA NPOs are in principle only eligible when they are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

Accordingly, only donations made to French NPOs recognised as public-utility entities or to Foreign Equivalent EU and EEA⁹¹ NPOs (having received an approval from the French Ministry - *cf.* 3.) can benefit from tax advantages.

2.2.3. Which persons are eligible for tax advantages?

French resident taxpayers⁹² are eligible for tax advantages, regardless of their nationality.

In this regard, tax advantages are available to:

- individuals (personal income tax, real estate wealth tax and transfer tax); and
- companies (corporate income tax).

Non-French residents are eligible to the real estate wealth tax reduction only⁹³.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences?

For individuals:

Personal income tax:

- individuals are entitled to a tax reduction of 66% of the value of their donation⁹⁴;
- individuals are entitled to a tax reduction of 75% regarding donations made to NPOs and other organisations which supply free meals to persons in difficult situations, provide free housing and care⁹⁵.

Real estate wealth tax:

- individuals may opt to benefit from a real estate wealth tax reduction of 75% of the value of the donation⁹⁶;
- it should be noted that the real estate wealth tax reduction is applicable with regard to donations made to public-utility foundations only, subject to conditions, excluding donations to public-utility associations.

Transfer tax:

- individuals are entitled to a tax exemption⁹⁷.

⁹¹ Provided that EEA NPOs are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

⁹² Individuals which are French tax resident within the meaning of Art. 4B of the FTC and individuals deriving most of their income from France are entitled to the tax advantages. Companies liable to personal or corporate income tax in France - including permanent establishments of foreign companies, subject to conditions - are entitled to the tax reduction, regardless of the nature of their activity. Companies which benefit from a simplified tax scheme or companies exempt from corporate income tax are however excluded from the tax reduction.

⁹³ BOI-PAT-IFI-40-20-10-10, 08/06/2018, no. 10. Please note that in our view restricting the application of the tax reduction solely to French tax reduction is questionable with regard to the fundamental freedoms guaranteed by the treaties of the EU.

⁹⁴ Art. 200, 1 of the FTC.

⁹⁵ Art. 200, 1 ter of the FTC.

⁹⁶ Art. 978 of the FTC.

⁹⁷ Art. 795, 2° of the FTC.

For companies:

Companies are entitled to a 60% tax reduction of their donations. As regards donations higher than EUR 2 million, companies are entitled to a 60% tax reduction up to EUR 2 million, and to a 40% tax reduction over EUR 2 million⁹⁸.

No regional, provincial, cantonal or other differences are applicable in France.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

(a) To obtain tax advantages, the donation must meet the following legal conditions:

- types of donations:
 - *Personal income tax*: any kind of donation, i.e., cash, shares, securities, real estate, in-kind donations, intellectual rights, etc.⁹⁹;
 - *Real estate wealth tax*: only cash and listed shares¹⁰⁰;
 - *Corporate income tax*: any kind of donation, i.e., cash, shares whether listed or not, real property, intellectual rights, in-kind donations, skill-based sponsorship, etc.¹⁰¹;
 - *Transfer tax*: no restriction.
- the donation must be made free of charge, with no direct or indirect consideration for the donor. However, the French tax authorities admit some considerations to some extent. In this regard, donations benefit from a corporate income tax reduction if there is no marked disproportion between their value and the value of the consideration given by receiving NPO¹⁰². As regards personal income tax and real estate wealth tax, the existence of such consideration is assessed according to the nature of any benefits granted to the donor¹⁰³;
- personal income tax and corporate income tax reductions are subject to the fulfilment of reporting requirements¹⁰⁴. In matter of real estate wealth tax, the donor must keep any relevant document in order to justify the benefit of the tax reduction in the event of a tax audit¹⁰⁵.

(b) The tax advantages are subject to the following restrictions:

- the tax reduction with regard to donations made by individuals is limited to 20% of their taxable personal income¹⁰⁶. The tax reduction made to public-utility NPOs which supply free-meals to persons in difficult situations or provide free housing and

⁹⁸ Art. 238 bis, 2 of the FTC.

⁹⁹ BOI-IR-RICI-250-20, 12/09/2012.

¹⁰⁰ BOI-PAT-IFI-40-20-10-10, 08/06/2018, no.130 et seq.

¹⁰¹ BOI-BIC-RICI-20-30-10-20, 21/06/2023, no. 5 et seq.

¹⁰² BOI-BIC-RICI-20-30-10-20, 21/06/2023, no. 120 et seq.

¹⁰³ BOI-IR-RICI-250-20, 12/09/2012; BOI-PAT-IFI-40-20-10-10, 08/06/2018, no. 40 et seq.

¹⁰⁴ BOI-BIC-RICI-20-30-40, 08/06/2022; BOI-IR-RICI-250-40, 12/09/2012.

¹⁰⁵ BOI-PAT-IFI-40-20-10-10, 08/06/2018, no. 290.

¹⁰⁶ Art. 200, 1 of the FTC.

care is limited to EUR 562 (up to EUR 1,000 for fiscal years from 2020 to 2023)¹⁰⁷. When the amount exceeds the 20% threshold, the excess is carried forward over the next five (5) years under the same conditions¹⁰⁸;

- the real estate wealth tax reduction is limited to EUR 50,000¹⁰⁹;
- the tax reduction with regard to donations made by companies is limited to the highest amount between EUR 20,000 and 0.5% of their annual turnover¹¹⁰. When the amount exceeds 0.5% of the annual turnover, the excess is carried forward over the next five (5) years, being subject to the same limitations.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

When indicating a qualifying NPO as beneficiary of their will, the bequest may be exempt from French transfer tax.

2.3.2. Which NPOs qualify to receive bequests with a tax advantage?

The tax exemption is available for bequests made to both French NPOs recognised as public-utility entities and Foreign Equivalent EU and EEA¹¹¹ NPOs.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes. The exemption is only available to bequests made to French NPOs recognised as public-utility entities or to Foreign Equivalent EU and EEA¹¹² NPOs which obtained an approval (*cf.* 2.2.2. and 3.).

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages are available for individuals.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Bequests are exempt from transfer tax, subject to conditions¹¹³.

No regional, provincial, cantonal or other differences are applicable in France.

¹⁰⁷ Art. 200, 1 ter of the FTC.

¹⁰⁸ Art. 200, 1 bis of the FTC.

¹⁰⁹ Art. 978, I of the FTC.

¹¹⁰ Art. 238 bis, 3 of the FTC.

¹¹¹ Provided that EEA NPOs are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

¹¹² Provided that EEA NPOs are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

¹¹³ Art. 795 of the FTC.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The tax exemption is granted provided that requirements related to the eligible NPO are met, and is subject to the following restrictions:

- The bequest is legally valid;
- The bequest must be done freely, i.e., without consideration or charges.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations and bequests to Foreign Equivalent EU¹¹⁴ and EEA NPOs are eligible for the same tax advantages as French recognised public-utility NPOs, provided that they are regarded as comparable to a French public-utility NPO¹¹⁵.

The benefit of tax advantages for donations and bequests to Foreign Equivalent EU and EEA NPOs is subject to an approval issued by the French Ministry¹¹⁶ (the "*Approval*")¹¹⁷. This Approval is granted provided that the Foreign NPO pursues objectives and presents characteristics similar to an eligible French resident NPO, both in its legal form and purpose. In this regard, Foreign NPOs must therefore pursue an aim of general interest¹¹⁸ and carry out one of the relevant activities above described (*cf.* 2.1.2.). The donation or bequest also must directly and exclusively be allocated to this relevant activity (*cf.* 2.1.2.).

To benefit from the tax advantages, this Approval must in principle be granted prior to the donation or bequest.

Law provides for the issuance of several approvals by the French Ministry, each applicable according to the tax considered. However, in practice, the Approval process is identical for all taxes. As a summary, the application for Approval shall be drawn up in duplicate, in French, and shall be based on the template issued by the French authorities ([Legifrance - Arrêté du 28 février 2011 - Template](#)). It shall be submitted together with the supporting documents to the French tax authorities¹¹⁹.

¹¹⁴ It should be noted that NPOs incorporated within outermost regions of the EU are eligible to the tax advantages, provided the requirements are met. Not being part of the EU, overseas countries and territories of the UE are in principle excluded from the scope of the tax advantages. The French tax authorities however admit that NPOs incorporated within Nouvelle-Calédonie and overseas communities (i.e., Saint-Barthélemy, Saint-Martin, Polynésie française, Wallis-et-Futuna, Saint-Pierre-et-Miquelon) can be regarded as French entities with regard to personal income tax and corporate income tax.

¹¹⁵ It should be noted that comparability is strictly assessed by the French authorities.

¹¹⁶ Art. 200, 4 bis of the FTC; Art. 238 bis of the FTC; Art. 795-0 A of the FTC; Art. 978 of the FTC.

¹¹⁷ The benefit of tax advantages to a Foreign Equivalent EEA NPO is also subject to its incorporation in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

¹¹⁸ By carrying out a non-for-profit activity, having a selfless management and defending the interest of a closed circle of beneficiaries.

¹¹⁹ The supporting elements to submit are provided by the French authorities and can be found via the following link: [Legifrance - Arrêté du 28 février 2011 - Template](#). In practice, the application should be submitted to the Direction générale des finances publiques. The relevant address can be found via the following link: [annuaire.service-public.fr](#).

The Approval process generally takes up to 6 months.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Yes. EU or EEA-based NPOs must obtain an Approval.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Yes. Only EU or EEA¹²⁰-based NPOs can obtain an Approval.

In this regard, donations made to non-EU or EEA-based NPOs are in principle not eligible to tax advantages.

Donations made to United Nations specialised agencies, funds and programs may however be eligible to a tax reduction and are exempt from the Approval requirement when the French State is a member of the said entity and participate to the program¹²¹.

The French tax authorities also admit that donations and bequests made to non-EU or EEA-based NPOs enjoy an inheritance tax exemption. Such tax advantage, which is not applicable with regard to tax reductions, may be granted provided that:

- the Foreign NPO is comparable to a French tax-exempt NPO. For that purpose, the donor or taxpayer must produce, within the time limit for filing the relevant returns, supporting documents certifying (i) that the Foreign NPO pursues objectives and has characteristics similar to French tax-exempt NPO and (ii) that the assets received are allocated to eligible activities; and
- a double tax treaty or a specific agreement between France and the Foreign NPO State of incorporation ensures a reciprocal treatment between both States¹²².

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

No. EU or EEA-based NPOs must obtain an Approval whereas French NPOs must be recognised.

There are no specific fees or costs payable vis-à-vis the French authorities that are related to the recognition process.

If third party assistance is requested (e.g., legal fees or consultancy fees), (legal or consultancy) fees payable to the third party may vary for assisting the NPO throughout the recognition process.

¹²⁰ Only EEA NPOs which are incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance can obtain an Approval.

¹²¹ BOI-BIC-RICI-20-30-10-10, 21/06/2023, no. 350.

¹²² BOI-ENR-DMTG-10-20-20, 14/06/2020, no. 680.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Donations to Foreign Equivalent EU and EEA¹²³ NPOs can benefit from all tax advantages, even if – a formal – registration and recognition as a public-utility entity is not possible for Foreign Equivalent EU and EEA NPOs.

The benefit of tax advantages for donations and bequests to Foreign Equivalent EU and EEA NPOs is in principle subject to an Approval (*cf.* 3.).

Please note that the French tax authorities may grant (but without certainty) the benefit of the tax advantages even if the Foreign Equivalent EU and EEA NPOs has not received an Approval provided that it can demonstrate (with the corresponding evidence) that it fulfils the requirements to obtain the Approval.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Foreign NPOs must demonstrate its comparability to French public-utility NPOs. For that purpose, the Foreign NPO must pursue an aim of general interest and present similar characteristics to a French NPO recognised as a public-utility entity. In this regard, Foreign NPOs must therefore prove that their legal form is equivalent to domestic legal forms.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No. Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

An overview of all French recognised public-utility NPOs can be found via:

- <https://www.data.gouv.fr/fr/datasets/associations-reconnues-d-utilite-publique/>;
- <https://www.data.gouv.fr/fr/datasets/fondations-reconnues-d-utilite-publique/>.

An overview of the approved Foreign Equivalent EU and EEA NPOs and more detailed information on the donations and bequests made to these NPOs eligible to tax advantages can be found via: <https://www.impots.gouv.fr/liste-des-organismes-europeens-agrees>.

4. CONCLUSION

Under certain conditions, Foreign equivalent EU and EEA NPOs qualify for the same tax advantages as French public-utility NPOs, i.e., tax reductions for donations by individuals,

¹²³ Please note that Foreign Equivalent EEA NPOs must be incorporated in a State which has concluded with France a convention on administrative assistance to combat tax evasion and avoidance.

tax reductions for donations by companies, real estate wealth tax reductions and transfer tax exemptions for donations and bequests.

For that purpose, Foreign equivalent EU and EEA NPOs must pursue an aim of general interest and present the same characteristics as French NPOs.

It is not possible for Foreign Equivalent EU and EEA NPOs to receive an official recognition as a public-utility entity in France. To qualify for the same tax advantages as French public-utility NPOs, in principle Foreign equivalent EU and EEA NPOs must however seek an Approval. In this regard, Foreign Equivalent EU and EEA NPOs benefit from a full legal certainty as to its comparability with French public-utility NPOs when the said Approval is obtained.

5. ADDITIONAL CLARIFICATIONS

5.1. WHEN PROVIDING SUPPORTING DOCUMENTS CERTIFYING THE SIMILARITY OF OBJECTIVES AND CHARACTERISTICS WITH FRENCH TAX-EXEMPT NPOs, AND THE ALLOCATION OF ASSETS, DOES THE DOCUMENTATION NEED TO BE IN FRENCH?

The application for approval shall be drawn up in French and submitted together with the supporting documents and the French translations of these documents. No certified translation is however required.

5.2. ARE THERE ADDITIONAL CERTIFICATES REQUIRED TO AVAIL FISCAL ADVANTAGES IN FRANCE?

When the said approval is obtained, a foreign NPO benefits from a full legal certainty as to its comparability with a French public-utility NPO. No additional certificate would therefore be required to be entitled to the same tax advantages in France than French qualifying NPOs.

GERMANY¹²⁴

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current main tax and legal regulations for philanthropy in Germany are:

Tax regulations:

German federal law determines whether an individual or an NPO is eligible to receive tax benefits, but the decision is made by the local tax office.

Tax advantages for donors:

- Sec. 10b
German Income Tax Law (*Einkommensteuergesetz -EStG*) and the corresponding Income Tax Law implementing rules (*Einkommensteuer-Durchführungsverordnung und Einkommensteuer-Richtlinien*) providing for tax deductions for individual donors.
- Sec. 9 Par. 1 sentence 1 no. 2
German Corporate Income Tax Law (*Körperschaftsteuergesetz – KStG*) and the corresponding Corporate Income Tax Law implementing rules (*Körperschaftsteuer-Richtlinien – KStR*) providing for tax deductions for company donors.
- Sec. 9 no. 5
German Local Commercial Tax Law (*Gewerbsteuergesetz – GewStG*) providing for tax deductions for company donors.

Tax advantages for donations and bequests:

- Sec. 13 Par. 1 no. 16
German Inheritance and Gift Tax Law (*Erbschaftsteuer- und Schenkungsteuergesetz – ErbStG*) and the corresponding Inheritance and Gift Tax Law implementing rules (*Erbschaftsteuer-Richtlinie 2019– ErbStR 2019*) providing for tax exemptions for donations and bequest made to tax privileged NPOs.
- Sec. 29 Par. 1 no. 4
German Inheritance and Gift Tax Law and the corresponding Inheritance and Gift Tax Law implementing rules providing for tax deductions for donations and bequests received and further donated to tax privileged NPOs.

Tax advantages for tax privileged NPOs:

¹²⁴ Answers provided by Noerr Partnerschaftsgesellschaft mbB (München).

- Sec. 5 Par. 1 no. 9
German Corporate Income Tax Law providing for tax exemptions for tax privileged NPOs. The respective tax exemption is subject to the provision that no economic business (*wirtschaftlicher Geschäftsbetrieb*) is maintained¹²⁵, i.e. the economic business of an NPO is partially taxable.
- Sec. 3 no. 6
German Local Commercial Tax Law (*Gewerbesteuerengesetz – GewStG*) providing for tax exemptions for tax privileged NPOs.*
- Sec. 12 Par. 2 no. 8 lit. a) and Sec. 4 no. 22 lit. a)
German VAT Act (*Umsatzsteuergesetz – UStG*) and the corresponding VAT Act implementing rules (*Umsatzsteuerrichtlinien – UStR*) providing for tax exemptions (VAT is reduced to 7% for services provided by NPOs and certain services are VAT exempt) for privileged NPOs.*
- Sec. 3 Par. 1 no. 3 lit. b
German Property Tax Law (*Grundsteuergesetz – GrStG*) providing for tax exemptions (property of an NPO that is used for non-profit or charitable purposes is exempt from property tax) for privileged NPOs.*

Requirements and recognition process of NPOs in Germany:

- Sec. 51-68
German Fiscal Code (*Abgabenordnung - AO*) and the tax authorities' corresponding Fiscal Code implementing rules (*Anwendungserlass zur Abgabenordnung – AEAO*) providing for requirements for tax exempt NPOs in Germany and the recognition process.

Civil legal regulations:

Under German law, various types of private legal entities can be used to form a tax privileged NPO (*cf.* 2.1.1.).

Relevant links for the recognition process and tax advantages for privileged NPOs in Germany:

- <https://www.stiftungen.org/stiftungen/basiswissen-stiftungen/stiftungsgruendung.html> (overview about German non-profit law and foundations);
- Merkblatt_Vereine_ Die Gemeinnützigkeit und das [Finanzamt.pdf](#) ([steuerportal-mv.de](#)) (overview about German non-profit law);
- Gemeinnütziger Verein & Gemeinnützigkeit | DEUTSCHES EHRENAMT ([deutsches-ehrenamt.de](#)) (overview about German non-profit law and associations);
- [WD-4-107-21-pdf-data.pdf](#) ([bundestag.de](#)) (overview about donations to foreign entities with regard to German tax law);

¹²⁵ Sec. 14, 64 German Fiscal Code; Sec. 5 Par. 1 no. 9 sentence 2 German Corporate Income Tax Law; Sec. 3 no. 6 sentence 2 German Local Commercial Tax Law; Sec. 12 Par. 2 no. 8 lit. a) sentence 2 and Sec. 4 no. 22 lit. a) German VAT Act.

- [Anlage 1 AO - Einzelnorm \(gesetze-im-internet.de\)](#) (sample statute in compliance with German non-profit law);
- [2022-01-24 Anlage zum Rundschreiben Handreichung Spenden Verf. des BLfSt. v. 09.08.2021 .pdf \(fundraising-bayern.de\)](#) (overview about requirements and obligations to provide evidence for domestic NPOs when pursuing non-profit purposes abroad);
- [EStH 2020 - Muster für Zuwendungsbestätigungen \(§10b... \(bundesfinanzministerium.de\)](#) (sample for a confirmation of donation – *Zuwendungsbestätigung*).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers with respect to donations and bequests.

Donations to specific, eligible NPOs can allow the taxpaying donor (individual donors as well as corporate donors) to deduct the donation from their income and by this reach a tax reduction.

Donations to specific, eligible NPOs are free of gift tax.

Bequests to specific eligible NPOs are free of inheritance tax as well but do not qualify for an income deductions/income tax reduction, neither for the decedent, nor for his heirs.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Under German law, all domestic private legal entities (*Körperschaften*) in the sense of Sec. 1 Par. 1 German Corporate Income Tax Law can benefit from a tax advantage – if the entity fulfils the requirements of German non-profit law, that are regulated in Sec. 51-68 German Fiscal Code.¹²⁶ The most common entities in Germany that are used as NPOs are associations (*Verein*), informal and formal foundations (*Stiftung*), and corporate enterprises, especially the German Limited Liability Company (*GmbH*).

Associations make up the majority of the entities recognized as tax privileged in Germany. An association is a membership organization whose members have come together to permanently pursue a common purpose. The designation “*e.V.*” (*eingetragener Verein*, which describes the status of a formal association) does not reflect the existence of a charitable organization, nor does it reflect its tax status.

NPOs may take a corporate form as well, specifically the limited-liability company (*GmbH*), which is registered and regulated under a special law (German Limited liability Company

¹²⁶ Sec. 51 Par. 1 sentence 1 German Fiscal Code.

Act - *GmbH-Gesetz*). The GmbH is a commercial company in corporate form with legal personality. It has stock originating from its shareholders. The shareholders are not liable for the debts of the company.

Foundations include formal foundations with legal personality and informal without legal personality (dependent) foundations. Both natural and legal persons may be the founder of a foundation.

A formal foundation (*rechtsfähige Stiftung bürgerlichen Rechts*) is established under Sec. 80-88 of the German Civil Code and defined as a legal entity without members endowed with assets for the permanent and sustainable fulfilment of a purpose specified by the founder. The foundation is usually established for an indefinite period of time, but it can also be established for a definite period of time within which its entire assets are to be used to fulfil its purpose (consumption foundation). Under the German Civil Code, a foundation reaches legal personality upon recognition by the competent authorities in the state (*Bundesland*) in which the foundation seeks to be based. The authorities must recognize the foundation if it meets the relevant legal requirements.

Informal foundations (“*nicht rechtsfähige*” or “*unselbständige Stiftung*”) do not acquire legal personality. Their establishment is subject to the general rules on contract law of the German Civil Code, which governs the contract between the founder and the trustee. Such a contract may be shaped and qualified as a “*gift contract*” or as a “*trust contract*”. Depending on the case, the informal foundation is subject to gift or trusts contract law of the German Civil Code. The provisions of the German Civil Code regarding formal foundations are not applicable to informal foundations. Informal foundations are not subject to the supervision of state supervisory authorities. Informal foundations may nonetheless enjoy the same tax benefits as formal foundations. Given this, the informal foundation may be an adequate tool for smaller initiatives, because there are less mandatory requirements and no specific state supervision.

Foreign NPOs that are established in the EU and European Economic Area (hereinafter **EU/EEA NPOs**) can also benefit from tax advantages subject to certain further requirements (*cf.* 3.). Foreign NPOs outside the EU/EEA cannot benefit from tax advantages (*cf.* 3.).

2.1.2. What are the substantive requirements for NPOs to be recognised?

For an NPO to be recognised as tax privileged by the local tax office, the NPO must meet the requirements under Sec. 51-68 of the German Fiscal Code.

The NPO must pursue tax privileged purposes (*steuerbegünstigte Zwecke*). These purposes are either charitable purposes (*gemeinnützige Zwecke*), benevolent purposes (*mildtätige Zwecke*) or church-related purposes (*kirchliche Zwecke*).¹²⁷

The NPO must pursue these tax privileged purposes unselfishly (*selbstlos*)¹²⁸, exclusively (*ausschließlich*)¹²⁹ and directly (*unmittelbar*)¹³⁰. These fundamental requirements are further

¹²⁷ See Sec. 51 Par. 1 German Fiscal Code; the tax privileged purposes are dealt with in more detail in Sec. 52-54 German Fiscal Code.

¹²⁸ Sec. 55 German Fiscal Code.

¹²⁹ Sec. 56 German Fiscal Code.

¹³⁰ Sec. 57 German Fiscal Code.

specified in the German Fiscal Code itself and in the Fiscal Code implementing rules as well as by German fiscal courts (e.g., principle of asset commitment¹³¹; requirement of timely use of funds – i.e., within two years¹³²; no promotion of political parties¹³³). On the other hand, there are legal exceptions from the abovementioned fundamental requirements (e.g., activity as a funding body (*Förderkörperschaft*)¹³⁴; possibility of building reserves¹³⁵).

The NPO's statute must show what purpose the NPO pursues, that this purpose and the realization of the purpose complies with the requirements outlined above.¹³⁶ The statute must also contain the provisions outlined in the German Fiscal Codes sample statute.¹³⁷

Not only the statute but also the actual management and thus the actual use of assets and the assets' revenue must comply with the provisions of the statute and therefore with non-profit law.¹³⁸ The NPO must prove that its actual management complies with the requirements of non-profit law by keeping proper records of its income and expenditure.¹³⁹

The statute as well as the actual management must comply with the requirements outlined above for the German Corporate Income Tax and German Local Commercial Tax during the entire assessment period (*Veranlagungszeitraum*), and for other taxes at the time the specific tax arises (e.g., German Inheritance and Gift Tax). However, the exemption ceases to apply with effect for the past if the conditions for the recognition of an NPO cease to apply within ten years of the donation and the donation is not used for charitable purposes¹⁴⁰).¹⁴¹

If the domestic NPO pursues its purposes abroad further requirements and obligations to provide evidence apply.¹⁴²

2.1.3. What does the recognition process look like?

German law does not contain a recognition procedure for NPOs with which the non-profit status is certified for all time and for all tax purposes. The recognition process can be divided into several steps with different fiscal objectives:

As a first step in the establishment phase of an NPO, an audit of its future statute by the local tax office is not mandatory. However, it is (recommendable) practice to submit the draft of the statute to the local tax office for a preliminary examination of the conformity with the requirements of the German Fiscal Code and its non-profit law (*cf.* 2.1.2.). This way, ambiguities can be clarified in advance and, if necessary, adjustments can be made to avoid the cumbersome process of amending the statutes later after establishment.

¹³¹ Sec. 55 Par. 1 no. 4 German Fiscal Code.

¹³² Sec. 55 Par. 1 no. 5 German Fiscal Code.

¹³³ Sec. 55 Par. 1 no. 1 German Fiscal Code.

¹³⁴ Sec. 58 no. 5 German Fiscal Code.

¹³⁵ Sec. 62 German Fiscal Code.

¹³⁶ Sec. 59 German Fiscal Code.

¹³⁷ Sec. 60 Par. 1 German Fiscal Code; see for the sample statute [Anlage 1 AO - Einzelnorm \(gesetze-im-internet.de\)](#).

¹³⁸ Sec. 59, 63 German Fiscal Code.

¹³⁹ Sec. 63 Par. 3 German Fiscal Code.

¹⁴⁰ Sec. 13 Par. 1 no. 16 lit. b) sentence 2 German Inheritance and Gift Tax Law.

¹⁴¹ Sec. 60 Par. 2, 63 Par. 3 German Fiscal Code.

¹⁴² Sec. 51 Par. 2, 90 Par. 2; Fiscal Code implementing rules (AEAO) for Sec. 51 Par. 2. For a useful overview see Bay. Landesamt für Steuern - Verfügung 09.08.2021 - S 0170.1.1-3/7 St31 – see: [2022-01-24 Anlage zum Rundschreiben Handreichung Spenden Verf. des BLfSt. v. 09.08.2021 .pdf \(fundraising-bayern.de\)](#).

After the establishment of an NPO, the local tax office checks and certifies by means of a notice of assessment (*Feststellungsbescheid* or so-called *60a-notice*) that an NPO's statute meets the formal requirements under the German Fiscal Code and its non-profit law.¹⁴³ *Nota bene*: The actual management must comply with the statute at all times and will be reviewed accordingly on an ongoing basis.¹⁴⁴ Therefore, the management is obliged to keep proper records of its income and expenditure.¹⁴⁵

However, the notice of assessment does not mean that a final decision has been made as to whether an NPO is actually (fully or partially) tax privileged.

This decision is only made in the second step of the assessment procedure of the NPO for the respective tax. The local tax office issues an exemption notice (*Freistellungsbescheid* - for fully tax-privileged NPOs) or the annex to the corporation tax notice (*Anlage zum Körperschaftsteuerbescheid* - for partially taxable NPOs). In this second step the tax office is bound by the determinations made in a 60a-notice granted before.¹⁴⁶

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

The recognition process of the tax-privileged status itself and the early coordination of a draft statute or a planned amendment of the statute with the local tax office is – on the part of the tax office – free of charge.

However, legal fees (e.g., for lawyers) and costs (e.g., for the notary) of setting up the NPO should be taken into account.

2.1.5. What is the timeframe for the recognition process to be completed?

The process of coordination and issuance of the 60a-notice and the exemption notice can regularly take several months, depending on the responsible local tax office and the legal questions that may arise in individual cases.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

The tax privileged status of an NPO is regularly reviewed every three years by the local tax office.¹⁴⁷

2.1.7. Is any specific legal form required for the German NPO?

Under German law, various types of private legal entities can be used to form a tax privileged NPO (*cf.* 2.1.1.).

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to German law (*cf.* 2.1.2. and 2.1.3.).

¹⁴³ Sec. 60a German Fiscal Code.

¹⁴⁴ Sec. 59 and 63 German Fiscal Code.

¹⁴⁵ Sec. 63 Par. 3 German Fiscal Code.

¹⁴⁶ Sec. 60a Par. 1 sentence 2 German Fiscal Code.

¹⁴⁷ Fiscal Code implementing rules (AEAO) no. 3 sentence 3 to Sec. 59 German Fiscal Code.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

A general donation deduction applies for individual and corporate donors when donating to domestic NPOs.

For donations made by individual donors or corporate donors, a tax deduction of up to twenty (20) % of their respective taxable income is available for income tax and corporate income tax.¹⁴⁸

For corporations, a deduction of up to 0.4% of the sum of the turnover, wages, and salaries is an alternative basis for calculating the maximum deduction.¹⁴⁹

Donations exceeding the deductible limits may be carried forward to subsequent fiscal years (*unbegrenzter Spendenvortrag*).¹⁵⁰

In addition to the general deductibility of donations, special deductions and restrictions may apply. Important cases are:

- an individual donor may deduct up to EUR 1,000,000.00 for a donation to the endowment of a tax privileged foundation. The deduction can be taken in the year of donation and/or divided over the following nine years¹⁵¹;
- if a donor itself has received assets (by gift or bequest) and passes these assets on to a tax-domestic privileged foundation within two years after the gift or inheritance tax arose, this gift or inheritance tax expires with effect for the past¹⁵²;
- the deductibility of the taxable corporate income is subject to the provision that the donation does not constitute a hidden distribution of profits (*verdeckte Gewinnausschüttung*) to shareholders of the corporate donor¹⁵³.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, it does.

(a) Significance for NPOs

The recognition of the tax privileged status of an NPO by the local tax office with a 60a-notice is a prerequisite for the tax exemption regarding the NPO's corporate tax¹⁵⁴ and local commercial tax¹⁵⁵ and other taxes (*cf.* 1. and 2.1.3.). *Nota bene:* The actual management

¹⁴⁸ Sec. 10b Par. 1 sentence 1 no. 1 German Income Tax Law; Sec. 9 Par. 1 sentence 1 no. 2 lit. a) German Corporate Income Tax Law.

¹⁴⁹ Sec. 10b Par. 1 sentence 1 no. 2 German Income Tax Law; Sec. 9 Par. 1 sentence 1 no. 2 lit. b) German Corporate Income Tax Law.

¹⁵⁰ Sec. 10b Par. 1 sentence 9 German Income Tax Law; Sec. 9 Par. 1 sentence 9 German Corporate Income Tax Law.

¹⁵¹ Sec. 10b Par. 1a German Income Tax Law.

¹⁵² Sec. 29 Par. 1 no. 4 German Inheritance and Gift Tax Law.

¹⁵³ Sec. 9 Par. 1 sentence 1 no. 2 and Sec. 8 Par. 3 German Corporate Income Tax Law.

¹⁵⁴ Sec. 5 Par. 1 no. 9 German Corporate Income Tax Law.

¹⁵⁵ Sec. 3 no. 6 German Local Commercial Tax.

must comply with the statute at all times and will be reviewed accordingly on an ongoing basis.

A foreign NPO can also be recognized as tax privileged and apply for a tax exemption for its German corporate income (*cf.* 3.).

(b) Significance for donors

Further, for the individual donor and the corporate donor the recognition as tax privileged is a prerequisite for the deductibility of donations to domestic NPOs (*cf.* 2.2.1.).

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to individuals and companies as donors (*cf.* 2.2.1.).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation?

[Note NOERR: To our understanding this question asks for possible tax advantages for tax privileged NPOs (“*available for qualifying NPOs*”) with regard to donations. Tax advantages for donors are covered under 2.2.1.]

(a) What type of tax advantages are available for qualifying NPOs?

Tax advantages for qualifying NPOs are outlined above under 1. (“*Tax advantages for tax privileged NPOs*”).

Regarding taxation of tax privileged NPOs, German non-profit law differentiates four areas, taking into consideration the different sources of the assets and its funds.¹⁵⁶

- non-material idealistic (*ideeller Bereich*) earnings (e.g., income in the form of donations or bequests). This form of income is generally exempted from corporate income tax¹⁵⁷ and from local commercial tax¹⁵⁸;
- also, donations and bequests to tax privileged NPOs are exempted from the gift and inheritance tax.¹⁵⁹ As outlined, the gift and inheritance tax exemption may cease to apply (*cf.* 2.1.2.)¹⁶⁰;
- passive earnings derived from asset management (*Vermögensverwaltung*), e.g., in general returns from investment in interest-yielding bonds, shares, real estate. This form of income is also generally exempted from corporate income tax and from local commercial tax;
- earnings derived from purpose-related economic activities aimed at achieving the charitable purpose of the NPO (*Zweckbetrieb*). This form of income is exempted

¹⁵⁶ See Sec. 5 Par. 1 no. 9 German Corporate Income Tax Act and Sec. 14, 65 et seq. German Fiscal Code.

¹⁵⁷ Sec. 5 Par. 1 no. 9 German Corporate Income Tax Act.

¹⁵⁸ Sec. 3 no. 6 German Local Commercial Tax.

¹⁵⁹ Sec. 13 Par. 1 no. 16 German Inheritance and Gift Tax Law.

¹⁶⁰ Sec. 13 Par. 1 no. 16 lit. b) sentence 2 German Inheritance and Gift Tax Law.

- from income tax and from local commercial tax as long as there is no distortion of competition;
- earnings derived from other economic activities unrelated to the charitable purpose of the NPO (*wirtschaftlicher Geschäftsbetrieb*). This form of income is subject to corporate income tax¹⁶¹ and local commercial tax¹⁶². In this case the NPO is partially subject to taxation, insofar as its income is generated from economic activities.
- (b) Are there any regional, provincial, cantonal or other differences?

There are in general no regional provincial, cantonal or other differences with regard to tax exemptions in Germany; non-profit law is federal law (but different tax authorities and/or fiscal courts may have different practices).

- (c) Are there any other formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation?

As outlined, tax privileged NPOs need to meet the requirements under der German Fiscal Code to benefit from tax advantages (*cf.* 2.1.2. and for the recognition process *cf.* 2.1.3.).

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

- (a) What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)?

Donors must file the donation receipt (*Zuwendungsbestätigung*) issued by the domestic NPO. The donation receipt must comply with the official printed form provided by tax authorities.¹⁶³ Instead of a donation receipt, the cash deposit receipt or the booking confirmation of a credit institution may suffice if the donation does not exceed EUR 300 as well as donations for aid in disaster situations.¹⁶⁴

Under current German law, it is not mandatory for a domestic donor to provide a donation receipt for donations made to foreign NPOs to benefit from tax advantages.¹⁶⁵ However, donations to foreign NPOs are subject to other requirements for the donor to benefit from tax advantages (*cf.* 3.).¹⁶⁶

- (b) Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)?

¹⁶¹ Sec. 5 Par. 1 no. 9 sentence 2 German Corporate Income Tax Act.

¹⁶² Sec. 3 no. 6 sentence 2 German Local Commercial Tax.

¹⁶³ Sec. 50 Par. 1 sentence 1 EStDV; BMF v. 7.11.2013 – IV C 4 – S 2223/07/0018:005, BStBl I 2013, 1333, see: [BMF v. 07.11.2013 - IV C 4 - S 2223/07/0018: 005 - NWB Datenbank](#) und [EStH 2020 - Muster für Zuwendungsbestätigungen \(§ 10b... \(bundesfinanzministerium.de\)\)](#).

¹⁶⁴ Sec. 50 Par. 4 EStDV.

¹⁶⁵ Sec. 50 Par. 1 sentence 2 EStDV.

¹⁶⁶ However, it is a prerequisite that the foreign donation receipt to be submitted by the taxpayer certifies not only the receipt of the donation, but also the non-profit status and the exclusive use for non-profit purposes in accordance with the statute (ruling of the German Fiscal Court - BFH X R 7/13 BStBl II 15, 588).

Under the provisions of the law on the compulsory share (*Pflichtteilsrecht*) a beneficiary of the compulsory share may be entitled to demand the return of the donation from the NPO.¹⁶⁷

- (c) Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Donors can ask the NPO to perform certain tasks if these tasks comply with the NPO's charitable purpose (e.g., the use for a certain/specific charitable education project if the NPO's purpose is education).

The use of the NPO's assets or income for private purposes violates the requirements of selflessness and exclusivity (*cf.* 2.1.2.).¹⁶⁸ As only exception a foundation may use part, but not more than one third, of its income¹⁶⁹ to adequately maintain the founder and his next of kin, to care for their graves and to honour their memory.¹⁷⁰

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

In general, no tax advantages apply for individual taxpayers when indicating a tax privileged NPO as beneficiary of their will, i.e., indicating an NPO as beneficiary in a last will does not give any tax advantages to the testator/decedent nor to the descendants/heirs (with the exception that the descendants/heirs have an indirect advantage as they are not enriched for inheritance tax purposes).

Bequests to qualifying NPOs are (if the assets are actually acquired by the NPO in the event of inheritance) exempt from inheritance tax.

Bequests do not qualify for an income deduction or income tax reduction, neither for the testator/decedent, nor for the descendants/heirs.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

As outlined, all private legal entities (*Körperschaften*) in the sense of Sec. 1 Par. 1 German Corporate Income Tax Law can benefit from tax advantages (*cf.* 2.1.1.).

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes, it does make a difference for the NPO.

- (a) Significance for the NPOs

¹⁶⁷ See Sec. 2325, 2339 German Civil Code.

¹⁶⁸ See Sec. 55 and 56 German Fiscal Code.

¹⁶⁹ Donations, contributions or other non-taxable increases in assets are not part of the income, Fiscal Code implementing rules (AEAO) for Sec. 58 no. 6.

¹⁷⁰ Sec. 58 no. 6 German Fiscal Code.

Without recognition of an NPO's tax privileged status assets that the NPO receives as bequests are subject to German inheritance tax, i.e., are not tax exempt.

(b) Significance for the descendants and heirs

As outlined (*cf.* 2.3.1.), no tax advantages apply for individual taxpayers when indicating a tax privileged NPO as beneficiary of their will.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

A company cannot (because of its "*immortality*") indicate an NPO as beneficiary in a last will.

If an individual indicates an NPO as beneficiary in a last will and the NPO actual acquires the bequest, the bequest is exempt from inheritance tax for the NPO and the descendants/heirs have an indirect advantage as they are not enriched for inheritance tax purposes.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

(a) What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)?

As outlined, the receiving NPO is exempt from inheritance tax (*cf.* 2.3.4. and 2.3.1.).

As outlined, in general no tax advantages (no income deductions/income tax reductions) apply for individual taxpayers (*cf.* 2.3.4. and 2.3.1.).

(b) Are there any regional, provincial, cantonal or other differences?

There are in general no regional, provincial, cantonal or other differences in Germany, as the inheritance tax law is federal law (but different tax authorities and/or fiscal courts may have different practice).

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

(a) What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)?

Apart from the conditions outlined (*cf.* 2.3.1.) there are no specific legal conditions for bequests made to tax privileged NPOs.

(b) Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)?

Yes, the available amount of a bequest can be restricted by the right of the descendants or of the spouse to a compulsory share (*Pflichtteil*).¹⁷¹

- (c) Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Testators can ask or legally oblige the NPO to perform certain tasks if these tasks comply with the NPO's charitable purpose (e.g., the use for a certain/specific charitable education project if the NPO's purpose is education).

The use of assets or income of the NPO for private purposes violates the requirements of selflessness and exclusivity (*cf.* 2.1.2.).¹⁷² As the only exception a foundation may use part, but not more than one third, of its income¹⁷³ to adequately maintain the founder and his next of kin, to care for their graves and to honour their memory.¹⁷⁴

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

As outlined, (i) tax advantages relating to donations are available for the individual and company donor (tax deductibility) and the NPO as donee (tax exemptions) and (ii) tax advantages relating to bequests are available for the NPO as recipient of the bequest (also indirectly for the descendants' heirs as they are not enriched for inheritance tax purposes).

Under current German law tax advantages relating to donations or bequests to foreign NPOs depend on (i) whether the foreign NPO is based in the EU/EEA and (ii) whether the foreign NPO has domestic income and is therefore subject to limited tax liability in Germany.

- (a) EU/EEA NPOs with domestic income/with limited tax liability

If EU/EEA NPOs generates domestic (i.e., German) income and therefore are subject to limited tax liability in Germany, they can apply for a 60a-notice and can be recognized as tax privileged in Germany (**Recognized EU/EEA NPOs**).

- (b) Significance for the domestic donor

Donations to Recognized EU/EEA NPOs can be deductible for domestic individual and company donors from their German taxable income.¹⁷⁵

¹⁷¹ Sec. 2303 et seq. German Civil Code.

¹⁷² See Sec. 55 and 56 German Fiscal Code.

¹⁷³ Donations, contributions or other non-taxable increases in assets are not part of the income, Fiscal Code implementing rules (AEAO) for Sec. 58 no. 6.

¹⁷⁴ Sec. 58 no. 6 German Fiscal Code.

¹⁷⁵ Sec. 9 Par. 1 sentence 2 lit. b) German Corporate Income Tax Law only refers to the tax exemption under Sec. 5 Par. 1 no. 9, Par. 2 no. 2 German Corporate Income Tax Law; see also Sec. 10b Par. 1 sentence 2 no. 2 German Income Tax Law.

As outlined, bequests from a domestic decedent do not qualify for tax advantages (with the exception that the descendants/heirs have an indirect advantage as they not enriched for inheritance tax purposes).

(c) Significance for the Recognized EU/EEA NPO as recipient

The gift and inheritance tax exemption for donations or bequests from domestic donors to a Recognized EU/EEA NPO is subject to more extensive requirements.¹⁷⁶

(d) Requirements for recognition (proof of equivalency)

In order for an EU/EEA NPO to be recognized as tax privileged in Germany by the local tax office, the EU/EEA NPO must prove that it is equivalent to German tax privileged NPOs. In particular it must:

- be structurally comparable to a German domestic private legal entity (so called *Typenvergleich* - cf. 2.1.1.);
- meet the requirements on a structural domestic connection (*Inlandsbezug*)¹⁷⁷;
- meet the provisions specified in the German sample statute (cf. 2.1.2.). The local tax offices expect the sample statute to be adopted almost word for word. In many cases, EU/EEA NPOs will not be able to comply because of the different legal requirements in their own country;
- prove that its actual management is in accordance with German law (cf. 2.1.2.). For this purpose, it must submit suitable documents, e.g., activity report, list of income and expenditure, cash report, statement of assets and liabilities with evidence of the formation and development of reserves, records of the receipt of donations and their use for the intended purpose as well as minutes of the board of directors.

Although case law has recently brought some relief¹⁷⁸, recognition is currently **difficult to achieve** for EU/EEA NPOs and depends strongly on the individual case and in particular on the respective statute.

(e) EU/EEA NPOs without domestic income/without tax liability

If an EU/EEA NPO generates no domestic (i.e., German) income, it is not subject to limited tax liability in Germany and therefore cannot apply for a 60a-notice and cannot be recognized as tax privileged in Germany.

But, however, if the statute and management of the EU/EEA NPO are equivalent to a German tax privileged NPO (**Equivalent EU/EEA NPO**), the same tax advantages apply for the Equivalent EU/EEA NPO as recipient (exemptions) and its domestic donors (deductions) as for a Recognized EU/EEA NPO and its domestic donors. In order for Equivalent EU/EEA NPOs and their domestic donors to benefit from these tax advantages,

¹⁷⁶ Sec. 13 Par. 1 no. 16 lit. b) German Inheritance and Gift Tax Law does not apply, rather Sec. 13 Par. 1 no. 16 lit. c) German Inheritance and Gift Tax Law.

¹⁷⁷ Sec. 51 Par. 2 German Fiscal Code. In the case of NPOs with unlimited tax liability, the domestic connection is presumed even if they operate exclusively abroad (*Indizwirkung*). In the case of EU/EEA NPOs, on the other hand, this must be positively established, but this is usually successful.

¹⁷⁸ The German Federal Fiscal Court just recently stated: The national legislator is not obliged under EU law to recognise a non-profit status under foreign law (BFH, Urt. v. 18.8.2022 – V R 15/20, IStR 2023, 104).

they each must prove that the receiving EU/EEA NPO is equivalent to German tax privileged NPOs. The requirements for this proof are outlined above (Requirements for recognition/proof of equivalency).

The main difference between EU/EEA NPOs with limited tax liability and EU/EEA NPOs without limited tax liability is that EU/EEA NPOs without limited tax liability and their domestic donors must prove equivalency in each case. As outlined, the 60a-notice on the other hand proves equivalency for a certain time period, i.e., in this time period no further proof of equivalency is necessary.

(f) Non-EU/EEA NPOs

Non-EU/EEA NPOs cannot be tax exempt even if they have domestic (i.e., German) income. Nor can donations and bequests to non-EU/EEA NPOs be gift or inheritance tax exempt for the non-EU/EEA NPOs. Therefore, donations to non-EU/EEA NPOs are not deductible for domestic (i.e., German) donors.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

As outlined, registration (i.e., recognition of the NPO's tax privileged status) is only possible for:

- domestic NPOs (with unlimited tax liability – *cf.* 2.1.3.); and
- EU/EEA NPOs with limited tax liability. Though, recognition is currently difficult to achieve for EU/EEA NPOs and depends strongly on the individual case and in particular on the respective statute (*cf.* 3.).

As outlined, registration is not possible for:

- EU/EEA NPOs without tax liability in Germany. Although these NPOs cannot register, they may prove their equivalency (*cf.* 3.) and benefit from tax advantages (equivalency is currently difficult to prove); and
- non-EU/EEA NPOs.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

The registration possibility is not extended to all foreign NPOs, EFTA, and/or UK.

As outlined, registration is only possible for NPOs from EU or EEA Member states, if they have domestic German income and therefore have German limited tax liability (*cf.* 3.).

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO?

The registration process for EU/EEA NPOs with limited tax liability is the same as for domestic NPOs (*cf.* 2.1.3.).

However, as outlined above, under the current legal regulations, recognition is difficult to achieve and depends on the individual case, in particular on the specific statute of the NPO (*cf.* 3.).

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Alternatives may make sense for:

- EU/EEA NPOs without domestic income (they cannot register);
- EU/EEA NPOs with domestic income if they fail to register;
- For non-EU/EEA NPOs there are no alternatives because they have no tax advantages at all (*cf.* 3.).

(a) Alternatives

Proof of equivalency + “*defence file*”:

The EU/EEA NPO and/or the donor must prove to the local tax office that the NPO`s income would be tax exempt if the NPO generated domestic income and the EU/EEA NPO is operating on a non-profit basis according to German standards. In particular the EU/EEA NPO and/or the donor must prove that the NPO`s statute meet the requirements of German non-profit law (c.f. 2.1.2).

The EU/EEA NPO and/or the donor must provide all relevant and necessary information (including but not limited to the NPO`s statute, annual financial reports, activity report, asset statements (particularly regarding reserves), cash statements, flyers, press material, and information concerning the disposition of funds etc.) to the local tax authority.¹⁷⁹ The local tax authority is entitled to render any document as relevant and necessary, this decision only being limited by the principle of proportionality.

If this proof of equivalency as outlined above is successful, the EU/EEA NPO could establish a (defence) file, in which it already indicates how and why the EU/EEA NPO fulfils the requirements that would also apply for a domestic NPO and provide the necessary documents. The EU/EEA NPO could provide a copy of this file to the domestic donor. Nota bene: This procedure is not an official procedure in Germany.

However, as outlined, under the current legal regulations, proofing equivalency is difficult and depends on the individual case, in particular on the specific statute of the NPO (*cf.* 3.). It also should be noted that the local tax office responsible for donors decides on the deductibility of a donation. Even if one tax office in the city of A for donor A affirms deductibility, another tax office in the city B for donor B may decide differently.

(b) Setting up a German intermediary

For this reason, foreign NPOs often use domestic German NPOs as intermediaries for donations and bequest from domestic German donors and descendants. Large international

¹⁷⁹ See BMF-Schreiben v. 16.5.2011, BStBl. I 2011, 559: [BMF v. 16.05.2011 - IV C 4 -S 2223/07/0005:008 - NWB Datenbank](#).

non-profit organizations typically maintain their own NPOs in Germany (e.g., Amnesty International Deutschland eV, Deutsches Komitee für UNICEF eV, CARE Deutschland eV, Ärzte ohne Grenzen eV). These domestic German NPOs are then recognized in Germany as tax privileged and can issue donation receipts compliant to German law; furthermore, gift and inheritance tax exemption is granted. The domestic German NPO can pass on the donations or bequests collected in Germany to the foreign NPO abroad to finance the non-profit activity. Nota bene: The German intermediary NPO is subject to increased obligations to cooperate and provide evidence.¹⁸⁰

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

As outlined above, the EU/EEA NPO must be structurally comparable to a German NPO (so called *Typenvergleich* - cf. 3.).

For a comparison of legal forms with German NPOs, Tables 1 and 2 in the appendix of the BMF letter of 24 December 1999 (BStBl. I 1999, 1076) can be consulted: [2009-08-25-Betriebsstaetten-Verwaltungsgrundsaeetze \(bundesfinanzministerium.de\)](https://www.bundesfinanzministerium.de/Content/DE/Pressemitteilungen/BMF/2009/08/25-Betriebsstaetten-Verwaltungsgrundsaeetze.html).

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

The main limitations and requirements for foreign NPOs to be recognised and to benefit from tax exemptions are outlined above (cf. 3.). Additional limitations and requirements may arise in individual cases.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

As of 1 January 2024, a central beneficiary register (*Zuwendungsempfängerregister*) shall be maintained in Germany.¹⁸¹

Recognized tax privileged domestic NPOs and recognized tax privileged EU/EEA NPOs with German income are automatically registered (in particular, the date of issue of the last exemption notice or of the 60a-notice shall be recorded in the register).

Further, all not recognized EU/EEA NPOs can be registered in the beneficiary register. The application is possible regardless whether the EU/EEA NPO has domestic German income or not (and therefore is subject to limited tax liability in Germany or not). The prerequisite of registration in the beneficiary register is, however, that the EU/EEA NPOs can prove it would qualify under German non-profit law as tax privileged (equivalency). After the introduction of the beneficiary register, this determination will be made by the Federal Central Tax Office (*Bundeszentralamt für Steuern*) on a nationwide basis in Germany.

EU/EEA NPOs registered in the beneficiary register may issue donation receipts in accordance with the official sample for donations they receive from 2025 onwards. A

¹⁸⁰ See Bay. Landesamt für Steuern - Verfügung 09.08.2021 - S 0170.1.1-3/7 St31: [2022-01-24 Anlage zum Rundschreiben Handreichung Spenden Verf. des BLfSt. v. 09.08.2021 .pdf \(fundraising-bayern.de\)](https://www.fundraising-bayern.de/Content/DE/Pressemitteilungen/BMF/2022/01/24-Anlage-zum-Rundschreiben-Handreichung-Spenden-Verf.-des-BLfSt.-v.-09.08.2021.pdf).

¹⁸¹ See Sec. 60b German Fiscal Code.

donation to registered EU/EEA NPOs will then be deductible in the same way as to domestic NPOs. The register will be open to the public.

From a domestic donor's point of view, this could be a relief, as donors no longer have to provide proof of equivalency for donations to EU/EEA NPOs which have no domestic German income and therefore are not subject to tax liability in Germany. This might help EU/EEA NPOs to use the German donation`s market (without the need to establish a German domestic NPO).

However, as outlined, under the current legal regulations, proofing equivalency is difficult and depends on the individual case, in particular on the specific statute of the NPO (*cf.* 3.). However, the problem remains for EU/EEA NPOs to prove their equivalency. In particular the EU/EEA NPO must prove that the NPO`s statute meet the requirements of German non-profit law.

4. CONCLUSION

4.1. TAX ADVANTAGES RELATING TO DOMESTIC (GERMAN) NPOs

Domestic (German) NPOs benefit from tax advantages (tax exemptions for their corporate income, for contributions made to them by donation or bequest and other taxes).

Domestic (German) individual and corporate donors benefit from tax advantages when donating to domestic (German) NPOs (the donation is deductible from their respective taxable income).

4.2. TAX ADVANTAGES RELATING TO RECOGNIZED EU/EEA NPOs

Recognized EU/EEA NPOs with domestic German income and therefore limited tax liability in Germany benefit from tax advantages (domestic income is tax exempt); but tax exemptions for a Recognized EU/EEA NPO as recipient of donations or bequests from domestic (German) donors are subject to more extensive requirements.

Domestic (German) individual and corporate donors benefit from tax advantages when donating to Recognized EU/EEA NPOs with German income (the donation is deductible from the donor`s taxable income).

However, recognizing the EU/EEA NPOs with German income as tax privileged is currently difficult and will prospectively stay difficult.

4.3. TAX ADVANTAGES RELATING TO EQUIVALENT EU/EEA NPOs

EU/EEA NPOs with no German income and no tax liability in Germany cannot be recognized as tax privileged in Germany. However, Equivalent NPOs (as well as EU/EEA NPOs who fail to register, even though they have domestic German income and limited tax liability in Germany) benefit from tax exemptions when receiving donations and bequests from domestic (German) donors.

Domestic (German) individual and corporate donors benefit from tax advantages when donating to Equivalent EU/EEA NPOs (the donation is deductible from the donor's taxable income).

These tax advantages may only be granted under more extensive requirements. In particular it must be proved that the EU/EEA NPO is equivalent. This proof must be made in each case is currently difficult and will prospectively stay difficult.

4.4. ALTERNATIVES

EU/EEA NPOs often use domestic (German) NPOs as intermediaries for donations and bequests from domestic (German) donors. At present this is a recommendable and practicable alternative for EU/EEA NPOs to collect donations and bequests from domestic (German) donors legally efficiently and safely.

It remains to be seen whether the legal situation will improve significantly with the introduction of the central beneficiary register under maintenance of the German Federal Central Tax Office.

5. ADDITIONAL CLARIFICATIONS

5.1. IS IT POSSIBLE FOR AN APPLICANT TO BE REGISTERED WITHOUT IMPLEMENTING AN OPERATING GERMAN BRANCH IN GERMANY?

As outlined in our memorandum (*cf.* 3.) registration (i.e. recognition of the NPO's tax privileged status) is only possible for domestic (German) NPOs (with unlimited tax liability – *cf.* 2.1.3.) and EU/EEA NPOs with limited tax liability (i.e. EU/EEA NPOs with domestic (German) income and tax liability in Germany). Thus EU/EEA NPOs with limited tax liability could be recognized in Germany as tax privileged without implementing an “operating German branch” in Germany. Domestic (German) income and tax liability in Germany is sufficient.

However, as outlined in our memorandum (*cf.* 3.) recognition is currently difficult to achieve for EU/EEA NPOs and depends strongly on the individual case and in particular on the respective statute of the EU/EEA NPOs. Due to that reason EU/EEA NPOs often use domestic (German) NPOs (i.e. an “operating German branch”) as intermediaries for donations and bequests from domestic (German) donors. At present this is a recommendable and practicable alternative for EU/EEA NPOs to collect donations and bequests from domestic (German) donors legally efficiently and safely (*cf.* 3.2.).

5.2. FOR THE DONATION RECEIPT, WHAT SPECIFIC FORM SHOULD IT TAKE, IS THERE ANY ADDITIONAL INFORMATION REQUIRED FROM THE REGISTERED ORGANIZATION TO PROVIDE TO THE DONOR, AND DOES IT HAVE TO BE IN GERMAN?

As outlined in our memorandum (*cf.* 2.2.5.) the donation receipt must comply with the official printed form provided by tax authorities and thus must be in German. Instead of a donation receipt, the cash deposit receipt or the booking confirmation of a credit institution may suffice if the donation does not exceed EUR 300 as well as donations for aid in disaster situations. Under current German law, it is not mandatory for a domestic donor to provide a

donation receipt for donations made to foreign NPOs to benefit from tax advantages. However, donations to foreign NPOs are subject to other requirements for the donor to benefit from tax advantages (*cf.* 3.).

As outlined in our memorandum (*cf.* 2.2.5. and footnote 39) the official printed form for the donation receipt provided by tax authorities can be found here (only in German): [EStH 2016 - Muster für Zuwendungsbestätigungen \(§ 10b... \(bundesfinanzministerium.de\)\)](#)

GREECE¹⁸²

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current tax framework for NPOs is the following:

- Law 4172/2013 (Income Tax Code) and in particular Art. 45 item c providing that NPOs, registered in Greece or abroad, are treated as taxable entities and, therefore, are subject to corporate income tax (currently at 22%) in Greece on business profit arising in Greece, excluding any revenues earned in pursuit of their non-profit purpose, which are not considered as taxable income. The relevant administrative Circulars n. 1044/2015 and n. 1123/2015 provide guidelines as to the determination of the taxable income;
- Law 3091/2002 which provides for the exemption of legal entities pursuing charitable, cultural, religious and/or educational purposes from the Special Real Estate Tax (Art. 15 Par. 2 στ). More specifically, to be entitled to the aforesaid exemption NPOs should engage in charitable, cultural, religious and/or educational activities in Greece and the real estate properties owned by the them should either be self-used for the pursuit of the aforesaid purposes or be vacant/unoccupied or, in case they are exploited, any revenue realized from such exploitation must be placed for the pursuit of the charitable, cultural, religious and/or educational purposes;
- Law 4223/2013 provides for an exemption of NPOs from the annual real estate tax (called ENFIA) with regard to the real estate properties being self-used in charitable, cultural, religious and/or educational activities (art. 3 Par. 1 item e), while the real estate properties not being self-used, are subject to the main tax under regular tax rates applicable for other entities, however they are subject to a reduced rate as regards supplementary real estate tax of 0,35% (instead of 0,55% which is the standard rate applicable to legal entities) (Art. 5 Par. 2);
- Law 2961/2001 (Inheritance and Gift Tax Code), and in particular Art. 29 Par. 5 and Art. 43B (a) provide that inheritances and gifts are subject to special taxation at a rate of 0,5% if the recipients are NPOs established in Greece or in an EU/EEA country, as well as NPOs established in non-EU/EEA countries on the basis of reciprocity, which they demonstrably pursue national, religious, charitable, educational, cultural or beneficial to the society in general purposes.

The Greek tax authorities published in 2019 an overview in Greek of the tax treatment of domestic and foreign NPOs:

http://elib.aade.gr/elib/view?d=/gr/egk/2019/D_ORG_D_1080442_EKs_2019/.

From a legal/regulatory standpoint, (i) there is no need for a specific license to be in place for pursuing or facilitating non-for-profit causes under Greek law. Furthermore, (ii) no specific limitations (as monetary caps) or disclosure obligations are in principle established under the Greek legal framework with respect to donations made by, or for the benefit of,

¹⁸² Answers provided by Zepos & Yannopoulos (Athens).

natural persons or legal entities (e.g., Charitable Foundations, Organizations, Associations, Bequests, NGOs), without prejudice to donations addressed to the Greek State. More specifically, any non-for-profit property dedicated (through donations) to the State, state owned entities legal or “*for a charitable purpose*” must be registered with the “*Register of Charitable Property*” (established under Law 4182/2013, as in force), maintained electronically at the website of the Ministry of Finance (database is publicly accessible) and the relevant registration in the database is performed at the care of the competent directorate of the Ministry of Finance. With respect to the legal landscape applicable for NPOs, please cf. 2.1.2.).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax reliefs currently in force apply to private individuals/donors and they concern partial tax reduction with respect to donations to specific eligible public, educational, medical or religious institutions, as well as to charitable foundations, NGOs pursuing charitable or cultural purposes, established in Greece or in an EU/EEA country (Art. 19 ITC).

There is no special provision in the ITC in respect of the deductibility of donations at the level of legal entities/donors. There is ambiguity as to whether this means that donations can be tax deductible on the basis that they constitute “*productive*” business expenses (which is the condition for the deductibility of expenses). With effect from January 1, 2020, as regards in particular expenses relating to corporate social responsibility (CSR) activities are tax deductible under the condition that the company has accounting profits in the tax year in which relevant expenses are incurred.

A reduced 0,5% rate applies to inheritances and gifts to NPOs. In case of transfers by means of inheritance or gift the relevant liability burdens the recipients of the inheritance/gift (i.e., the NPOs).

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

From a Greek income tax perspective, at the level of individuals, circular POL 1010/2014 determines the eligible Greek and EU/EEA NPOs for tax deductibility purposes. In particular, qualifying NPOs are charitable foundations, non-profit associations providing educational services and awarding scholarships, private law legal entities pursuing charitable purposes, research and technological bodies of L. 1514/1985, research centres and non-profit legal entities pursuing cultural purposes.

From a Greek inheritance and gift tax perspective, the 0,5% reduced tax rate applies if the recipients are NPOs established in Greece or in an EU/EEA country, as well as NPOs established in non-EU/EEA countries on the basis of reciprocity, which they demonstrably pursue national, religious, charitable, educational, cultural or beneficial to the society in general purposes.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

As a preliminary remark and in order to facilitate the analysis of the substantive requirements for the establishment and recognition process of NPOs, it is noted that an NPO may operate under the legal form of an association, a civil non-profit partnership, a foundation or an office of a foreign non-profit entity. However, it is our understanding that for the purposes of this Memorandum, only the legal forms of the association and the foundation are of interest and therefore our assessment will focus mainly on these legal forms.

Association:

It is regulated by Art. 78-106 of the Greek Civil Code (GCC) and main features are the following:

- at least twenty (20) members (individuals and/or legal entities) should sign the AoA;
- any decrease of the number of members below that of ten (10) constitutes grounds for dissolution of the association;
- the articles of Association (“*ΑοΑ*”) should contain certain information such as the object, name and registered seat, terms of admission, exit and disqualification of its members, financial resources, the convocation of the General Assembly of its members, terms for the amendment of the AoA and the terms for its dissolution;
- the Association (and any subsequent amendments thereto) must be approved by the Magistrates Court’s Judge and a summary of its decision must be published in the press and the newspaper of the Lawyer’s Pension Fund. Following these publications, the AoA must be registered with the special registry kept with the Court of First Instance (Association’s Registry), so that it can operate lawfully.

Foundation:

- pursuant to Art. 109 of the Greek Civil Code, the establishment of a foundation is made either by virtue of a notarial deed *inter vivos* or by virtue of a will;
- pursuant to Art. 110 of the GCC, an incorporation deed (in Greek “*Οργανισμός*”) is required, which must mandatorily contain the actual scope and property being dedicated to the foundation;
- *ex officio* approval of the foundation’s establishment by the competent authorities (Art. 112 of the GCC), upon a thorough legality and feasibility review by any competent ministry (following a prior opinion of the latter addressed to the Finance Minister (Charitable Foundations General Directorate); and
- issuance of a presidential decree, which shall be published in the official Governmental Gazette.

Further to the above, and in order to provide a comprehensive overview of the substantive requirements of the establishment and recognition process of NPOs in the Greek market, the following prerequisites apply with regard to the civil non-profit partnership and the office of a foreign non-profit entity:

Non-Profit Civil Partnership:

It is incorporated on the basis of Art. 741-784 of the Greek Civil Code and from a practical perspective, partnership's setting-up is a straightforward procedure and as a brief outline, the process requires:

- drafting and execution of the AoA by at least two persons (individuals and/or legal entities);
- certification by the competent tax authorities of the executed AoA (a stamp duty currently set at 3.6% of the funding capital of the partnership);
- the registration with the General Commercial Registry (“GEMI”) of partnership's AoA (together with a pre-reservation of selected trade name of the partnership and certain legalisation documents, which differentiate for founders individuals and founders - legal entities);
- within thirty (30) days from the above registration with GEMI thereon, the partnership must be also registered with the local tax authorities to acquire a tax registration number (VAT) and hence, capacity to commence operational activities, within its scope of AoA - matching with the appropriate activity codes being declared with the tax authorities;
- contrary to associations, no approval is required by the Court for setting-up a partnership.

Office of a foreign non-profit entity:

The foreign office is not subject to a special set of rules in terms of Greek administrative supervision and governance but is not largely tested considering that there is no specific legal framework clearly governing such a presence.

2.1.3. What does the recognition process look like?

Association:

The Association (and any subsequent amendments thereto) must be approved by the Magistrates Court's Judge and a summary of its decision must be published in the press and the newspaper of the Lawyer's Pension Fund. Following these publications, the AoA must be registered with the special registry kept with the Court of First Instance (Association's Registry), so that it can operate lawfully.

Foundation:

With regard to the establishment of a foundation the following legal acts are required:

- the founding act in the form of a notarised deed or will (art. 109 of the GCC), as already mentioned above (2.1.2.) and (b) the manifestation of the state approval of the aforementioned founding act, which gives the foundation legal personality. According to Art. 108 and 112 of the GCC, foundations can only be established by an act of the Greek State. From a practical point of view, for the establishment of a foundation, the following actions are required:
 - o preparation of a dossier containing the application to the Ministry of Finance and the deed of foundation. The deed of foundation must contain the purpose of the foundation, the exact property to be donated and its organisation. This file must

- be submitted to the Ministry of Finance and, more specifically, to the General Directorate of Public Property;
- in particular, the founding act specifies the purpose, the foundation's assets and the AoA, which determines the foundation's structure in alignment with the founder's wishes. If the founding act lacks important points concerning the administration of the foundation, such points may be added/completed by the state authorities and published once the presidential decree is issued. In this regard, it should be noted that the assets dedicated to the foundation should cover both the operating costs of the foundation and its purpose. It is mentioned that the state approval may interpret, complete or modify the structure of the foundation, provided that the will of the founder is respected. If the founding act is not sufficiently clear as to the identity of the beneficiaries, the state approval may determine this in accordance with the founder's will and its interpretation;
 - once the file has been submitted to the Directorate of Public Property, the latter will determine which ministries are competent on the basis of the purpose of the foundation as stated in the AoA. More than one ministry may be competent;
 - in the event of a favourable opinion, the Directorate of Public Property prepares a draft presidential decree and submits it for signature to the Minister of Finance and any other relevant ministries that have expressed an opinion;
 - finally, the Presidential Decree is submitted to the President of the Hellenic Republic for signature and publication purposes.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no specific fees or costs payable vis-à-vis the Greek administration that are related to the establishment and recognition process, apart from any third-party fees related to the provision of legal, notary or consultancy services, which may vary according to the legal form of the NPO to be established (as primarily notarial deed for foundation's articles or legal representation fees for court-related recognition process for Associations). For non-for-profit civil companies, the stamp duty (currently set at 3,6% of the total contributions' amount) should be also factored into the cost analysis.

2.1.5. What is the timeframe for the recognition process to be completed?

Association:

Under normal circumstances, the estimated time frame for the establishment of a non-profit association should take approximately 2-3 months (considering the court recognition process, notwithstanding any further delays due to court's workload following submission of a petition for approval before the Magistrate's Court until the issuance of a court decision).

Foundation:

It depends on each foundation's particularities, the number of the Ministries (of joint competence) involved in each case and their level of responsiveness in furnishing their affirmative opinion to the Finance Ministry. In particular, the establishment and recognition of a foundation is an extremely time-consuming process, and it usually takes from 10 months to 1.5 years due to the bureaucracy and the lack of interoperability between the authorities involved.

Civil non-profit partnership:

Under normal circumstances, the completion of the establishment takes approximately up to seven (7) business days from the date of official submission of the articles of Association to the competent GEMI division (at present, there is no online set-up process for this type of entity).

General note for all types: A key dependency of the overall timeline is the pre-set-up stage and more specifically, the actual time required for founders' documents to be provided in requisite form (*Note:* Documents by foreign founders must be provided in notarized and apostilled form and be translated locally for submission purposes).

Office of a foreign non-profit entity:

The only registration requirements required for a Greek office is its registration with the tax authorities (i.e., no corporate registration with the General Commercial Registry is required, until at present). However, in practice, there are no concrete guidelines by the Ministry of Finance providing for the supporting documentation and related actions required for the establishment of the said office and thus Greek tax offices are not familiar with the said registration.

In this regard, the establishment of the local office of a non-profit foreign entity is largely dependent on the tax registry department of the competent tax office. In view of the above, it is not easy to estimate the time required for the registration of a Greek office with the tax authorities.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

No, there are no such provisions regarding the period of validity of the recognition and no requirements for renewal are provided under the Greek legal framework.

2.1.7. Is any specific legal form required for the Belgian NPO?

[Note: We understand that this question refers to any specific legal forms required for the Greek NPO, but please confirm. Our answer has been drafted in relation to the Greek NPO]. Under the Greek legal framework, a non-profit entity may operate under the legal form of (i) an association, (ii) a civil non-profit partnership, (iii) a foundation or (iv) an office of a foreign non-profit entity.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

Notwithstanding the standard registration processes discussed above (*cf.* 2.1.3.), please take note of the following complementary or special (as the case may be) registration processes from a regulatory perspective, as follows:

Association:

Especially, with regard to the Association and following all required publications related to the establishment and recognition process, the AoA must be registered with the special registry kept with the Court of First Instance (Associations' Registry), so that the Association can operate lawfully.

As a general note, the Non-Governmental Organizations (“**NGO**”) must be registered with the national Registry for Greek and Foreign Non-Governmental Organizations (NGOs) kept with the Greek authorities. Eligible for acquiring the NGO status are restrictive types of *private legal entities*, i.e., i) associations ii) charitable foundations and iii) branches of foreign NGOs and iv) non-for non-profit civil companies (in Greek, abbreviated, as “*AMKEs*”).

As envisaged in the recently introduced regime of Greek Law 4873/2021, the relevant NGOs - related information are traceable in the unified electronic mapping of Civil Society Organizations (CSOs, in Greek “*OKOIPs*”, i.e., voluntary organizations operating as associations or civil non-profit organizations of a non-for-profit purpose [NGOs included]) <https://www.gov.gr/ipiresies/polites-kai-kathemerinoteta/organoseis-tes-koinonias-ton-politon/organoseis-tes-koinonias-ton-politon-kai-koinopheleis-phoreis>.

Foundation:

There is a requirement for *public-benefit foundations* to be registered with, and supervised by, the Directorate for Bequests and Foundations, which is responsible for the initial entry (record) in the Register and any subsequent additional registration, change or deletion of existing entries relating to public - benefit competence (Art. 11 of Law 4182/2013). The Registry of public-benefit foundations consists of the General Inventory, the sections and the Files. In the General Inventory foundations are registered in alphabetical order and in the File the following is included - indicatively - for each foundation: name, administrative structure, court decisions, administrative acts, members of the Board of Directors, balance sheets.

Registrations are kept as a record on electronic databases by the supervisory board of the Central Registry Office and the General Secretariat, while they are meant to be publicly available and can be accessed remotely (Art. 13 of Law 4182/2013).

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

20% of the donated amounts to NPOs established in Greece and in EU/EEA can be deducted from the annual income tax of Greek individual donors provided that within the relevant tax year the value of the donations exceeds the amount of EUR 100. Furthermore, the total amount of donations should not exceed the 5% of the total taxable income of the donor (Art. 19 ITC).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, tax advantages are relevant only to specific eligible NPOs determined by Circular POL 1010/2014 (*cf.* 2.1.1.).

2.2.3. Which persons are eligible for tax advantages?

The tax reduction of Art. 19 ITC applies to Greek tax residents, while it does not apply to non-Greek tax residents except for EU/EEA residents provided that they earn Greek-source income which represents more than 90% of their worldwide income (Art. 20 ITC).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Donations by individuals or legal entities do not have the features of income for income tax purposes and therefore are exempt from corporate income tax (POL. 1044/2015). Said exemption applies equally to Greek and foreign NPOs.

Donations in cash or in kind to Greek or EU/EEA non-profit entities are subject to 0.5% gift tax after deducting (for donations in kind) an amount of EUR 1,000, which constitutes a tax-free amount. This is lower than regular gift tax rates.

There are no regional, provincial, cantonal or other differences for the application of the aforesaid tax advantages on donations.

In terms of formalities, the tax authorities may request at their discretion for documentation to substantiate the tax advantages claimed, such as a certified copy of the articles of Association of the NPO, donation agreements and bank statements in case of monetary gifts.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain a tax deduction, the donation must meet the following conditions:

- donations must be made to specific qualifying NPOs (*cf.* 2.1.1.);
- donations must be done in cash (i.e., no donations in kind);
- donations must exceed an aggregate amount of EUR 100 per year; and
- payments of donations should be made through bank wire transfer or any other electronic means of payment and be evidenced by the relevant bank statement or other supporting documents issued by the credit institution (Decision IAPR A. 1042/2023).

The amount of donations by individuals cannot exceed 5% of their total taxable income.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

The transfer of any form of assets (movable or immobile property) situated in Greece as well as the transfer of movable or immovable property situated abroad of a Greek national residing anywhere and of a non-Greek national residing in Greece that is realized by means of inheritance is subject to inheritance tax in Greece (Art. 3 of Law 2961/2001).

When it comes to foreign nationals residing outside Greece a special exemption from the Greek inheritance taxation applies with respect to their movable property located outside Greece provided that they were based permanently outside Greece for at least 10 consecutive years before the demise.

As regards inheritance tax, the relevant tax liability burdens the beneficiary of the inheritance (i.e., the NPOs, the specific case). For this reason, the foreign beneficiaries should tax register in Greece to comply with the relevant reporting requirements.

If NPOs are beneficiaries of a will, they are subject to inheritance tax at a flat rate of 0.5%, which is lower than regular inheritance tax rates.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

NPOs qualifying to the beneficial inheritance tax treatment (0.5%) are NPOs established in Greece or in an EU/EEA country, as well as NPOs established in non-EU/EEA countries on the basis of reciprocity, which they demonstrably pursue national, religious, charitable, educational, cultural or beneficial to the society in general purposes.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes, tax advantages are relevant only to NPOs which are lawfully established in Greece or in an EU/EEA country and NPOs registered in third countries (on the basis of reciprocity) which are able to prove on the basis of specific documentation that they engage in the activities mentioned under 2.3.2.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages are only available for the beneficiaries, i.e., the eligible NPOs.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Application of a reduced tax rate of 0.5% (instead of the regular inheritance tax rates which may be up to 40%).

There are no other special rates depending on the region of the transferred property or residence of the deceased.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The only legal requirement is that the Greek or EU/EEA NPOs are lawfully established, as well as the non-EU/EEA on the basis of reciprocity, and pursue national, religious, charitable, educational, cultural or beneficial to the society in general purposes.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Yes. As regards in particular NPOs established outside EU/EEA the 0,50% preferential gift and inheritance tax treatment applies on the basis of reciprocity provided that they are operating for a demonstrably national, religious, charitable, educational, cultural or beneficial to the society in general purposes.

According to the recent guidelines (Circular E. 2051/2022), the term reciprocity covers the following cases: (a) when an exemption or a more favourable taxation is provided in the foreign legislation for Greek NPOs. In such case, the Greek gift/inheritance tax legislation with the foreign one should be identical in order for the favourable taxation to be applied in Greece for foreign NPOs ("*legislative reciprocity*"), (b) the absence of a corresponding tax obligation in the foreign state, which either has not regulated or has abolished the imposition of tax upon death or gift, either specifically for NPOs or in general ("*effective reciprocity*").

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Tax registration is required for the 0,50% preferential gift and inheritance tax treatment to be applied for assets acquired in Greece.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

It is extended to all foreign NPOs

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

In general terms, we would expect that the registration process will be the same for domestic and foreign NPOs. However, in practice there are no specific administrative guidelines issued determining the registration formalities in connection with the foreign NPOs, i.e., the supporting documentation depending on whether they are based in EU/EEA or elsewhere and as a result, local tax offices are not familiar with the said registration. Therefore, it cannot be excluded that discrepancies and complexities could be encountered in the potential need

for the registration of a foreign NPO in Greece. To this end the specific tax office where the registration would need to be made should be contacted in advance.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

No specific requirement for this exists.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

No.

4. CONCLUSION

For gift and inheritance tax purposes, foreign NPOs qualify for the same tax advantages with Greek ones.

The tax reduction at 20% for donations by individuals applies only to Greek tax residents or EU/EEA tax residents under requirements, and it applies to donations made both to Greek and EU/EEA NPOs.

5. ADDITIONAL CLARIFICATIONS

5.1. WITH REGARDS TO ‘EQUIVALENCE’: DOES EQUIVALENCE ALONE SUFFICE, OR IS THERE A NEED TO TAKE ADDITIONAL STEPS? WHAT ACTIONS SHOULD BE TAKEN TO ADDRESS DISCREPANCIES AND COMPLEXITIES WITH TAX OFFICES?

The non-profit characteristics of the foreign NPO (i.e. equivalence with domestic NPOs for tax registration purposes) shall derive from the articles of incorporation provided and thus no additional steps will be required. In general, the documentation required by default to be provided by foreign legal entities are the articles of incorporation, certificate of good standing and extract from the commercial registry reflecting the particulars of the foreign NPO as well as its legal representatives. Nevertheless, as per our answer in question 3.2.1 of the questionnaire, to limit complexities during the tax registration process, it is highly advisable the tax office where the registration of the foreign NPO will take place to be contacted in advance, since for the time being there is not a consistent approach as to the documentation requested for the registration of this type of legal entities.

5.2. WHEN TAX AUTHORITIES MAY REQUEST FURTHER DOCUMENTATION, SHOULD THE PROVIDED DOCUMENTS, INCLUDING ARTICLES OF ASSOCIATION AND DONATION AGREEMENTS, BE IN GREEK?

Yes. In terms of formalities, all the foreign documentation provided will need to be vested a notarized and apostilled form and be also accompanied by a Greek translation (to be certified by a lawyer), otherwise they will not be accepted by the tax office.

HUNGARY¹⁸³

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

General overview:

The main relevant legal provisions are the contained in the following acts:

- Act C of 1990 on local taxes ('*LT Act*');
- Act XCIII of 1991 on duties ('*Duties Act*');
- Act CXVII of 1995 on personnel income tax ('*PIT Act*');
- Act LXXXI of 1996 on corporate income tax ('*CIT Act*');
- Act V of 2003 on the Civil Code ('*Civil Code*');
- Act CXXVII of 2007 on value added tax ('*VAT Act*');
- Act CLXXV of 2011 on the freedom of association, on public-benefit status, and on the activities of and support for civil society organizations ('*Civil Act*');
- Act CLXXXI of 2011 on the court registration of civil organizations and related procedural rules ('*Civil Registration Act*');
- Act XIII of 2019 on trusts ('*Trusts Act*').

Furthermore, we refer to the Agreement between the Government of the Hungarian People's Republic and the Government of the Kingdom of Belgium on the avoidance of double taxation and the prevention of tax evasion in the field of income and wealth taxes done at Budapest on 19 July 1982 (publish in the Official Journal via the Decree 20 of 1984 (IV.18.) of the Ministerial Council) which might affect any payment made between a Hungarian and a Belgian tax entity.

Tax advantages:

Cf. 2. and 3. (and their sub-questions, particularly 2.2.1., 2.2.4. and 2.3.1., 2.3.5.).

Recognition and registration:

Please note that Hungarian law does not provide for per se recognition of foundations or other legal entities, NPOs registered in other EU or EEA member states or third countries. However, such foreign entities are free to found and register a new, Hungarian legal entity such as a foundation.

That said, there are exceptional instances where foundations registered in other EEA member states that could be qualified as holding public-benefit ('*közhasznú*' in Hungarian) status are eligible for certain benefits, e.g.: they are exempt from duties, and also from local taxes. For details, *cf.* 2. and 3. (and their sub-questions).

¹⁸³ Answers provided by Nagy és Trócsányi Ügyvédi Iroda (Budapest).

Contact information:

The National Tax and Customs Administration (“*NTCA*”), the Hungarian tax authority, provides information on its website in English:

- general portal ([link](#));
- general information document regarding tax issues of foreigners ([link](#));
- taxation matters ([link](#));
- representation ([link](#));
- central customer services with opening hours and phone numbers ([link](#)).

For additional questions, the authority can be contacted directly via the NTCA’s dedicated directorate for foreigners: Large Taxpayers Tax and Customs Directorate of the NTCA

Address: 1077 Budapest, Dob utca 75-81,
Mailing address: 1410 Budapest, P.O. Box 138
Email: kavig@nav.gov.hu
Telephone: +3614613300

Opening hours:
Monday 08.00 – 16.15
Wednesday 08.00 – 16.15
Thursday 08.00 – 12.00

The following shall be included in all written communication with the NTCA or any other authorities:

- the name of your NPO;
- the enterprise or registration number of your NPO (if any); and
- the phone number and email address and the name of the contact person of the NPO (who is available during office hours).

EU level legislation:

We also note that there are legal developments on EU level regarding cross-border associations ([link](#) and [link](#)).

The proposal for future legislation is made by the EU Commission and stems from the European Parliament resolution of 17 February 2022 ([link](#)), aiming to promote associations and other non-profit organisations in the EU in completing the internal market, protecting their fundamental rights and fostering an EU democratic space.

The resolution asked the Commission, under Art. 225 TFEU, to submit two new legislative proposals: a Regulation (under Art. 352 TFEU), which creates the legal form of ‘*European Associations*’, and a Directive harmonising common minimum standards for NPOs (under Art. 114 TFEU).

The legislations are not yet in force, the texts are not yet adopted and the legislative process is still ongoing ([link](#)).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

The Civil Act provides that civil society organizations and public-benefit organizations, and the benefactors of such organizations shall be entitled to tax and duty exemption or to tax and duty allowance [Sec. 36 (2) of the Civil Act].

Furthermore, see the information document of the NTCA on the taxation of NPOs in the tax year of 2023 ([link](#)) but please note that it is available only in Hungarian.

For the purposes of this Questionnaire, we use the term ‘Recognised NPO’ for the NPOs that qualify as and are recognised with public-benefit status (*‘közhasznú jogállású szervezet’* in Hungarian) in Hungary.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

As a general rule, the Civil Act provides that civil society organizations and public-benefit organizations, and the benefactors of such organizations shall be entitled to tax and duty exemption or to tax and duty allowance. [Sec. 36 (2) of the Civil Act]

However, NPOs that qualify as and are recognised with public-benefit status may be eligible for additional of higher-level exemptions and benefits.

For the purposes of this Questionnaire, we use the term ‘Recognised NPO’ for the NPOs that qualify as and are recognised with public-benefit status (*‘közhasznú jogállású szervezet’* in Hungarian) in Hungary and ‘recognition’ for the procedure to recognise a Hungarian NPO as Recognised NPO in Hungary.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Public benefit status may be granted to an organization registered in Hungary, that is engaged in public benefit activities and that has sufficient resources to satisfy the common needs of individuals and society, and that enjoys demonstrable social backing and support which exists in society at large, and:

- that is a civil society organization (other than a civil company), or
- that is an organization allowed by law to obtain public-benefit status.

[Sec. 32 (1) of the Civil Act]

Any organization that is considered eligible shall be granted public-benefit status upon being registered as a public-benefit organization (*‘admission to the public-benefit register’*) [Sec. 33 of the Civil Act].

A **‘civil society organization’** (*‘civil szervezet’* in Hungarian) shall mean:

- a civil company;
- an association registered in Hungary, excluding political parties, trade unions and mutual associations;
- a foundation, excluding public foundations and party foundations.

[Sec. 2 (6) of the Civil Act]

A **‘civil company’** (*‘civil társaság’* in Hungarian) shall mean:

- A partnership set up by natural persons working for a common objective aiming to achieve their non-economic goals, by means of a civil law partnership agreement [Sec. 5/A (1) of the Civil Act].

2.1.3. What does the recognition process look like?

For admission to the public-benefit register the organization’s instrument of constitution (foundation document or deed) shall specify:

- the public benefit activity (activities) in which the organization is engaged, including the public function(s) for which such public benefit activities are performed, indicating also the statutory provisions under which such public functions are executed, and it does not preclude access to its services for persons other than its members, if applicable;
- that the organization is engaged in economic-business activities without jeopardizing the public benefit activity or the core activity specified in its instrument of constitution;
- that the organization shall not distribute the profit it may generate, and shall use such for the public benefit activities specified in its instrument of constitution;
- that the organization is not engaged in the pursuit of any direct political activity, it is independent of political parties and does not provide any financial support to political parties;
- the organization having submitted an application for admission to the public-benefit register shall satisfy the requirements set out in Sec. 32 of the Civil Act, which shall be verified by the court relying on the data and information received from the register and from the financial report.

[Sec. 34. of the Civil Act]

At the request of the organization - or, in the case of a foundation, the founder or the foundation - the court decides in civil non-litigation proceedings on the classification of the organization as a public benefit and on the registration of the public benefit legal status in the registry. In the case of a foundation, the request must be submitted by the founder, if he declares in the request that the founding deed previously submitted to the court does not contain the provisions prescribed in the Act. The court keeping the register is competent for the procedure [Sec. 44 (1) of the Civil Registration Act].

The application must include:

- designation of the trial court;
- the applicant's name, place of residence (seat); and
- the name and registration number of the organization affected by the application.

The application must state that:

- the fulfilment of the requirements contained in the Civil Act can be determined from the deposited reports; and
- the founding deed contains the provisions prescribed in the Civil Act.

The application must be accompanied by the statement of the senior official that it does not fall under the grounds for disqualification defined in the Civil Act [Sec. 44 (3)-(5) of the Civil Registration Act].

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

As a general rule, duties have to be paid for the registration procedure that are done by the competent courts. However, the following entities shall be granted full exemption from duties (among others):

- associations, public bodies;
- legal entities of the church;
- foundations, including public foundations, and the public-benefit trusts carrying out public service functions and the higher education institutions they operate;
- non-profit business associations registered as public-benefit and priority public-benefit organizations, public-benefit social cooperatives.

Please note, that a ‘foundation’ shall mean a public-benefit foundation provided for in the Civil Act, and any foundation registered in another EEA Member State, if able to verify its compliance with the conditions laid down in the Civil Act for public-benefit status, not including registration in Hungary; furthermore, in the year of foundation and in the next two years, a newly established foundation that agrees to meet such conditions by the end of the second year after the year of foundation [Sec. 5 (1) and Sec. 102 (1)u-v) of the Duties Act].

2.1.5. What is the timeframe for the recognition process to be completed?

The court shall decide on the application – as a general rule – within 30 days of receipt of the application. However, please note and expect that courts tend to issue orders for remedying of deficiencies (*hiánypótlás* in Hungarian) which make the process longer [Sec. 44 (2) and (6) of the Civil Registration Act].

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

No, there is no formal validity period, however in practice, the recognised status is reviewed annually.

Most legal entities have to file a financial report (*beszámoló* in Hungarian) detailing their activities annually for the public. Relying on the annual financial report (*beszámoló* in Hungarian), the court having competence for the registration of public-benefit status shall

verify compliance with the requirements set out in the Civil Act each time the annual financial report is deposited.

If the requirements set out in Sec. 32 of the Civil Act are not satisfied, the court shall revoke the organization's public-benefit status and shall strike the relevant data (public-benefit status) from the register. (In such a case, a foundation would still be registered as a foundation but loses its Registered NPO status) [Sec. 30 and 32 (6) of the Civil Act].

2.1.7. Is any specific legal form required for the Belgian NPO?

We understand that with Question 2.1.7. you would like to know whether in Hungary any specific legal form is required for an NPO to become a Recognised NPO.

Registered NPO status could be granted in accordance with the conditions explained in our answer for Question 2.1.2.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

(a) Tax benefits provided by the CIT Act

The CIT Act provides:

- "*donation*": shall mean financial support or grant provided in the form of assets without consideration or compensation at the asset's book value, or the cost of services provided free of charge, to Recognised NPOs for supporting their activities defined by law and, furthermore, to ecclesiastical legal entities to support the activities defined by law, as well as for the purposes of public commitments (including the support of voluntary mutual insurance funds), provided that – above and beyond what is provided for in this Act – such donation does not result in any financial advantage for the donor, its members (shareholders), its executive officers, any member of its board of directors or board of supervisors, its auditor, or close relatives of such persons or natural person members (shareholders), with the proviso that any reference made to the name or to the activities of the donor shall not be regarded as financial advantage;
- therefore, only Recognised NPOs can receive 'donation' [as defined by the CIT Act];
- tax benefits of the donor:
 - o the donor's pre-tax profit shall not be increased by the amount of support (money, equipment, services) provided as a 'donation', accounted for as expenditure for the tax year, if the taxpayer has a certificate issued by the Recognised NPO for the purpose of determining the tax base;
 - o the tax base reduction item can be enforced on the other hand up to 20% of the value of the donation provided as support for a public benefit activity in the case of support of a public benefit organization, or up to 40% in the case of a

permanent (long-term) donation contract, but together no more than the amount of the pre-tax profit.

[Sec. 4.1/a, Sec. 7(1)z), Annex 3.B/17 of the CIT Act]

(b) 1% donations

The PIT Act provides that:

- all natural persons paying personal income tax can donate the 1% of their annual personal income tax to Recognised NPOs (and also 1% of their annual personal income tax to a registered church) [Sec. 45 of PIT Act and Sec. 4-4/A of Act CXXXVI of 1996].

(c) Tax exempt contributions according to the PIT Act

The following public service contributions shall be tax-exempt according to Annex 1 Chapter 3 of the PIT Act:

- 3.1. amounts paid to private individuals by non-profit companies and public foundations in accordance with the objectives laid down in the charter, disbursed for studies pursued in educational institutions, research, foreign study trips (as scholarships), as well as amounts paid as social aid to indigent persons, and such amounts paid to the participants of students' or other leisure/recreation sports, not exceeding HUF 500 [cca. EUR 1,2] per occasion;
- 3.2. payments received by a private individual:
 - o 3.2.1. as Olympic benefits pursuant to the Act on Sports;
 - o 3.2.2. under the Act on Sports in the form of Gerevich Aladár athletic scholarships, in the form of aid provided under social considerations to retired athletes winning any medals in Olympic games and in world championship events, including their widows, as well as to retired experts participating in extraordinary achievements in any sports, furthermore, material support provided to private individuals in the form of a bonus defined by an act, government decree or ministerial decree on the recognition of sports achievements, or on the basis of government decision;
 - o 3.2.3. to the debit of the special allotment determined in the budget act, based on the Act on the Use of a Specified Amount of Personal Income Tax in accordance with the Taxpayer's Instruction;
 - o 3.2.4. to the debit of funds disbursed on the basis of obligations of Hungary stemming from an international agreement, such funds originating from international aid and verified with the relevant registration;
 - o 3.2.5. from a foundation, public foundation or association that is not involved in any profit-oriented activities - in accordance with the objectives laid down in their statutes - before 23 October 1989, where this person was persecuted on political grounds;
 - o 3.2.6. for studies pursued in educational institutions, research, foreign study trips (as scholarships), as well as amounts paid as social aid to persons with special social needs, and payments made to the participants of students' or other

- leisure/recreation sports in the form of maintenance grant, not exceeding HUF 500 [cca. EUR 1,2] per occasion;
- 3.2.6.1. by the ministry of the minister appointed to enforce social convergence directly, or indirectly through the budgetary agency, foundation, public foundation or State-owned non-profit business association delegated by the minister responsible for the promotion of equal opportunities to supervise the Fund Manager; or
 - 3.2.6.2. by public-benefit non-profit business associations taking over the functions of foundations and public foundations which are being terminated by decision of the Government in accordance with Act LXV of 2006 on the Amendment of Act XXXVIII of 1992 on Public Finances and Other Related Acts, within the framework of the assumed responsibilities.
- 3.3. revenues acquired in kind by a private individual from charitable donations, from public commitment, from a public benefit association, foundation or public foundation, and designated in accordance with the objectives laid down in the statutes, moreover, in connection with benefits provided by an employee representation group - by means other than money - to a private individual from the value of such benefits (other than the benefits treated as non-wage benefits in accordance with this Act), if the benefits are provided in money - on a monthly basis up to 50% of the prevailing minimum wage [for details, see below], furthermore, any prize established before 1 January 2008 and awarded upon public nomination in a public ceremony to private persons who distinguished themselves and excelled in the fields of Hungarian culture, sciences, art and sports (including the Bethlen Gábor Award received from the Bethlen Gábor Foundation);
 - 3.4. the following payments (benefits) shall not be tax-exempt in neither of the cases described in Points 3.1. - 3.3.:
 - those addressed to the founder, sponsor or patron, with the exception of income acquired in the form of goods and/or services provided upon doctor's orders in connection with any disability or medical treatment;
 - those provided to a private individual engaged under an employment relationship, other work-related relationship, or other contractual relationship covered by the Civil Code with the payer, where the payment (benefit) is due to the private individual:
 - based on quantitative and/or qualitative characteristics of his activities;
 - in consideration of goods and/or services supplied;
 - in consideration for acquiring a right, for the transfer (assignment) or termination of a right.
 - 3.5. any valuable consideration provided directly to private individuals in the form of pledges, grants and endowments made in the public interest by the current or former President of the Republic, the Speaker of the Parliament from their special appropriations;
 - 3.6. any payment of allowances, other than remuneration for activities, received by a private individual from a foundation or public foundation not involved in any profit-oriented activities, in accordance with the objectives laid down in their statutes, if the foundation or public foundation:

- is established under specific other act, for the purpose defined by specific other act; or
 - received any aid under the act on the central budget.
- 3.7. any benefit, other than remuneration in consideration for an activity, provided to a private individual according to the Act on the Erzsébet Program from funds allocated for the Erzsébet Program;
 - 3.8. the following established by the President of the Republic:
 - benefits provided within the framework of a scholarship and assistance program by a foundation advocating climate protection objectives, publicly announced for achieving such objective, under the conditions announced;
 - donations given by a foundation set up to provide support to family members of victims of the COVID-19 pandemic, provided for achieving the objectives of the foundation;
 - benefits provided within the framework of a scholarship and assistance program by a foundation defined in Sec. 32/A of the Civil Act advocating climate protection objectives, publicly announced for achieving such objective, under the conditions announced.
 - 3.9. amounts paid to private individuals as scholarship by a public-benefit trust carrying out public service functions in connection with discharging its public function.

(d) Entertainment and gifts

If the payer is an association, public body, ecclesiastical entity or a foundation (including public foundations), from the income determined in connection with the value of entertainment costs and promotional gifts whose individual value does not exceed 25% of the prevailing minimum wage, the part that exceeds 10% of all expenses claimed for the tax year in connection with public services or the designated activities, as shown in the annual account for the tax year, or that does not exceed 10% of the total revenues claimed for the tax year shall be tax exempt.

'Entertainment' ('reprezentáció' in Hungarian):

Shall mean hospitality (food and beverages) provided during a business, official, trade, diplomatic or religious event in connection with the activities of the provider or during state and church festivities, and associated services (travel, accommodation, programs etc.) provided in connection with the event, however, the above definition shall not apply where there is any evidence - direct or circumstantial - found in the documents and circumstances pertaining to the services given (arrangements, advertising, marketing, route, destination, place and date of stay, ratio of actual trade or religious program in recreational programs etc.) to suggest any violation of the principle of enforcing the intents and purposes of the law.

'Promotional gift' ('üzleti ajándék' in Hungarian):

Shall mean gifts given in connection with the provider's activities within business, official, trade, diplomatic or religious circles (gratuitous or preferential goods or services, and certificates denominated exclusively for this purpose) [Sec. 3.26-27, 70 (5) of PIT Act].

'Minimum wage' ('*minimálbér*' in Hungarian):

HUF 232.000 [cca. EUR 600] per month in a full-time employment (40 hours per week) [Government Decree 573/2022 (XII.13)].

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes. In general, donating to a Recognised NPO and receiving donation as a Recognised NPO is granted more or higher-level tax benefits. For details, *cf.* 2.2.1.

2.2.3. Which persons are eligible for tax advantages?

Both natural persons and legal persons are eligible.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

In Hungary taxes could be levied on the national level by the Hungarian State or by local level by the municipalities.

(a) National taxes

The CIT Act provides that:

- the following persons shall be exempt from corporate income tax liability:
 - o foundations, public foundations, associations - other than national interest representation organizations - and public bodies not qualifying as public-benefit organizations, as well as housing cooperatives, if the revenue realized from their business operations is not more than HUF 10 million [cca. EUR 26,000], and do not exceed 10% of total revenues realized in the tax year;
 - o also, Recognised NPOs must not pay corporate income tax if the income of business operations is not more than 15% of the total revenue and if the income of such activities exceeds the 15%, only a beneficial ratio of the donations received will increase the tax base.
- as a tax incentive every public-benefit organisation can reduce its pre-tax profit by 20%.

[Sec. 9(2)b) +(3) +(7), 20 (1)a) of the CIT Act]

The VAT Act provides that:

- individual exemption ('*alanyi adómentesség*' in Hungarian) is available if the value of all supplies of goods and services that the taxable person provides for

consideration, due or paid in any given year is below the upper limit of HUF 12 million [cca. EUR 31,000]:

- in the calendar year preceding the current calendar year;
- in the current calendar as it may be reasonably expected.

Only the business income counts into the HUF 12 million limit [Sec. 188. of the VAT Act].

Furthermore, the VAT Act provides certain activities are tax exempt, e.g.,

- hospital and medical care and closely related activities undertaken by public service bodies or, under social conditions comparable with those applicable to public service bodies, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature;
- the supply of services - other than catering if the consideration payable is to be provided separately - and of goods closely linked to welfare and social security work, by public service bodies, acting as such;
- the supply of services - other than catering if the consideration payable is to be provided separately - and of goods closely linked to the protection of children and young people by public service bodies, acting as such;
- the supply of services - other than catering if the consideration payable is to be provided separately - and of goods closely linked to nursery care by public service bodies, acting as such;
- the provision of children's or young people's education, kindergarten, school or university education other than catering [further conditions apply];
- the supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making persons or organizations - registered by the court or admitted to other registers of the authorities - operating under bylaws or a charter document;
- the supply of certain cultural services relating to the arrangement and organization of exhibitions, fairs and shows of folk art or hand-crafted articles, and the supply of goods closely linked thereto, by public service bodies or persons or organizations holding a certificate of folk art and design, acting as such, meaning unique or limited-edition folk art or hand-crafted articles approved and numbered by a panel of experts and produced without the use of any industrial technology;
- the leasing or letting of immovable property or part thereof.

[Sec. 85-87/A. of the VAT Act]

Note that for the purposes of the above 'public service bodies' shall mean (among others):

- associations, alliances, civil companies, public bodies, national athletic associations with respect to their activities indicated in the bylaws (charter document, articles of association), including the facilities they operate (maintain) to the extent of the activities indicated in the bylaws (charter document);
- foundations and public foundations to the extent of the activities indicated in their bylaws (charter document), and the institutions they operate (maintain) to the extent of the activities indicated in the institutions' bylaws (charter document);
- public-benefit organizations and non-profit business association to the extent of the activities indicated in their bylaws (charter document);

- civil society organizations registered as public-benefit organizations according to the Civil Act to the extent of the activities in the public interest indicated in their bylaws (charter document).

[Sec. 85 (4) of the VAT Act]

(b) Local taxes

Exempt from all local taxes are the associations, foundations, public service organizations, public bodies, voluntary mutual insurance funds, private pension funds and – only with regard to local business tax – non-profit economic organizations that qualify as public benefit organizations company.

The exemption above applies to the taxable person in the tax year in which it did not have to pay taxes either at home or abroad for the income (profit) from his activities in the preceding tax year. Regarding building and land tax, the exemption applies to buildings, parts of buildings, and plots of land, which are registered in the real estate register as the owner or as the beneficiary of a right of property value existing on property owned by the Hungarian state, solely for the purpose of carrying out the core activity or main activity specified in the founding deed. use. The taxpayer must declare the existence of the conditions in writing to the tax authorities by the last day of the fifth month of the tax year. The declaration is considered a tax return and data declaration.

Foreign individuals and organizations are also subject to taxation, provided that their tax exemption is not guaranteed by an international treaty or reciprocity. In the matter of reciprocity, the minister responsible for tax policy is decisive [Sec. 3 (2)-(4) of the LT Act].

(c) Duties

The following shall be granted full exemption from duties (among others):

- associations, public bodies;
- legal entities of the church;
- foundations, including public foundations, and the public-benefit trusts carrying out public service functions and the higher education institutions they operate;
- non-profit business associations registered as public-benefit and priority public-benefit organizations, public-benefit social cooperatives.

A 'foundation':

Shall mean a public-benefit foundation provided for in the Civil Act, and any foundation registered in another EEA Member State, if able to verify its compliance with the conditions laid down in the Civil Act for public-benefit status, not including registration in Hungary; furthermore, in the year of foundation and in the next two years, a newly established foundation that agrees to meet such conditions by the end of the second year after the year of foundation.

Furthermore, gifts provided to public-benefit organizations for the purposes of public service activities shall be exempt from gift duty [Sec. 5 (1), Sec. 102 (1)u-v), and Sec. 17 (1)i) of the Duties Act].

Formalities:

Funds, public foundations, associations, public bodies, ecclesiastical legal entities, housing cooperatives, voluntary mutual insurance funds, institutions of higher learning registered as public-benefit organizations, European groupings of territorial cooperation and institutions for occupational retirement provision shall file - on a form in lieu of tax return - a formal statement by 31 May of the year following the tax year, if they did not produce any revenues from business operations (activities auxiliary to business operations in respect of voluntary mutual insurance funds) during the tax year or if they claim no costs and expenses in connection with such activities and business operations, furthermore, taxpayers qualifying as ecclesiastical legal entities on the last day of the tax year, if not engaged in business operations [Sec. 5 (8a) of the CIT].

In connection with any donation or aid provided by a non-resident [not Hungarian resident] donor, if the beneficiary is either of the persons or organizations listed under Sec. 85.(4) [see the list above] of the VAT Act, as verified, the state tax authority shall - upon the beneficiary's request made in writing - refund the amount of VAT charged in connection with the supply of goods and/or services and paid as part of the price, or the amount of VAT that was declared payable by the beneficiary, provided that:

- the beneficiary to whom the goods and/or services were supplied is engaged in activities, shown in the beneficiary's articles of association (charter document), which are recognized as performed in the public interest according to the Civil Act, furthermore, if the beneficiary is an ecclesiastical legal entity that satisfies the requirements laid down in specific other legislation to support the activities described therein;
- the donor accounted the amount of donation in accordance with the tax laws of the country where registered for VAT purposes;
- the donor renders use of the donation conditional upon granting exemption for the beneficiary from the payment of VAT incorporated in the price (cost) of goods and/or services;
- the VAT would not be wholly or partly deductible by the beneficiary;
- the right to claim VAT refund shall be available to the beneficiary in the same percentage as the amount of the donation represents in the costs of carrying out the activities specified in point a) above.

[Sec. 257/A of the VAT Act]

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Legal conditions:

Donations can take many forms (cash, kind, etc.) and different tax advantages are attached to them. For example, if someone donates the same amount of money as single payment

(Option A) or via a long-term donation contract (Option B) that person receives different level of tax advantages: 20 (Option A) or 40 (Option B) % reduction of their taxbase. For details *cf.* 2.2.1.

Restrictions:

There are restrictions on the freedom of the testator: the law provides rules for situations where someone dies without a last will and according to these rules' protection is in place for the heirs (compulsory share or '*kötelesrész*' in Hungarian) that could not be overridden by the testators in their wills. The heirs are entitled to the one third of the amount as compulsory share that would be designated to them by law in absence of a will.

The basis of a compulsory share of inheritance is the net value of an estate, and the net value, at the time of advancement, of the advancement granted by the testator *inter vivos*, including the value of assets entrusted to a fiduciary under fiduciary asset management ('*advancement*').

The following shall not pertain to the basis of a compulsory share of inheritance:

- the values of advancements granted by the testator to anybody more than ten years prior to his death;
- the value of advancements granted by the testator before the creation of a relationship conveying entitlement to a compulsory share of inheritance;
- the value of advancements not exceeding the common value;
- the value of maintenance given to a spouse or domestic partner and descendants;
- the value of maintenance provided without consideration to other persons in need up to the extent necessary for subsistence.

Advancements the inclusion of which has been cancelled by the testator shall not be added to the basis of a beneficiary's own compulsory share [Sec. 7:75-82 of the Civil Code].

Tasks in exchange:

Yes. The testators ('*örökös*' in Hungarian) (donors) have multiple options to formulate their will and prescribe obligations to the NPOs:

- via an agreement ('*öröklési szerződés*' in Hungarian): An agreement as to succession means an agreement where the testator names the other party to the agreement his/her heir in exchange for maintenance, annuity or care to be provided to the testator him/herself or to a third person specified in the agreement for his entire estate or a specific part thereof, or in respect of certain property, and the other party undertakes the commitment to provide said maintenance, annuity or care [Sec. 7:48 (1) of the Civil Code];
- via a devise ('*meghagyás*' in Hungarian) in its testament: If the testator has burdened a person who receives a part of the estate with an obligation to be performed for the benefit of a third person, the person named in the will shall become entitled to the claim. Performance of a devise for which the will contains no instructions whatsoever may be demanded by the executor of the will and by any other person who receives a part of the estate. Performance of a public interest devise may be demanded by the

competent authority as well. In case of doubt, a devise shall burden the heir. Where there is reason to believe that the testator wished to make a bequest pending discharge of a devise, the person burdened with the devise shall be required to forfeit the bequest according to the provisions on unjust enrichment if he fails to discharge the devise or if discharging the devise becomes impossible for reasons within his control. Forfeiture of the bequest may be demanded by the executor of the will and by any other person who receives a part of the estate. The value of the forfeited property shall be allocated to discharging the devise [Sec. 7:33. of the Civil Code].

As a general rule, any condition in a testament that is manifestly in contradiction to good morals, unintelligible, impossible, or contradictory shall be invalid. The invalidity of a condition shall not affect the validity of a testamentary disposition unless it can be established that the testator would not have made the disposition without the condition [Sec. 7:38 (1) of the Civil Code].

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

No such tax advantage is provided by the Hungarian law for the testator.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

While the taxpayers (testators) who name an NPO as beneficiary of their will are not eligible for tax advantages, the named NPOs could be eligible for tax advantages on receiving the donations.

The following shall be granted full exemption from duties (among others):

- associations, public bodies;
- legal entities of the church;
- foundations, including public foundations, and the public-benefit trusts carrying out public service functions and the higher education institutions they operate;
- non-profit business associations registered as public-benefit, priority public-benefit organizations and public-benefit social cooperatives.

A 'foundation':

Shall mean a public-benefit foundation provided for in the Civil Act, and any foundation registered in another EEA Member State, if able to verify its compliance with the conditions laid down in the Civil Act for public-benefit status, not including registration in Hungary.

Furthermore, in the year of foundation and in the next two years, a newly established foundation that agrees to meet such conditions by the end of the second year after the year of foundation [Sec. 5 (1) and Sec. 102 (1)u-v) of the Duties Act].

2.3.3. Does it make a difference whether an NPO is recognised or not?

Based on their legal form, yes.

E.g., on the one hand regarding foundations their recognition as a Recognised NPO [the NPO qualify as and is recognised with public-benefit status ('közhasznú jogállású szervezet' in Hungarian)] is a legal requirement for full duty exemptions, while on the other hand associations (founded based on the Civil Code) do not need such recognition for duty benefits [Sec. 5 (1) and Sec. 102 (1)u-v) of the Duties Act].

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Cf. 2.3.1. and 2.3.2.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Full exemption from duties and exemption from duties. (Furthermore, gifts provided to public-benefit organizations for the purposes of public service activities shall be exempt from gift duty) [Sec. 5 (1), Sec. 102 (1)u-v), and Sec. 17 (1)i) of the Duties Act].

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Legal conditions:

The duty exemptions are based on the law which grants full exemption for many types of the NPOs (see our answers above). Based on the rules in the Duties Act (full personal exemption) no further conditions (e.g., cash, real estate, etc.) apply.

Restrictions:

Restrictions regarding the compulsory share apply. For details, *cf.* 2.2.5. However, these restrictions do not affect the tax benefits granted by the Duties Act (but might have other conditions, *cf.* 2.2.5.).

In exchange:

Yes, the testators can ask for the performance of certain tasks. For details, *cf.* 2.2.5. However, these conditions do not affect the tax benefits granted by the Duties Act (but might have other conditions, *cf.* 2.2.5.).

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

The Hungarian legislation – as a general rule – provides benefits, advantages for certain types of legal entities (e.g., associations): (i) without providing any special definitions for

them and therefore relying on general Hungarian civil law terms which usually include that they are registered/seated in Hungary, (ii) and based on their recognised public-benefit status which is a Hungarian procedure and quality. Therefore – as a general rule – foreign entities are not entitled to these tax advantages.

However, on some instances the Hungarian law provides for ‘equal treatment’ of certain foreign (not Hungarian) entities: e.g., the Duties Act provides tax advantages for foundations and the foundation definition of this act includes any foundation registered in another EEA Member State, if able to verify its compliance with the conditions laid down in the Civil Act for public-benefit status, not including registration in Hungary. The LT Act contains a similar definition and provides its benefits to EEA seated foundations. The burden of proof lies with the taxpayer claiming the tax advantage.

Because of the above, the question has to be examined on a case-by-case basis [Sec. 5 (1) and Sec. 102 (1)u-v) of the Duties Act, LT Act Sec. 52.55].

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is not possible for EU or EEA based NPOs to receive an official recognition in Hungary that would grant them all and the same tax status and benefits that Hungarian NPOs have.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

While it is not possible for EU or EEA based NPOs to receive an official recognition in Hungary, such NPOs might be eligible for multiple tax benefits and advantages.

Regarding these tax benefits and advantages clarification information might be obtained from the NTCA. It is possible to ask for information (‘*tájékoztatás*’ in Hungarian) from the NTCA via their website ([link](#), both in Hungarian and English) or in person at one their customer service offices ([link](#)).

However please note that any answer provided by the NTCA as information does not have binding legal power it is only for information purposes.

Please also note that representation before the NTCA (e.g., via an attorney) is possible however quite cumbersome and slow. Therefore, it might be faster and easier in certain cases that the legal entity (e.g., a foundation) contacts the NTCA directly.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

No. What they do have to prove in case the Hungarian law provides tax benefits or advantages for foreign NPOs, is that they comply with the requirements of the Hungarian law, except the registration in Hungary.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No. Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

No such list is available since the registration of such foreign NPOs is not possible in Hungary.

4. CONCLUSION

Hungarian law does not provide for *per se* recognition of foundations or other legal entities, NPOs registered in other EU or EEA member states or third countries. However, such foreign entities are free to found and register a new, Hungarian legal entity such as a foundation.

The Hungarian legislation – as a general rule – provides benefits, advantages for certain types of legal entities (e.g., associations): (i) without providing any special definitions for them and therefore relying on general Hungarian civil law terms which usually include that they are seated in Hungary, (ii) and based on their recognised public-benefit status which is a Hungarian procedure and quality. Therefore – as a general rule – foreign entities are not entitled to these tax advantages.

That said, there are exceptional instances where foundations registered in other EEA member states that could be qualified as holding public-benefit (*‘közhasznú’* in Hungarian) status are eligible for certain benefits, e.g.: they are exempt from duties, and also from local taxes. In order to do so, the foundation has to be able to verify its compliance with the conditions laid down in the Civil Act for public-benefit status, not including registration in Hungary.

Regarding these tax benefits and advantages clarification information might be obtained from the NTCA. It is possible to ask for information (*‘tájékoztatás’* in Hungarian) from the NTCA via their website ([link](#), both in Hungarian and English) or in person at one their customer service offices ([link](#)). However please note that any answer provided by the NTCA as information does not have binding legal power it is only for information purposes.

5. ADDITIONAL CLARIFICATIONS

5.1. PLEASE CONFIRM WHETHER A TAX RULING PROCEDURE BE AVAILABLE TO RECEIVE A BINDING CONFIRMATION OF THE TAX ADVANTAGES FOR A FOREIGN NPO.

According to the Act on the Rules of Taxation [‘Taxation Act’, Sec. 164-173], a “conditional tax assessment” (‘feltételes adómegállapítás’ in Hungarian) could be requested by the taxpayer:

- Upon the taxpayer’s application, the minister in charge of taxation [as of today: Mr. Mihály Varga, the minister of finance] shall determine the taxpayer’s tax liability or lack thereof based on the detailed facts supplied by the taxpayer concerning the future transaction(s) or other transaction not recognised as a future transaction or type contract, in connection with any specific question or questions contained in the application relating to tax liability or lack thereof. Furthermore, upon the taxpayer's request, the taxpayer may be heard during the provisional tax assessment. [Gov. Decree 465/2017 (XII.28.), Sec. 106(3)]. In the application form the taxpayer has to declare that to the best of its knowledge, there is no inspection, official procedure or court procedure in its case containing the same facts as the requested conditional tax assessment [Gov. Decree 465/2017 (XII.28.), Sec. 103a)]. A future transaction is: a) contract or other legal transactions concluded after submitting an application for the establishment of an arm’s length price or a contract or other legal transactions concluded between the same parties after submitting an application for conditional tax assessment irrespective of its economic purpose; b) contract or other legal transactions based on which at the time of, or after submitting an application for conditional tax assessment, or for the establishment of an arm’s length price-permanent performance occurs, irrespective of the fact that the contract or other legal transaction was concluded before submitting the application [Taxation Act, Sec. 7.26.].
- The Act provides that in the case of a continuously performed transaction recognized as a future transaction, the minister responsible for taxation shall only assess tax liabilities, or the lack thereof regarding value added tax. And when the application is submitted, regarding transactions not recognized as a future transaction, conditional tax assessment may only be requested regarding corporate tax, personal income tax, small business tax and local business tax, and the application may only be submitted before the submission of the tax return regarding the tax type and tax assessment period concerned with the application, but no later than the time limit for the declaration of the given tax. If a failure to do so arises, a justification of absence petition shall not be available.
- The application for conditional tax assessment shall be submitted by way of electronic means. The application for conditional tax assessment is subject to a fee. The amount of the fee shall be 8 million forints (cca. 21.000 EUR) in other cases; 20 million forints (cca. 53.000 EUR), if the application is adjudged in an urgency procedure. [Taxation Act, Sec. 165(1)]. The time limit for adopting a decision on the application for a conditional tax assessment shall be ninety days, and it may only be extended once by sixty days. The taxpayer may request in the application to have his application processed in an urgency procedure, where the administrative time limit shall be sixty days, and it may only be extended once by thirty days. [Taxation Act, Sec. 166].

- A foreign resident may submit its application for a conditional tax assessment only through its Hungarian based (domestic) representative. [Gov. Decree 465/2017 (XII.28.), Sec. 102(3)].
- The minister's decision could be challenged in court [Taxation Act, Sec. 168].
- The binding force of the resolution passed in the conditional tax assessment procedure shall last until the last day of the 5. tax year following the issue of the resolution and may only be extended on one occasion for 2 years. Conditional tax assessment shall only be binding on the tax authority for the case in question and under unaltered conditions. In the event of any future changes in the legislation concerned with conditional tax assessment or any changes in international legal commitments or in the facts (content changes) as of the date of entry into force, or such changes taking effect, conditional tax assessment cannot be applied [Taxation Act, Sec. 170].

Based on the above, a foreign NPO has the option to request and receive a binding confirmation of the tax advantages from the minister of finance. However, because of the high fees and lengthy procedure we advise to contact the ministry informally in advance regarding the application forms and technicalities of the application in order to prepare a smooth application process. Still, even if the minister confirms any tax advantages the confirmation is valid only till the facts and the relevant legal provisions do not change and the Hungarian tax law tends to change irregularly and frequently.

5.2. DOES A FOREIGN NPO NEED TO BE ACTING IN THE PUBLIC BENEFIT OF HUNGARY OR CAN THIS ALSO BE THE PUBLIC BENEFIT OF AN EU COUNTRY?

According to the Civil Act [Sec. 2.20], an activity shall be considered for the public benefit if it is serving - directly or indirectly - the fulfillment of public functions specified in the instrument of constitution of an organisation, with a view to facilitating the common interests of society and of the individual.

The above definition does not use the term 'country' or 'Hungary' and it is not based on statehood but concentrates on society as such and the individuals. Therefore, one could argue that benefits (interests) of an EU member state's society/individuals other than Hungary might not be excluded from the definition above specially since non-Hungarian citizens happening to be in Hungary might be considered as 'individuals' in the meaning of the Civil Act and this reasoning resonates well with general EU law principles.

However, since the Civil Act (and the Civil Code to which the Civil Act refers in many questions related to NPOs) is a Hungarian norm and its territorial scope is Hungary, it is our position that at least an indirect but clear benefit of the Hungarian society/individuals is required as a result of the activities of a foreign NPO in order to claim that its activities shall be considered as with public benefit in the meaning of the Civil Act.

IRELAND¹⁸⁴

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

In the Republic of Ireland (“Ireland”) there exists two types of philanthropical organisation: charities (“Charities”) and not for profit organisations (“NPOs”). Whether an organisation is a Charity or not is a matter of fact under the Charities Act, 2009 (the “Act”). The two relevant authorities in respect of charities are the Charities Regulatory Authority (“CRA”) and the Revenue Commissioners. As such, where an organisation is established with a “charitable purpose” and meets the definition of a “charitable organisation” within the meaning of the Act it is required to register with the CRA where it intends to operate or carry out activities in the State.¹⁸⁵ A registered charity is also entitled to certain tax reliefs and exemptions.

“Charitable purpose” for the purposes of Irish law means the prevention of relief of poverty or economic hardship; the advancement of education; the advancement of religion; or any other purpose that is of benefit to the community – this last purpose contains a number of sub-categories. A purpose is not charitable unless it is of public benefit.

NPO: NPOs that do not come within the definition of a “charitable organisation” do not qualify for tax exemptions or tax relief available to Charities. However, there may be other tax exemptions that can be claimed depending on the nature of the NPO e.g., exemption for certain bodies promoting human rights (s.209 Taxes Consolidation Act (“TCA”) 1997 as amended) or established to promote athletics or amateur sports or games (s.235 TCA 1997). In Ireland, there is no separate legal concept of an NPO. They are often structured as a social enterprise which is an enterprise whose objective is to achieve a social, society or environmental impact, rather than with a view to maximising profits for its shareholders and any profits are reinvested into achieving its social objectives. There is no organizational form specifically designed for NPOs in Ireland, however the Company Limited by Guarantee (CLG) is the most common form currently used. All Charities are non-profits but not all non-profits meet the definition of a charity as laid out in the Act. The most common non-profit entities that fail to meet the definition of a charity include political parties, sporting organisations, trade unions and social enterprises.

The current legal and tax framework for philanthropy and its tax advantages:

- **Registration:** As set out above, there is no recognition process or universal tax advantages for NPOs in Ireland. For Charities, the recognition process involves making an application to the CRA via their online portal. Details of this can be found at <https://www.charitiesregulator.ie/en/information-for-charities/registering-a-charity#:~:text=To%20be%20a%20charity%2C%20an,non%2Dfor%2Dprofit%20basis.> There are also guidelines available to charitable entities wishing to register available [here](#);

¹⁸⁴ Answers provided by Arthur Cox (Dublin).

¹⁸⁵ Charities Act 2009, Sec. 39(3).

- **Tax advantages for Charities:** A registered Charity is exempt from a number of taxes under the Taxes Consolidation Act, 1997 (as amended) including: Income Tax, Corporation Tax, Capital Gains Tax, Deposit Interest Retention Tax and Professional Services Withholding Tax. There are also exemptions from Capital Acquisitions Tax (inheritance tax and gift tax) under the Capital Acquisitions Tax Consolidation Act, 2003 and Stamp Duty under the Stamp Duties Consolidation Act, 1999. In certain circumstances Dividend Withholding Tax does not have to be deducted from distributions to charities and residential properties of certain charitable trusts may be exempt from Local Property Tax. There is no general VAT exemption for Charities, but some VAT reliefs may apply. Finally, Charities that are employers must pay employment related taxes in respect of their employees and are treated in the same manner as any other employer. Foreign Charities registered with the CRA can also apply to the Revenue Commissioners for exemption from Income Tax and to become an “*approved body*” (cf. 2.).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Charities: Where a donation is made to a Charity that is recognised as an “*approved body*” (discussed below) by the Revenue Commissioners, there are tax advantages to the organisation itself in respect of donations by individual taxpayers. In respect of corporate taxpayers, the corporate donor can claim a deduction for the donation as if it were a trading expense. Where the donor is an individual, the charity can recoup tax at a specified rate on the donation (subject to certain restrictions). The tax relief applies in respect of personal or corporate donations above EUR 250 per annum.

An “*approved body*” is a charity that has held a charitable tax exemption for two or more years and has registered to become an approved body in accordance with the requirements set out on the Revenue Commissioner’s website (which can be found [here](#)).

NPO: There are generally no tax advantages to individual taxpayers or to corporates in respect to donations and bequests to NPOs that are not Charities, save in the case of donations to bodies that promote athletics or amateur sports or games.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

NPOs that fall within the definition of “*charitable organisation*” in the Act and are registered as a Charity (with both the CRA and the Revenue Commissioners) can benefit from tax advantages. Certain sports bodies that are not Charities can benefit from limited tax exemptions.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

If the objects of an NPO fall within the requirements of the Act, they must register with the CRA and the Revenue Commissioners. The registration requirements with the CRA are the same for domestic and non-domestic Charities— *cf.* 1.

In respect of non-domestic organisations, the Revenue Commissioners will require the entity to meet the same tests for charitable exemption as for a domestic applicant charity, with the exception of the establishment requirement. The core elements that the Revenue Commissioners will focus upon in the comparability test are that the charity pursues a purpose which is of public benefit exclusively (and not a small proportion of beneficiaries); and that in the event of dissolution, the remaining assets must be used for the public benefit. The remuneration of board members is generally not permitted although expenses may be reimbursed, and the administration costs must be reasonable. Finally, it is the practice of the Revenue Commissioners to stipulate that if a charity wishes to accumulate funds for more than two years, the charity must first obtain their permission to do so.

NPO: There are no recognition requirements for NPOs that are not Charities.

2.1.3. What does the recognition process look like?

The registration process with the CRA requires each organisation to provide information about itself, where it operates and what kind of activities it carries out. It must also provide details of its trustees. In the case of an incorporated body this will be the directors of the company or officers. It is important to note that certain duties apply to trustees under the Charities Act 2009. An organisation must also provide details of its income and fundraising activities including details of its bank accounts; the manner in which it raises/ proposes to raise money; the amount of money it raised in the year prior to its registration; details of all professional fundraising agents and consultants engaged by the organisation; gross income for the preceding financial year and financial accounts; details of its risk assessment procedures, safety checks and safeguards employed where its activities include working with vulnerable people (including older people, children and young people, sick people and people with disabilities); and a copy of the organisation's governing documents or constitution (if incorporated).

The CRA operates a three-step process regarding applications for registration: an online application on the Authority's website; a documentation review and assessment by a CRA case officer; and finally, consideration of the completed application. If the application is approved the organisation will be notified and granted a "*Registered Charity Number*" and added to the Register of Charities. If the CRA is considering refusing an application it will notify the organisation in writing, setting out the reasons. The organisation will have a right of reply before a final decision is made. If an application is refused, the organisation can appeal to the Charity Appeals Tribunal within 21 days of receiving the notification for refusal.

Obtaining the tax exemption:

Once the organisation is registered with the CRA it must separately apply to the Revenue Commissioners to obtain a Charitable Tax Exemption (CHY) Number.

The process involves the completion of one of three forms, depending on the legal structure of the entity, on the Revenue Online Service (ROS) in order to register for tax. Following that, an entity can apply to the Revenue Commissioners for a CHY number and the following information must be provided: the latest set of financial accounts; a statement of the charity's activities and plans and a copy of the charity's constitution which has been approved by the CRA. Once a Charity holds a CHY number for two or more years an entity can apply to be an approved body (*cf.* 2.).

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There is no recognition process in relation to NPOs. In relation to Charities, the CRA and the Revenue Commissioners do not currently charge organisations a fee for registration. However, it is possible that this may change in the future insofar as the CRA is concerned. There would likely be associated adviser fees with any registration process.

2.1.5. What is the timeframe for the recognition process to be completed?

For recognition as a Charity, the timeframe varies and will depend on whether the CRA raises any queries on the application and how detailed those queries are. However, in practice the application process time in recent years is between 9 and 12 months.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Recognition with the CRA and Revenue Commissioners is not time limited and does not require renewal, although there are annual reporting requirements. The CRA has the power to remove a Charity from the register of charities where the body breaches the Act. The Revenue Commissioners reserve the right to withdraw the benefit of tax exemptions retrospectively where the conditions specified in the relevant legislation or by them are not complied with. In the event of this occurring, a charge to tax may arise. A Charity must hold a CHY number (designating its entitlement to charitable tax exemptions) for two years before an application to become an approved body can be made (*cf.* 2.). Approved body status is granted for up to 5 years, after which the Charity must then re-apply for approved body status.

2.1.7. Is any specific legal form required for the Belgian NPO?

For domestic Charities the legal form can include a trust, a company limited by guarantee (corporate structure not having a share capital) and an unincorporated association. There is no specific legal form required for a Belgian Charity. However, in order to secure tax exemptions in Ireland, the entity must be carrying on substantial activities in Ireland or be established in the UK; a State in the European Economic Area (EEA) or a Member State of the European Free Trade Association (EFTA). A majority of the trustees or directors must be resident within the EU /EEA/ EFTA and the charity's objects must conform to the definition of charitable purposes under Irish law. Its governing documentation must require the charity to apply its income and/or property for purposes that would be regarded as exclusively charitable under Irish law (*cf.* 1.2.).

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Where a Charity is an “*approved body*”:

- individual donors do not obtain a tax advantage when donating to a charity. Rather, the “*approved body*” can obtain tax relief in respect of the donation, under Sec. 848A TCA. A donation which satisfies the conditions of Sec. 848A is grossed up at a specified rate (currently 31%) and the Charity is deemed to have received the grossed-up amount net of tax deducted at the specified rate. It can reclaim that tax, capped at the amount of tax actually paid by the donor in the year. The minimum donation to qualify for relief is EUR 250. There is a maximum qualifying donation by an individual in a year of assessment of EUR 1 million;
- where a company makes a donation to an “*approved body*” it can claim a deduction for the donation as if the donation was a trading expense or an expense of management for the accounting period in which it is paid;
- **NPO:** There are no tax advantages associated with a donation to a NPO that is not a Charity.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, the Charity must be an “*eligible charity*” under the TCA i.e., a Charity registered with the CRA and holding charitable tax-exempt status with Revenue. It then can apply for registration as an “*approved body*”.

2.2.3. Which persons are eligible for tax advantages?

The Charity itself can obtain tax advantages/relief in respect of donations by private individuals. Where a donation is made by a company, the company can claim a deduction on the donation as if it was a trading expense or expense of management for the accounting period in which it is paid.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Details of the tax advantages are set out above. There are no regional, provincial, or cantonal differences in Ireland other than to note that Northern Ireland is a separate jurisdiction within the United Kingdom. The tax exemptions described in this questionnaire relate solely to Ireland.

Charities must file specified returns and repayment claims to obtain refunds of tax on donations made by individuals, including authorisation certificates from the individual donors concerned.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In order to obtain benefit from being an approved body, donation must be in the form of money or designated securities (or a combination of both) and for the purposes of obtaining tax relief must exceed EUR 250 in respect of an individual donor. There is a maximum qualifying donation by an individual in a year of assessment of EUR 1 million.

The donation must not confer any benefit directly or indirectly on the donor or any person connected with him or it will not be an eligible donation for the purposes of the charity donation scheme under s. 848A TCA. Thus, a charity could not claim a tax refund in respect of a donation made by a donor in exchange for the charity providing care to a third party, such as a disabled child.

However, a donor can attach conditions to a donation where it is not linked to securing a private benefit. For example, a donor could donate to a university on condition that the funds are spent on providing facilities in its law school. These types of donations are often referred to as restricted funds and are generally accounted for separately in a Charity's accounts. The tasks would need to fall within the Charity's objects (or not conflict with them) and should not be designed to confer any benefit directly or indirectly on the donor or any person connected with him.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Bequests may be made to Charities either in cash form or in the form of a transfer of property to the Charity. No Capital Gains Tax (CGT) arises on a bequest of any nature as no CGT arises on property passing on a death. Charities in receipt of gifts or bequests are not generally subject to any taxation themselves on receipt of the funds. As noted at 1.4(b) above, the Charity, which is the intended beneficiary of the bequest, benefits by receiving the bequest free from Capital Acquisitions Tax liability (a tax on gifts and inheritance) provided that its charitable purposes are recognised as charitable under Irish law. This exemption can apply to foreign charities provided that their purposes are regarded as exclusively charitable under the law.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Charitable organisations, within the meaning of the Charities Act 2009 are entitled to receive bequests and avail of the exemption from paying Capital Acquisition Tax in respect of the receipt of the assets.

2.3.3. Does it make a difference whether an NPO is recognised or not?

The organisation need not be a registered charity in Ireland to avail of exemption from Irish gift or inheritance tax on gifts or bequests made to it.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

All charitable entities, however constituted, are eligible for exemption from inheritance tax. No tax deduction is generated for the estate of the deceased donor for any bequests provided in his Will.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

There are no regional, provincial, cantonal or other differences in Ireland.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In order for a bequest to be effective it must be made by means of a valid will. Bequests can take any form. There are no express restrictions on the amount that can be made by bequest to a Charity. However, where an individual dies testate (i.e., with a will) and they do not make proper provision for their surviving spouse or children, it is open to those individuals to challenge the will. A surviving spouse is entitled to a fixed share of a deceased spouse's estate. This is known as the legal right share. It is a right to one-third of the estate if the donor is survived by children, and to 50% of the estate if he is not survived by children. Children are not entitled to any fixed percentage share of a deceased parent's estate. However, they can invoke the discretion of the court to vary their deceased parent's Will in their favour if they satisfy the court that the deceased parent failed to make proper provision for the child in accordance with his means.

Testators can affix conditions to bequests and can require Charities to perform tasks in exchange for the bequests. Such tasks would need to fall within the Charity's objects (or not conflict with them).

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Foreign charities may avail of the same tax exemptions on bequests as Irish charities, provided their charitable purposes could be regarded as exclusively charitable under Irish law.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Foreign Charities must register with the CRA in order to operate in Ireland. In respect of charitable tax-exempt status, as noted above for income tax purposes the organisation can register for charitable tax-exempt status with Revenue. Foreign charities can then avail of the tax exemptions provided their purposes could be regarded as exclusively charitable under Irish law.

Non-resident charities established in an EEA/ EFTA State, or the UK can be authorised as an “*approved body*” for the purposes of the charity donation scheme provided that the requirements for an approved body are met (*cf.* 2.).

Foreign charities are not required to register in Ireland to avail of the inheritance or gift tax exemption.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Registration is possible in respect of bodies established in an EEA or EFTA state or the UK.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Charity: The same process is followed as in respect of domestic organisations. The fee for legal assistance on registration can vary depending on the complexity of the Charity and the level of involvement required from a legal perspective but would generally be in the region of EUR 10,000 (before VAT).

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

There is no specific legal form required for a foreign Charity nor does it have to demonstrate legal equivalence. However, in order to secure tax exemptions in Ireland, the entity must be carrying on substantial activities in Ireland or be established in the UK; a State in the European Economic Area (EEA) or a Member State of the European Free Trade Association (EFTA). A majority of the trustees or directors must be resident within the EU /EEA/ EFTA and the charity’s objects must conform to the definition of charitable purposes under Irish law. Its governing documentation must require the charity to apply its income and/or property for purposes that would be regarded as exclusively charitable under Irish law (*cf.* 1.2.).

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Not applicable.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

The Revenue Commissioners publish the following list in respect of foreign Charities that are registered as “*approved bodies*”: [Non-resident charities and approved bodies – Tax relief on donations \(revenue.ie\)](#).

4. CONCLUSION

Whether or not an entity is a Charity is a matter of fact in Irish law. Foreign organisations that meet the definition of a “*charitable organisation*” within the meaning of the Charities Act 2009 must register with the CRA and may qualify for the same tax advantages and exemptions as domestic charities once they are registered with the Revenue Commissioners. As noted above there are certain organisations that cannot be registered Charities including bodes that promote political aims.

In Ireland, there is no separate legal concept of an NPO. All Charities are non-profits but not all non-profits meet the definition of a charity as laid out in the Charities Act.

5. ADDITIONAL CLARIFICATIONS

5.1. SHOULD THE DOCUMENTS PROVIDED BY THE ORGANIZATION TO REGISTER AS AN APPROVED BODY BE IN ENGLISH?

The Charities Regulatory Authority (“CRA”) will require a copy of the governing document of the charity to be submitted in English as they will need to determine that it meets the relevant Irish law test in terms of charitable purposes. The registration guidelines do not specify that apostilled or certified copies of the document need to be submitted but we would not rule this out as a follow on request from the CRA.

5.2. WHAT SPECIFIC FORMAT SHOULD BE FOLLOWED FOR FILING RETURNS AND REPAYMENT CLAIMS FOR OBTAINING TAX REFUNDS ON DONATIONS

- <https://www.revenue.ie/en/companies-and-charities/documents/charities/chy4-annual-certificate.pdf>; or
- <https://www.revenue.ie/en/companies-and-charities/documents/charities/chy3-enduring-certificate.pdf>

5.3. COULD YOU SHORTLY SPECIFY THE VAT RELIEFS THAT MAY APPLY IN IRELAND?

The guidance on the VAT Compensation Scheme for Charities is found here: <https://www.revenue.ie/en/tax-professionals/tdm/value-added-tax/part12-refunds-and-repayments-of-tax/vat-compensation-scheme/vat-compensation-scheme-guidelines.pdf>

ITALY¹⁸⁶

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages is:

- The legal requirements for foundations, associations and committees (“NPO”):
 - o Art. from 14 to 42-bis of the Italian Civil Code (Royal Decree 16 March 1942, No. 262)^{187 188}.
- The legal requirements for third-sector entities (“ETS”):
 - o Legislative Decree 3 July 2017, No. 117, as amended from time to time, known as the code of third sector (“*CTS*”)¹⁸⁹.
- The recognition process and requirements of NPOs:
 - o Presidential Decree 10 February 2000, No. 361¹⁹⁰ providing for the procedures of recognition of private legal entities and establishing a register of legal entities (the “*Register of Legal Entities*”);
 - o for more detailed information on the recognition process of NPOs, please refer to the website of each Prefecture (*Prefettura*) in the following section: *Home page/Services to Citizens/How to/Legal Entities*; for example, with reference to the Prefecture of Rome see: https://www.prefettura.it/roma/contenuti/Persone_giuridiche-47474.htm; or, alternatively;
 - o Ministerial Decree 15 September 2020, No. 106 relating to the registration procedure of ETS in the third-sector register (“*RUNTS*”)¹⁹¹ and other Ministerial Decrees related to ETS¹⁹²;
 - o for more detailed information on the RUNTS registration procedure see <https://www.lavoro.gov.it/temi-e-priorita/terzo-settore-e-responsabilita-sociale-impres/focus-on/riforma-terzo-settore/pagine/registro-unico-nazionale-terzo-settore>.
- Tax advantages for donations:
 - o Art. 77, 78, 81, 82, 83 of CTS;

¹⁸⁶ Answers provided by Chiomenti (Milano).

¹⁸⁷ <https://www.gazzettaufficiale.it/dettaglio/codici/codiceCivile>.

¹⁸⁸ Special laws regulate certain types of foundation, such as (i) Law no. 218/1990, Law no. 461/1990, Legislative Decree no. 356/1990, Legislative Decree no. 153/1999 and Law no. 448/2001, for foundations of banking origin; (ii) Decree of the Ministry for Cultural Heritage and Cultural Activities of 27 November 2011, for cultural foundations; (iii) Law 388/2000 and Presidential Decree no. 254/2001, for university foundations; and (iv) Law no. 289/2002 and Law no. 398/1991 for non-professional sports associations and companies.

¹⁸⁹ <https://www.normattiva.it/urires/N2Ls?urn:nir:stato:decreto.legislativo:2017-07-03:117!vig=>,

¹⁹⁰ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:presidente.repubblica:decreto:2000-02-10:361>.

¹⁹¹ <https://www.gazzettaufficiale.it/eli/id/2020/10/21/20A05564/sg>.

¹⁹² <https://www.lavoro.gov.it/temi-e-priorita/terzo-settore-e-responsabilita-sociale-impres/focus-on/riforma-terzo-settore/pagine/codice-del-terzo-settore>.

- Art. 10, 15, 100 of the Italian Tax Consolidated Act, Presidential Decree no. 917/1986¹⁹³ (hereinafter “*ITCA*”);
 - Art. 10 of the Presidential Decree no. 633/1972¹⁹⁴;
 - Art. 1 of Decree-Law no. 83/2014¹⁹⁵, converted with amendments into Law no. 106/2014 (“*Art Bonus*”).
- Tax advantages for bequests:
- Art. 3 of the Legislative Decree no. 346/1990¹⁹⁶;
 - Art. 82 of the CTS.

Please consider that until authorisation by the European Commission, the provisions of the CTS only apply to voluntary organisations and social promotion associations enrolled to the RUNTS.

After that approval, the provisions of the CTS will also apply to all the ETS, regularly registered with RUNTS.

Pursuant to Art. 4 of the CTS, ETS are: voluntary organisations, associations for social promotion, philanthropic entities, social enterprises, including social cooperatives, associative networks, mutual-aid companies, associations (whether recognised or not), foundations and other specific private entities, registered with RUNTS.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers with respect to donations and bequests.

Donations to NPOs recognised under Presidential Decree 10 February 2000, no. 361 (“*Recognised NPOs*”) and ETS can grant the taxpayer a tax deduction (for individuals) or tax deduction and VAT exemption (for companies) as well as an exemption from inheritance and gift tax.

Bequests to Recognised NPOs and ETS can benefit from an exemption from inheritance and gift tax.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations made to:

¹⁹³ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:presidente.repubblica:decreto:1986-12-22:917>.

¹⁹⁴ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:presidente.repubblica:decreto:1972-10-26:633>.

¹⁹⁵ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2014-05-31:83!vig=>.

¹⁹⁶ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1990-10-31:346>.

- ETS, as provided by the Art. 77, 78, 81, 82, 83 of the CTS and Art. 1 of Decree-Law no. 83/2014, converted with amendments into Law no. 106/2014;
- Italian Recognised NPOs pursuant to Art. 10, 15, 100 of the ITCA and Art. 1 of Decree-Law no. 83/2014, converted with amendments into Law no. 106/2014;
- foreign entities that are considered equivalent to the Italian Recognised NPOs and ETS and enrolled in the RUNTS or in the Register of Legal Entities;
- an exemption from gift and inheritance tax is available for donations to foundations and associations established in the EEA, and subject to reciprocity, to public bodies, foundations and associations established worldwide.

Tax advantages are available for bequests made to:

- ETS pursuant to Art. 82 of the CTS;
- Italian Recognised NPOs pursuant to Art. 3 of the Legislative Decree no. 346/1990;
- foreign entities that are considered equivalent to the Italian Recognised NPOs and ETS and enrolled in the RUNTS or in the Register of Legal Entities;
- foundations and associations established in the EEA, and subject to reciprocity, to public bodies, foundations and associations established worldwide.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

The substantive requirements for NPOs to be recognised are:

- the fulfilment of all requirements set out by law or regulation for the establishment of the relevant NPO (i.e., the entity must be set up by public deed executed before a notary public or by will, comply with the relevant rules regarding the governance of the entity and the liquidation of the residual assets at the time of dissolution of the entity);
- the circumstance that the NPOs has a possible and lawful purpose;
- the suitability and adequacy of the assets in view of the purposes pursued by the entity;
- the constitution of an unavailable and restricted minimum fund of assets as a guarantee for third parties (the amount of which varies from case to case).

With reference to ETS, the substantive requirements to be enrolled in the RUNTS are:

- carry out one or more of the activities listed under Art. 5 CTS¹⁹⁷; other activities can only be carried out on a secondary and instrumental basis¹⁹⁸;
- no distribution, even indirectly, of profits and operating surpluses, funds and reserves¹⁹⁹;

¹⁹⁷ Which includes the carrying out one or more activities of general interest, exclusively or principally, for the pursuit, on a non-profit basis, of civic, solidarity and socially useful purposes listed in Art. 5 CTS. For example, activities relating to: (i) education, teaching and professional training; (ii) protection of the environment and natural resources; (iii) protection and enhancement of the cultural heritage and landscape; (iv) scientific research of particular social interest; (v) organization and management of cultural, artistic or recreational activities of social interest; (vi) organization and management of tourist activities of social, cultural or religious interest; (vii) promotion of the culture of legality, peace among peoples, non-violence and unarmed conflict; (viii) promotion and protection of human, civil, social and political rights.

¹⁹⁸ Art. 6 CTS.

¹⁹⁹ Art. 8 CTS.

- in case of extinction or dissolution of the ETS, devolution of residual assets to other ETS or, failing that, to the Italia Sociale Foundation²⁰⁰;
- compliance with the rules and requirements related to financial/social statements, accounting and mandatory entity books²⁰¹.

Moreover, with reference only to ETS foundations and associations:

- specific requirements for articles of associations and bylaws of ETS foundations and associations²⁰² to be executed before a Notary public;
- minimum assets required for ETS foundations not less than EUR 30,000 and minimum assets required for ETS associations not less than EUR 15,000²⁰³;
- specific governance and administration rules²⁰⁴; and
- controlling body and auditing system to be established in accordance with the relevant provisions²⁰⁵.

2.1.3. What does the recognition process look like?

The NPOs shall request the recognition by submitting a formal application to (i) the prefecture of the province in which the relevant NPO has its registered office (in case the activity of the NPO has to be carried out within the Republic of Italy), or (ii) a specific Region (in case the activity of the relevant NPO has to be carried out only within such Region and the NPO's social purposes fall within the matters of regional competence).

The NPOs must attach to the formal application the following documents: (i) copy of the articles of association and bylaws, executed by public deed before a Notary²⁰⁶; (ii) a report on the activities the relevant NPO intend to carry out; (iii) a report on the economic-financial situation of the relevant NPO; (iv) Italian tax code; and (v) list of members of each governing body.

The application can be submitted by hand delivery at the competent office, registered mail, or via certified e-mail.

Once received the application, the competent authority (i.e., prefecture or region) ascertains (i) the compliance with the legal requirements relating to the establishment of the entity, (ii) the circumstance that the purpose of the entity is possible and legitimate, and (iii) the adequacy of the assets for pursuit of the purpose. In the event of a positive outcome, the competent authority will proceed to register the relevant NPO in the Register of Legal Entities.

²⁰⁰ Art. 9 CTS.

²⁰¹ According to Art. 13,14 and 15 CTS.

²⁰² According to Art. 20 CTS.

²⁰³ Art. 22 CTS.

²⁰⁴ Art. From 23 to 29 CTS.

²⁰⁵ Art. 30 and 31 CTS.

²⁰⁶ According to Art. 16 of the Italian Civil Code the articles of associations and the bylaws must specify: (i) the name of the entity, (ii) the purpose, (iii) the assets and headquarters, (iv) the rules on organization and administration. Moreover, it shall be specified: (1) with reference to recognized associations, the rights and obligations of the members and the conditions of their admission; and (2) with reference to foundations, the criteria and methods of disbursement of income. The articles of association and the bylaws may also contain the rules relating to the extinction of the entity and the devolution of assets, and, for Foundations, the rules relating to their transformation.

With reference to the ETSs, registration with RUNTS is mandatory in order to acquire such status and benefit from the provisions of CTS. In order to obtain registration with RUNTS²⁰⁷ a formal application must be submitted to the RUNTS office of the region where the ETS has its registered office; the application must be sent, by the legal representative of the ETS or by the Notary Public (for ETS foundations and associations wishing to obtain legal personality), only by telematic means by accessing the following portal <https://servizi.lavoro.gov.it/Public/login?retUrl=https://servizi.lavoro.gov.it/&App=ServiziHome>. The content of the application is defined in detail by the CTS and DM 106/2020²⁰⁸ and specific annexes shall be attached to the application²⁰⁹ (for example: (i) articles of association; (ii) bylaws registered with the tax authorities; and (iii) last two approved financial statements, if any, together with copies of the resolution of approval).

The competent RUNTS office ascertains (i) the compliance with the legal requirements set forth by CTS and DM 106/2020, and (ii) the formal regularity of the documentation provided.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Costs for notarial assistance, plus minimal costs for filing the documentation (e.g., stamp duty at the flat rate of EUR 16.00).

If third party assistance is requested (e.g., legal assistance) the related fees may vary depending on the type of activity.

2.1.5. What is the timeframe for the recognition process to be completed?

The recognition process for NPOs usually takes no more than 120 days from the date of the application, save for certain specific extensions.

In particular, the competent authority may require additional documentation from the applicants, who, within the following 30 days, may submit additional documents. If, within a further 30 days, the authority does not proceed with registration of the NPO in the Register of Legal Entities, the recognition of the relevant NPO shall be deemed denied.

The registration procedure with RUNTS for ETS usually takes no more than 60 days from the date of the application, save for certain specific extensions (please note that if, at the expiry of the deadline, the RUNTS office does not adopt an express decision of registration or refusal, the application is deemed accepted)²¹⁰.

²⁰⁷ The registration procedure is regulated (i) by Art. 47 CTS; (ii) with reference to ETS that do not intend to acquire legal personality, by Art. 8 and 9 DM. 106/2020; and (iii) with reference to ETS intending to acquire legal personality (i.e., ETS associations and foundations), by Art. 15 and 16 DM. 106/2020).

²⁰⁸ In particular, it is necessary to provide: (i) the section of RUNTS in which registration is requested; (ii) the name of the entity; (iii) the tax code; (iv) the VAT number (if any); (v) the legal form; (vi) the registered office; (vii) a certified e-mail address that must be constantly updated and active; (viii) at least one telephone number; (ix) any secondary offices; as well as the additional information better specified under Art. 8 of DM 106/2020. In case of ETS foundations and ETS associations, the Notary must also provide and give evidence of the required minimum fund, as well as the additional elements specified under Art. 16 c. 2 of DM 106/2020).

²⁰⁹ Listed under Art. 6, 8 and 16 DM 106/2020 and its Annex B.

²¹⁰ Art. 9.5 and 16.4 DM 106/2020.

If the competent RUNTS office finds formal irregularities in the application or in the documentation provided, it shall, within the aforesaid time limit, invite the applicant to complete or amend the application or to supplement the documentation within 30 days. If the RUNTS office does not notify a formal refusal of the registration within the following 30 days from the receipt of the additional documentation, the registration shall be deemed accepted²¹¹.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Recognition of NPOs is not subject to a time limit. However, the cancellation of an NPO from the Register of Legal Entities (resulting in loss of recognition of the NPO) may occur in the following cases: (i) the purpose of the entity is fulfilled or becomes impossible; (ii) for associations, if there are no remaining associates; (iii) for foundations, which are subject to control by the governmental authority, if they are transformed or dissolved by such authority in the cases provided for by law²¹².

Registration of ETS with RUNTS is not subject to a time limit. However the competent office periodically carries out control activities over ETS and may order, also ex officio, the cancellation of an ETS from RUNTS in specific cases provided for by the applicable law²¹³ and, in particular, if: (i) the ETS legal requirements for registration with the RUNTS are no longer met (including with reference to the pursuit of civic, solidaristic and socially useful purposes); or (ii) the judicial or tax authorities take final measures that affect the registration with the RUNTS.

2.1.7. Is any specific legal form required for the Italian NPO?

Italian NPOs can take, among others, the legal form of:

- associations, established according to the Italian Civil Code, and falling into two broad categories: (a) recognized associations which must be set up by public deed and apply for recognition by registration in the Register of Legal Entities; and (b) unrecognized associations which have not applied for/obtained registration in the Register of Legal Entities;
- foundations, established according to the Italian Civil Code, which must be set up by public deed and apply for recognition by registration in the Register of Legal Entities;
- committees established according to Art. 39 ff. of the Italian Civil Code²¹⁴;
- foundations of banking origin²¹⁵;
- ETS, registered with the RUNTS²¹⁶, may have, according to type, different legal forms, such as (i) association (for associations, volunteering organizations,

²¹¹ According to Art. 9.3 DM 106/2020 the term is equal to 60 days for applications related to entities not wishing to obtain legal personality.

²¹² Art. from 25 to 28 of the Italian Civil Code.

²¹³ Art. 49,50,92,93 CTS and Art. from 21 to 25 DM 106/2020.

²¹⁴ Committees are formed by a group of people collecting funds to pursue an altruistic purpose. For example, relief or charity committees, promoters of public works, monuments, exhibitions, festivities. The committee can be established by private agreements or public deeds (the latter is necessary if the committee intends to apply for the recognition of legal personality).

²¹⁵ See Law no. 218/1990, Law no. 461/1990, Law no. 448/2001, Legislative Decree no. 356/1990 and Legislative Decree no. 153/1999. According to Art. 3 CTS, the provisions of the same do not apply to foundations of banking origin (without prejudice to the provisions of Chapter II of Title VIII CTS related to volunteer service centres).

²¹⁶ ETS are a particular category of entities: volunteering organizations, associations for social promotion, philanthropic entities, social enterprises and cooperatives, association networks, mutual aid societies, associations, foundations and other

associations for social promotion, mutual aid societies, philanthropic entities social enterprises and cooperatives); (ii) foundation (for philanthropic entities); (iii) committee, company, cooperative (for social enterprises and cooperatives).

Each entity must fulfil all related formal requirements as set out in the relevant applicable law.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Italy.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to Italian Recognised NPOs or ETS, Italian taxpayers can benefit from the following tax advantages with respect to donations:

- a tax deduction from personal income tax for individuals and a tax deduction from corporate income tax for companies, provided that certain conditions are met;
- an exemption from gift and inheritance tax, provided that certain conditions are met.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donations to Italian Recognised NPOs and ETS can grant the taxpayers with the income tax advantages (deduction).

Donations to Foreign entities that are considered equivalent to the Italian Recognised NPOs and ETS are also eligible for the income tax advantages (deduction), provided that these entities are enrolled in the RUNTS or in the Register of Legal Entities.

An exemption from gift and inheritance tax is available for donations made to Italian Recognised NPOs and ETS, as well as to foundations and associations established in the EEA and, subject to reciprocity, to public bodies, foundations and associations established worldwide.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax, inheritance and gift tax);
- companies and other entities (corporate income tax, VAT exemption).

private entities other than companies, set up for the pursuit, on a non-profit basis, of civic, solidarity and socially useful purposes, by carrying out, solely or mainly, one or more activities of general interest by means of voluntary activity or the supply of money, goods or services free of charge, mutual aid or production and exchange of goods or services.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences?

For individuals:

- individuals are entitled to a tax deduction from gross personal income tax of 30% (or 35% if the donation is in favour of voluntary organisations) of the donation made in favour of Italian ETS in cash or in kind, for a total amount in each tax period not exceeding EUR 30,000. Alternatively, individuals can deduct the donation from the net income, within the limit of 10% of the total declared income;
- individuals are entitled to a tax deduction for donation made to foundations, recognised associations etc. within the limits and conditions set forth in Art. 10 and 15 of the ITCA (generally, the tax deduction is equal to 19% of the amount donated, up to a specific percentage of the overall income within specific limitation set from time to time by the law);
- social bonus provides a tax credit equal to the 65% of the amount of the donation made by individuals to ETS that have presented a project to the Ministry of Labour for the recovery of unused public property and up to a limit of 15% of taxable income;
- individuals who act as members of ETS operating in the specific sectors indicated by Art. 1 of the Law no. 3818/1886²¹⁷ can deduct from the gross tax liability an amount equal to 19% of their membership contributions not exceeding EUR 1,300. This provision also applies to ETS under Art. 82 of the CTS (1) provided that donations is used pursuant to Art. 8 (1) of the CTS;
 - o for individuals financing ETS via online social lending platforms, a withholding tax at a reduced rate of 12.5% applies to the amount contributed therein;
 - o tax credit for donations in support of culture envisaged by Art. 1 of Decree-Law no. 83/2014, converted with amendments into Law no. 106 /2014. The tax credit is equal to 65% of the donations made and is recognised for individuals up to a limit of 15% of taxable income.

For companies:

- companies may be entitled to a tax deduction within the limit of 10% of the total declared income for donations made to ETS. If the deduction exceeds the total declared income, less all deductions, the excess may be counted as an increase of the amount deductible from the total income of the following tax periods, but not beyond the fourth, up to its amount;
- companies may be entitled to a tax deduction for donation made to made to foundations, recognised associations etc. within the limits and conditions set forth in Art. 100 of the ITCA (generally the tax deduction is equal to 2% of declared corporate income);
- social bonus provides a tax credit equal to 50% of the amount of the donation made by companies to ETS that have presented a project to the Ministry of Labour for the recovery of unused public property and is recognised up to a limit of 5% of total annual revenues;
- VAT exemption for the specific supply of goods free of charge (pursuant to Art. 2 no. 4 of the DPR no. 633/1972), made to recognised associations or foundations

²¹⁷ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1886:3818>.

whose sole purpose is assistance, charity, education, study or scientific research pursuant to Art. 10 no. 12 of the DPR 633/1972;

- tax credit for donations in support of culture envisaged by Art. 1 of Decree-Law no. 83/2014, converted with amendments into Law no. 106/2014. The tax credit is equal to 50% of the donations made and is recognised for companies and non-commercial entities up to a limit of 5‰ of total annual revenues.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

According to Art. 83 (1) of the CTS, a donation can be eligible for a tax deduction whether done indifferently in cash and/or in kind. In case of donation of cash, the payment must be performed through banks or post offices or through other traceable systems provided for Art. 23 of the Legislative Decree no. 241/1997.

To obtain the 19% tax deduction pursuant to Art. 83 (5) of the CTS, the amount limit as of EUR 1,300 apply and it the contribution shall be paid by members to ETS operating in the sectors individuated in Art. 1 of the Law no. 3818/1886.

Specific conditions apply with respect to the tax deductions set forth in Art. 10, 15, 100 of the ITCA.

To obtain the Social Bonus pursuant to Art. 81 of the CTS, the donation must meet the following conditions:

- must be done in cash;
- the beneficiary ETS must have submitted to the Ministry of Labour and Social Policies a project to support the recovery of unused public buildings and movable and immovable property confiscated from organised crime assigned;
- the tax credit is granted to and individuals and non-commercial entities within the limit of 15% of their taxable income and to companies within the limit of 5‰ of their annual revenues;
- the beneficiaries ETS shall notify the Ministry of Labour and Social Policies on a quarterly basis of the amount of the donation received in the relevant quarter; they shall also publicly disclose the amount, as well as the destination and use of the donations, on their institutional website.

To obtain the Art Bonus, donations must be:

- done in cash;
- directed to specific activities indicated in the relevant legislation;
- must be performed through wire transfers; payment at the desk of a local post office; debit (ATM), credit and prepaid cards.

To obtain the exemption from the gift and inheritance tax, the donation must meet the following conditions:

- the donation must be enacted in a notarial deed;
- it must be freely done, without consideration or charges.

With reference to relevant restrictions, the Italian Civil Code reserves, according to the quotas defined therein, for certain relatives (spouse, descendants and ascendants, so-called "*reserved heirs*") a share of the inheritance (so-called "*reserved share*") that the deceased person during his lifetime cannot affect, *inter alia*, by donations.

In the event that a reserved share is impaired by donations or wills, the remedies laid down by Italian law are the reduction claim (aimed at determining whether the reserved share has been infringed or not) and, should the reduction action be successful, the claw back action (aimed at the restitution of the donated asset to the forced heir). Such actions may be brought only once the donor is deceased, specifically within ten years after the death of the donor²¹⁸.

Moreover, the donor may encumber the donation with a duty, and in such a case the donee is required to fulfil the duty within the limits of the value of the thing donated. The fulfilment of the duty may be demanded not only by the donor but also by any interested party. The donor may also provide in the deed of donation for its termination for failure to fulfil the duty²¹⁹.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Italian tax resident individuals/testators, pursuant to Art. 3 of the Legislative Decree no. 346/1990 and Art. 82 (2) of the CTS, can benefit from inheritance and gift tax exemption for bequests made in their will to Italian Recognised NPOs, ETS and to foundations and associations that are located in the EEA and, subject to reciprocity, public bodies, foundations and associations established worldwide.

2.3.2. Which NPOs qualify to receive bequests with a tax advantage?

An exemption from inheritance and gift tax is available for bequests to:

- ETS;
- Italian Recognised NPOs;
- Foundations and associations that are located in the EEA and, subject to reciprocity, public bodies, foundations and associations established worldwide.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes, only bequests to Italian Recognised NPOs and ETS can grant the donor with a tax exemption from inheritance and gift tax.

²¹⁸ Art. 536 ff. of the Italian Civil Code.

²¹⁹ Art. 793 and 794 of the Italian Civil Code.

An exemption from gift and inheritance tax is available for bequests made to foundations and associations established in the EEA and, subject to reciprocity, to public bodies, foundations and associations established worldwide.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Tax advantages are only available for individuals.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

The tax advantages consist in a tax exemption from inheritance and gift tax for bequests made in favour of Italian Recognised NPOs and ETS.

There are no differences on a local basis.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain the exemption from the gift and inheritance tax, the bequest must meet the following conditions:

- the bequest must be made in a legally valid will;
- it must be freely done, without consideration or charges.

With reference to relevant restrictions, The Italian Civil Code reserves, according to the quotas defined therein, for certain relatives (spouse, descendants and ascendants, so-called "*reserved heirs*") a share of the inheritance (so-called "*reserved share*") that the deceased cannot affect, *inter alia*, by will. The will drafted by the deceased remains valid even if it does not comply with the reserved shares, but in such a case it may be challenged by the forced heirs (or their descendants) alleging that his/her reserved shares were infringed by the will. In such case, the remedies laid down by Italian law are the reduction claim (aimed at determining²²⁰.

Testamentary dispositions - that may have either universal value (institution of heir) or have a specific value (institution of legatee) - may be subject to suspensive or resolutive conditions²²¹. Moreover, the testator may impose a duty on the heir or legatee and any interested party may act for the fulfilment of the burden. In the event of non-fulfilment of the duty, the judicial authority may declare the resolution of the related testamentary provision if the testator so provided or if the fulfilment of the duty was determinant²²².

²²⁰ Art. 536 ff. of the Italian Civil Code.

²²¹ Art. 633 ff. of the Italian Civil Code.

²²² Art. 647 ff. of the Italian Civil Code.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations to Foreign entities may grant to the individuals and corporate taxpayers the same tax deductions figured out with respect to the Italian Recognized NPOs and ETS, provided that these Foreign entities are enrolled in the RUNTS or in the Register of Legal Entities²²³.

Furthermore, the same exemption from gift and inheritance tax granted for donations and bequests made to Italian Recognised NPOs and ETS is available with respect to donations and bequests made to foundations and associations established in the EEA and, subject to reciprocity, to public bodies, foundations and associations established worldwide.

To take advantage of the exemption from gift and inheritance tax, the recipients are required to use the assets to meet the statutory activities, related to the pursuance of civic, solidarity and socially useful purposes.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Please note that with reference to NPOs the reciprocity principle applies²²⁴; therefore, according to such principle, Italian law reserves to a foreign NPO the same rights available to Italian entities, subject to the condition of reciprocity²²⁵.

Registration is not possible for foreign NPOs (EU and extra-EU) unless specific circumstances occur. If the foreign NPO has an operating office in Italy, the same is allowed to register in the Register of Legal Entities. If a foreign NPO has in Italy (i) its administrative office or (ii) its main purpose, the same shall be subject to Italian law and therefore it must be registered in the Register of Legal Entities²²⁶.

Moreover, foreign entities (EU and extra-EU), wishing to obtain the qualification of ETS, must register with RUNTS to be recognized as ETS and enjoy the related rights set forth under the CTS. Please note that such registration with RUNTS can be obtained only if the applying entity fulfils all the stringent requirements imposed by CTS regulations for registration with RUNTS (e.g., minimum capital requirements, rules on devolution of assets. Cf. 2.1.2. (ii)).

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

If the conditions for registration are met (as stated in 3.1. above), there is no distinction between EU and non-EU NPOs (save for the assessment of the condition of reciprocity).

²²³ See Reply no. 406/2021 issued by the Italian Tax Authority.

²²⁴ Art. 16 of the general provisions of the Italian Civil Code (so called "*Preleggi*").

²²⁵ Please note that with reference to: (i) a legal entity established and registered in an EU State the principle of reciprocity operates automatically; and (ii) a legal entity established and registered in an extra-EU State, the principle of reciprocity shall be verified and assessed on a case by case basis (with reference to the assessment of the reciprocity condition, useful information can be found at the following link: https://www.esteri.it/it/politica-estera-e-cooperazione-allo-sviluppo/diplomazia-giuridica/condizreciprocita/elenco_paesi/).

²²⁶ Art. 25 of Law No. 218, dated May 31, 1995.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

If a foreign NPO can register in accordance with the conditions set out under point 3.1 above, the application for registration shall be sent by the legal representative of the entity to the Prefecture together with the following document: (i) copy of the articles of association and bylaws of the foreign NPO; (ii) resolution of the foreign NPO concerning the opening of the operational office in Italy and the appointment of the legal representative in Italy; (iii) certification proving the status of legal entity issued by the competent authority of the foreign State of origin of the foreign NPO; (iv) copy of the certificate of purchase or lease relating to the office; (v) copy of a valid document of the legal representative. All documents issued abroad must be duly legalized and provided with a legalized Italian translation.

With reference to ETS, same registration process of domestic ETS shall be followed (*cf.* 2.1.3. (ii)).

If third party assistance is requested (e.g., legal fees) the related fees may vary depending on the case at stake.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

If an NPO is recognized as such in its home country, there is no requirement to prove the equivalence of its foreign legal form to domestic legal forms, however if the foreign NPO wishes to register with the Register of Legal Entities (if it complies with the requirements set out in point 3.1. above) a certification proving the status of legal entity issued by the competent authority of the foreign State of origin shall be provided.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No. Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

Please note that there are no specific registers/lists for Recognised foreign NPOs.

4. CONCLUSION

Donations and bequests to Italian Recognized NPOs and ETS grant individuals and corporate taxpayers with tax certain advantages (such as, tax deductions and exemption from inheritance and gift tax) provided that certain conditions are met.

Foreign entities can grant to the taxpayers the same tax deductions as Italian Recognized NPOs and ETS, provided that are enrolled in the RUNTS or in the Register of Legal Entities²²⁷.

An exemption from gift and inheritance tax applies also with respect to donation and bequests made to support foundations and associations established in the EEA and, subject to reciprocity, to public bodies, foundations and associations established worldwide.

To take advantage of these tax benefits, the recipients are required to use the assets to meet the statutory activities, related to the pursuance of civic, solidarity and socially useful purposes.

5. ADDITIONAL CLARIFICATIONS

5.1. IS REGISTRATION IN THE RUNTS/LEGAL ENTITIES NECESSARY FOR A FOREIGN ORGANIZATION, OR IS THE PRINCIPLE OF RECIPROCITY SUFFICIENT?

Please note that, in accordance with the principle of reciprocity, the status of a foreign NPO is also recognized in Italy (e.g., if such an entity has acquired legal personality in its country of origin, such legal personality is also recognized in Italy). However, if the foreign NPO intends to operate in Italy and enjoy the same rights granted to Italian NPOs, registration with the Register of Legal Entities, for acknowledgement purposes ("per presa d'atto"), is necessary. Please note that in order to apply for registration in Italy, the foreign NPO should have an operating office in Italy. Furthermore, with reference to entities wishing to acquire the status of ETS (and thus enjoy the rights granted to such types of entities), the registration of the foreign NPO with RUNTS is mandatory. Please note that such registration with RUNTS can only be obtained if the applying foreign entity meets all the strict requirements imposed by the CTS regulations for registration with RUNTS.

5.2. REGARDING THE NOTARIAL DEED FOR DONATIONS: WHO SHOULD PROVIDE IT AND IN WHAT FORM? IS THERE A CERTIFICATION REQUIRED FOR SUBMISSION TO THE TAX AUTHORITY? DOES IT NEED TO BE IN ITALIAN?

A notarial deed is required as a condition for the validity of a donation having as its object asset of relevant value. With reference to the notarial deed of donation, the donor and the donee shall, as a condition of its validity, execute the relevant deed in the form of a public deed before an Italian Notary Public in the presence of two witnesses. Such a notarial deed must be written in Italian and may be accompanied by a sworn translation in foreign language.

²²⁷ See Reply no. 406/2021 issued by the Italian Tax Authority.

Notarial deeds for donations made in Italy must be registered in front of the Italian tax authority within 30 days from the execution of the relevant deed. Should the donation be eligible for the exemption from gift and inheritance tax, the notarial deed to be signed will include a specific clause referring to such exemption. Therefore, no specific certification is required to apply for the inheritance and gift tax exemption in front of the Italian tax authority.

LATVIA²²⁸

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

Regarding the status of a public benefit organization (PBO) and obtaining of the status:

- The current legal framework for organizations is the Public Benefit Organizations Act – available here <https://likumi.lv/ta/id/90822-sabiedriska-labuma-organizaciju-likums>.
- Latvian Tax Authority (hereinafter, **LTA**) has a right to grant the status of a public benefit organization in accordance with the Act on the State Revenue Service²²⁹.
- An overview of the procedure to obtain the status of the public benefit organization (**PBO**) is available here (in Latvia) <https://www.vid.gov.lv/lv/sabiedriska-labuma-organizacijas-statuss>.
- A limited amount of information in English is available here <https://www.vid.gov.lv/en/services/public-benefit-organisation-status>.

For additional questions, the LTA can be contacted directly at:

- SLK@vid.gov.lv;
- VID@VID.gov.lv.

Please note that a communication with LTA in English may be an issue.

Regarding tax advantages:

In relation to the donations to PBO, tax benefits are available for corporate income tax (**CIT**) payers and individuals. It is possible to donate in cash or in kind (goods, real estate, etc.). To apply the tax deduction the beneficiary must have a status of PBO.

For Latvian CIT payers, the tax benefits are regulated in Corporate Income Tax Act (**CIT Act**) Art. 12. Available in English here <https://likumi.lv/ta/en/en/id/292700-enterprise-income-tax-law>.

In additional Cabinet Regulation No. 677 Regulations Regarding Application of Provisions of the Corporate Income Tax Act (CR No 677) Par. 84-96 available here in English <https://likumi.lv/ta/en/en/id/295416-regulations-regarding-application-of-provisions-of-the-enterprise-income-tax-law>.

Information about tax advantages (for companies) is available here (in Latvian) <https://www.vid.gov.lv/lv/nodoklu-atvieglajumi>.

For Latvian individuals:

²²⁸ Answers provided by Ellex Klavins (Riga).

²²⁹ Art. 2 Sec. 8).

Tax benefit for donations to organizations with PBO status in Latvian or EU/EEA state. Regulated by the Act on Personal Income Tax (Art. 10. Sec. 1 Par. 3), available here <https://likumi.lv/ta/en/en/id/56880-on-personal-income-tax>.

Special rules for donations to PBO of other EU/EEA states are in Sec. 1 of Art. 10 of the PIT Act.

Please note that the English versions of the legislative act may not be up to date.

For your information, Latvia has a unique CIT system. In Latvia, an income is subject to CIT only upon distribution as dividends or liquidation proceeds. In addition, there are many rules aimed at applying CIT to hidden distributions and non-business-related expenditure (Art. 4 of the CIT Act). For example, non-business-related expenses, bad debts (subject to certain conditions) and loans issued to related persons (affiliates) (with exceptions), excessive interest and other payments are dividend distribution from the Latvian CIT perspective.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Yes, tax advantages are available for companies and individuals for donations to NPOs with PBO status. If the NPO does not have the status of PBO then tax advantages are not available.

There are no specific rules for Bequests. There is no inheritance tax in Latvia.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations made to the NPOs that have PBO status. It is possible to verify whether the Latvian NPOs have the PBO status here - <https://www6.vid.gov.lv/SLO>.

A donation cannot be related to a family member of the donor and there are no hidden advertisements (in relation to donations by the companies).

EU/EEA NPOs:

For individuals to apply to tax advantages for donations made to NPOs in other EU/EEA country the taxpayer must submit the following information in the annual personal income tax returns²³⁰:

²³⁰ Act on Personal Income Tax (Art. 10. Sec. 1 Par. 3), available here <https://likumi.lv/ta/en/en/id/56880-on-personal-income-tax>.

- documents confirming that the recipient (beneficiary) is resident of EU/EEA country;
- the beneficiary of the donation has a status that is equivalent to PBO status in Latvia;
- the beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is directed towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the aim of PBO.

Please note that the law is not clear with regard to the individuals whether the tax advantages can be applied to the donations made to NPOs with PBO status from a country with which Latvia has concluded and has in force a tax treaty.

With respect to companies:

Tax advantages are applicable to a donation made to the Latvian NPOs with PBO status.

If a donation is made to NPO of other EU/EEA Member State taxpayer must include the following information in the annual return²³¹:

- documents confirming that the beneficiary is resident of EU/EEA country;
- beneficiary of donation has a status that is equivalent to PBO status in Latvia;
- beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is directed towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the objective of PBO.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

In Latvia, NPO:

- must be registered as an association or a foundation in Latvia;
- must perform activities for the public benefit (the said must be indicated in the articles of association);
- if the amount of donations exceeds 12 minimum monthly salaries in a taxation year (in 2023, EUR 7,440 (12*EUR 620)) then no less than 75% of the donations must be used for the purpose to achieve the objectives of the PBO;
- cannot perform commercial activities (with some exceptions if it is a social entrepreneurship);
- the donations are used only to achieve the aim of the NPO.

²³¹ CIT Law Art. 12 Sec. 6, Par. 5, <https://likumi.lv/ta/id/292700-uznemumu-ienakuma-nodokla-likums>.

The most important criterion is for NPOs to be able to prove that they are performing activities for the public benefit and there is a social aim for the activities.

2.1.3. What does the recognition process look like?

After the registration, NPO must submit an application to the LTA for the purpose to obtain the status of the PBO. In the application to LTA, NPO must inform about activities in the previous year (if any) and about future (contemplated) activities. Also, it must be indicated in the application what kind of activities NPO will perform and what the public benefit. The documents that have to be submitted are available here: <https://www.vid.gov.lv/lv/veidlapas-un-iesniegumi-9>.

After the submission of the application NPO will be invited to a meeting with LTA and representatives of the commission who are assigning the PBO status. A representative of NPO must present to the commission the planned activities of NPO and why NPO is eligible to for PBO status. The meeting is usually an online Teams meeting.

During the meeting, in about 7-10 minutes, NPO must present why NPO would be eligible to obtain PBO status. At least half of the commission must vote in favour thereof. If a positive decision is made, then within 14 days the PBO status is assigned.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no fees or costs associated with the recognition of NPOs as a PBO.

2.1.5. What is the timeframe for the recognition process to be completed?

The recognition process can take about 1 to 2 weeks; however, this will depend on when the meeting about assignment of the PBO is scheduled. In addition, about 1 to 2 months will be needed for registration of association or a foundation.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no validity period for PBO status. However, every year NPOs with a PBO status must prepare and submit an annual report, where it must be stated in detail how the funds are used to achieve the aims of the NPOs stated in the articles of association. Each year the committee is reviewing the annual report and evaluating whether the activities of NPO comply with the PBO status.

2.1.7. Is any specific legal form required for the Belgian NPO?

In Latvia the NPO can be established as an association or a foundation.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

If the donation is made to NPOs with PBO status, then:

- a refund of tax (for individuals);
- the donation will not be subject to CIT or reduction of CIT payable (for companies).

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donations made to Latvian NPOs with PBO status or NPO of another EU/EEA Member State with a status equivalent to PBO may qualify for tax advantages. For companies, the donations also made to NPOs with PBO status of another country with which Latvia has concluded tax treaty are subject to tax advantages.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- Individuals (personal income tax);
- Companies (corporate income tax)

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Latvian NPOs are exempt from taxation. In case NPOs have employees then NPOs are liable to pay all payroll taxes. NPOs cannot perform economic activities (with some very limited exemptions).

For individuals:

It is possible to decrease the annual taxable income for up to EUR 600 (in taxation period) but not exceeding 50% of the annual income (EUR 600 is the maximum amount for which annual taxable income may be decreased). Please note that EUR 600 is applicable to donations to PBO, expenses for medicine, insurance etc.

The actual benefit for individual would be $EUR\ 600 * 20\%$ (personal income tax rate) = EUR 120 refund.

For companies:

Latvian CIT payers may choose one of the following tax benefits (not to include the taxable base):

- not include in the CIT bases the amount of donation does not exceed 2% of gross salaries for which mandatory social insurance contributions were paid in the previous financial year; or

- not include in the CIT bases the amount of donation does not exceed 5% of the profit (after the paid CIT) in the previous financial year; or
- to reduce the CIT calculated on the dividends by 85% of the donated amount but not exceeding 30% of the calculated amount of CIT for the calculated dividends.

The chosen CIT advantage is applicable for a full year.

Considering the unique Latvian CIT system, the tax advantage is that the donation is not considered to be a profit distribution or that some of the CIT payable on dividends (it is not mandatory to distribute dividends each taxation year) is used to decrease the CIT payable.

The tax advantages are not applicable if one of the below criteria is met:

- company does not have a tax debt (or tax debt does not exceed EUR 150) on the first day of the taxation period when the donation is made;
- the beneficiary of the donation is performing activities of a compensatory nature;
- beneficiary of the donation has undertaken a commitment that the donor's name will not be displayed in public, either as the corporate name of SIA or the brand elements thereof.

If a donation is made to NPO of other EU/EEA country, then the following information must be submitted in the annual CIT return:

- documents confirming that the beneficiary is resident of EU/EEA country;
- beneficiary of donation has a status that is equivalent to PBO status in Latvia;
- beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is aimed towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the objective of PBO.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To apply tax advantages to the donations the beneficiary must have a PBO status.

If donation is made to NPO of other EU/EEA country then the following information must be included in the annual CIT return:

- documents confirming that the beneficiary is resident of EU/EEA country;
- beneficiary of the donation has a status that is equivalent to PBO status in Latvia;
- beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is directed

- towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the objective of PBO.

If the value of the donation exceeds 10 minimal monthly salaries in Latvia (EUR 6,200 in 2023) then a donation agreement must be signed. It is possible to donate in cash or in kind (real estate, goods, etc.).

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

In Latvia there is no inheritance tax. Consequently, there are no specific tax advantages for Bequests.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

2.3.3. Does it make a difference whether an NPO is recognised or not?

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations made to NPO of EU/EEA countries with PBO status may benefit from the same tax advantages.

A taxpayer has an obligation to prove that the following criteria are met:

- documents confirming that the beneficiary is resident of EU/EEA country;
- beneficiary of donation has a status that is equivalent to PBO status in Latvia;
- beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is directed towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the objective of PBO.

There are no tax advantages for Bequests as there is no inheritance tax in Latvia.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

No, it is not possible and it is not required for Foreign Equivalent NPOs to register in Latvia and to obtain the PBO status.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

For a taxpayer (individual or company) to benefit from tax advantages for a donation made to a foreign NPO the following information must be gathered:

- documents confirming that the beneficiary is resident of EU/EEA country;
- beneficiary of donation has a status that is equivalent to PBO status in Latvia;

- beneficiary of the donation is operating in the field of public benefit which provides significant benefit for the public or any part thereof, especially if it is directed towards charity, protection of human rights and individual rights, development of civic society, promotion of education, science, culture and health and disease prevention, supporting of sports, environmental protection, provision of aid in case of disasters and emergency situations, raising of social welfare of the public, especially for the groups of persons in need and socially low-protected persons;
- at least of 75% of the donated amount is used in relation to achieving the objective of PBO.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

This is needed for the Latvian donor to apply tax advantages.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Only NPOs from EU/EEA (with respect to individuals) or from countries with which Latvia has concluded tax treaty are eligible.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

The list of all NPOs with PBO status in Latvia is available here <https://www6.vid.gov.lv/SLO> by choosing “*atlasīt*” it is possible to see all of the NPOs having the PBO status in Latvia.

There is no list of NPOs considering that it is not possible for them to be recognized.

4. CONCLUSION

Donations made to foreign NPOs with PBO status from EU/EEA countries (and from a country with which Latvia has concluded the tax treaty for companies) can benefit from the same tax advantages as donations made to Latvian NPOs with PBO status. The donations made to foreign NPOs may be an administrative burden because of the documentary proof that must be obtained.

Foreign NPO can prepare a defence file that it can send to all donors from Latvia for them to receive the tax advantages.

5. ADDITIONAL CLARIFICATIONS

5.1. FOR DOCUMENTS PROVING EQUIVALENT PBO STATUS AND OTHER DEFENSE FILE CONTENTS, SHOULD THEY BE IN LATVIAN?

Ideal option would be that there is a translation into Latvian, but it is advisable to double check this with Latvian Tax Authority. If needed, happy to help with clarifications.

5.2. PLEASE CONFIRM WHETHER A BINDING TAX RULING COULD BE RECEIVED WITH REGARDS TO THE TAX BENEFITS FOR FOREIGN NPOS.

In Latvia it is possible to obtain a tax ruling about the rights of the specific person (natural or legal). It is not possible to obtain a tax ruling in favor of other person. If NPO will submit a request for a tax ruling about the tax benefits for donors there is a possibility that Latvian Tax Authority will refuse to issue the tax ruling. The donors must submit and obtain tax ruling by themselves. If needed we can prepare a sample (draft) tax ruling that can be submitted to the Latvian Tax Authority by donors.

It is possible for NPO to ask a general question to the Latvian Tax Authority whether the donors (in general) will be eligible for tax benefits. Of course this will not be binding.

LITHUANIA²³²

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations:
 - o Art. 28 of the Lithuanian Law on Corporate Income Tax Code (*Pelno mokesčio įstatymas*).
- Tax treatment for bequests:
 - o Art. 3 and 7 of the Inheritance Tax Law (*Paveldimo turto mokesčio įstatymas*) and the Official Commentary of the Inheritance Tax Law issued by the Lithuanian State Tax Authorities.
- The recognition process and requirements for NPOs:
 - o Law on Charity and Sponsorship (*Labdaros ir paramos įstatymas*); Art. 13 of the Law on Charity and Sponsorship stipulates requirements for obtaining status of a recipient of sponsorship;
 - o Law on Charity and Sponsorship Funds (*Labdaros ir paramos fondų įstatymas*);
 - o Law on Public Institutions (*Viešųjų įstaigų įstatymas*);
 - o The Civil Code of the Republic of Lithuania (Book Two) (*Civilinis kodeksas*).

The Lithuanian State Tax Authorities provide on their website an overview in Lithuanian language of:

- Tax benefits for legal entities (providers of sponsorship and charity) and other information in respect of sponsorship and charity – please see the link [here](#).

For additional questions, the tax authorities can be contacted at:

- Vilnius@vmi.lt or +370 5 2605060, +370 5 2191777.

The Register of Legal Entities provides on its website an overview of:

- establishment and registration of charity and sponsorship fund (in English) – please see the link [here](#);
- establishment and registration of public institution (in English) – please see the link [here](#);
- obtaining the status of a recipient of sponsorship (in Lithuanian) - please see the link [here](#).

For additional questions, the Register of Legal Entities can be contacted at:

²³² Answers provided by Ellex Valiunas (Vilnius).

- info@registrucentras.lt or +370 5 268 8262.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to corporate taxpayers with respect to donations. That is, donations to eligible NPOs (having status of a recipient of sponsorship) can grant the taxpayer a tax deduction (for companies).

No inheritance tax is applied when bequests are received by the eligible NPOs (having status of a recipient of sponsorship). That is, legal entities are not subject to the inheritance tax on their bequests received.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations made by Lithuanian corporate income taxpayers to:

- NPO's registered in Lithuania and having status of a recipient of sponsorship;
- legal entities or organizations that are established for non-profit purpose in the European Economic Area, and which cannot distribute profits to their participants;
- legal entities or organizations that are established for non-profit purpose and cannot distribute profits to their participants, and which are established in the democratic and legal states included in the list compiled by the Government of the Republic of Lithuania, which are experiencing crimes, as they are understood according to the Rome Statute of the International Criminal Court, ratified by the law of the Republic of Lithuania; and
- Lithuanian communities and institutions/organisations abroad that are indicated in the list approved by the Government of the Republic of Lithuania.

In Lithuania there are three main types of legal forms in respect of NPOs which are entitled to receive donations and bequests (to be entitled to donations/bequests, NPO's must possess a status of a recipient of sponsorship; such status can be obtained from the Register of Legal Entities):

- Public Institution (*Viešoji įstaiga*);
- Charity and Sponsorship Fund (*Labdaros ir paramos fondas*); and
- Association (*Asociacija*).

Charity and sponsorship fund is the most proper legal form for philanthropy purpose. Charity fund's main intention is to collect sponsorship/donations and to distribute it to/support other legal entities and (or) individuals for science, education, culture, art, religion, sports, health

care, social care and assistance, environmental protection and other activities (purposes) beneficial to society and specified in the Law on Charity and Sponsorship.

Public institution usually provides services and implement projects that are related to activities beneficial to society, as prescribed by the law. In addition, under the law more restrictions are applied to the activities of a charity fund than to the activities of a public institution (e.g., charity fund is not entitled to borrow and lend funds, pledge its assets, etc.).

Association must have at least 3 members (stakeholders) and the main intention of it is to promote interests of its members.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

NPO that wishes to be recognised (i.e., which intends to receive a status of a recipient of sponsorship in Lithuania) should comply with the following requirements²³³:

- it must be established in Lithuania and have an appropriate legal form²³⁴ (e.g., public institution (Viešoji įstaiga), charity and sponsorship fund (Labdaros ir paramos fondas), association (Asociacija));
- the articles of association of the NPO must provide for activities beneficial to society as specified in Par. 3 of Art. 3 of the Law on Charity and Sponsorship (i.e. the following activities shall be presumed to be for the public benefit: activities for the purpose of international cooperation, protection of human rights, integration of minorities, promotion of cultural, religious and ethical values, educational, scientific and vocational development, non-formal and civic education, sports, social security and labour, health care, national security and defence, law and order, crime prevention, adjustment of living environment and development of housing, protection of copyright and related rights, environmental protection as well as any activities in other fields recognised as selfless and beneficial to society);
- NPO did not breach the law which may preclude from status of a recipient of sponsorship (e.g., violation of financial reporting regulations, failure to pay taxes due/financial liabilities to the state budget exceeding EUR 10,000, failure to comply with the Law on Charity and Sponsorship, failure to meet the minimum criteria of a reliable taxpayer, etc.);
- the managing body of the NPO has not been previously the managing body of other NPO which lost its status of a recipient of sponsorship due to non-compliance with the law or due to the fact that NPO did not meet the minimum criteria of a reliable taxpayer.

2.1.3. What does the recognition process look like?

The recognition process requires the Lithuanian NPO to apply to the Register of Legal Entities by submitting the following documents: (i) an application request (form JAR-PGS), and (ii) identification document of the applicant or the power of attorney if the application is submitted by the authorised person and his/her identification document. The

²³³ Art. 13 of the Law on Charity and Sponsorship.

²³⁴ Art. 7, Par. 1 of the Law on Charity and Sponsorship.

abovementioned documents can be submitted either electronically (via [the e-system](#) of the Register of Legal Entities, via the post mail or in person).

A more detailed overview of the recognition process, and the specific requirements, can be found [here](#)²³⁵ (in Lithuanian language).

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Administration fee (EUR 4.15) shall be paid to the Register of Legal Entities.

If third party assistance is requested, service fees payable to the third party may vary for assisting the NPO throughout the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

In practice, the recognition process (grant of status of a recipient of sponsorship) usually takes up to 10 business days after filing of the application request.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

No validity period is established for the recognition of the NPO (granting of status of a recipient of sponsorship).

In case the status of a recipient of sponsorship has been revoked due to non-compliance with the law (Art. 13, Par. 5 and 6 of the Law on Charity and Sponsorship), the NPO is entitled to submit application for renewal of its status not earlier than in 1 year after its status has been revoked.

2.1.7. Is any specific legal form required for the Lithuanian NPO?

In Lithuania there are three main types of legal forms used in respect of NPOs:

- Public institution (Viešoji įstaiga);
- Charity and sponsorship fund (Labdaros ir paramos fondas); and
- Association (Asociacija).

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Lithuania.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Corporate income tax advantages:

²³⁵ Art. 13 of the Law on Charity and Sponsorship.

Upon making donations to Lithuanian recognised NPOs (i.e., NPOs having status of a recipient of sponsorship) or to foreign NPOs as listed under point 2.1.1. above, the Lithuanian taxpayers (legal entities that are entitled to provide sponsorship) can benefit from the tax deduction for donations under certain conditions²³⁶. That is, provider of donation may twice deduct from its income the amount of donation (that was provided in the form of asset, inventory, services or monetary funds), however, not in excess of 40% of the taxpayer's taxable income (equal to income less non-taxable income, allowable deductions and limited allowable deductions, excluding donations and the losses for the previous tax periods).

However, in case donation is made in cash, the amounts paid in cash to one receiver of sponsorship or charity cannot exceed 250 basic social benefits approved by the state (approx. EUR 12,250 in 2023) during one taxable period.

Legal entities that are entitled to provide both sponsorship and charity (e.g., charity and sponsorship fund), shall deduct from its income all amounts of sponsorship and charity (except for the amounts paid in cash to one receiver of sponsorship or charity exceeding 250 basic social benefits approved by the state (EUR 12,250 in 2023) during one taxable period) granted to other legal entities or individuals in accordance with the provisions of the Law on Sponsorship and Charity.

VAT advantages:

0% VAT shall apply to goods supplied to recipients of donation/sponsorship specified in the Law on Charity and Sponsorship and registered in the Republic of Lithuania, provided that such goods are exported as support, by such recipients of donation/sponsorship, to legal persons operating outside the territory of the European Union and other organisations that can be recipients of sponsorship under the Lithuanian Law on Charity and Support.

Goods intended for the provision of gratuitous aid to victims of disasters specified in the decision of the European Commission in respect of the Republic of Lithuania, submitted in relation to implementation of Art. 53 of Directive 2009/132/EC, supplied to recipients of support, as they are understood in accordance with the provisions of the Law on Charity and Sponsorship, and/or to other persons involved in elimination of consequences of the disaster, if according to the decision of the European Commission referred to in this paragraph, the Republic of Lithuania is granted the right to exempt these goods from import VAT, shall be taxed at a 0% VAT rate.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes. The Lithuanian NPO must possess status of a recipient of sponsorship in order to be entitled to receive donations/bequests.

If donation is granted to NPO which does not have status of a recipient of sponsorship, the amount of donation:

- may not be deducted for tax purposes by the donor (Lithuanian taxpayer);
- will be included into taxable income of Lithuanian NPO and will be taxed with 15% corporate income tax.

²³⁶ Art. 28 of the Law on Corporate Income Tax.

If the donation is made to the NPO established in the EEA (as specified under question 2.1.1.), the taxpayer must submit to the Lithuanian tax authorities documents confirming that the donation is provided for the socially beneficial purposes established in the operating documents of legal entity or other organization to which the donation has been granted (*cf.* 2.2.4.).

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available only to legal entities.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Companies (the donors) may be entitled to a double tax deduction for the full donated amount in their corporate income tax; also, 0% VAT may be applied in some cases (*cf.* 2.1.).

Before making the donation, the donor should verify whether the NPO has a valid status of a recipient of sponsorship. This information is available on the web site of the State Tax Authorities (the link is [here](#)).

If the donation is made to foreign NPOs (as outlined in points ii and iii of 2.1.1 above), the donor is obliged to submit the following documents to the Tax Authorities:

- a tax residence certificate of the foreign NPO;
- a copy of the articles of association or any other appropriate document proving that purpose of and activities of the NPO qualify for purpose and activities beneficial to society;
- a document stating the specific purpose for which the foreign NPO received the donation from the Lithuanian taxpayer and providing general information about this foreign NPO (name, registration code, address, etc.), signed by the head of the foreign NPO or another authorized person;
- evidence that the purpose of the foreign NPO that received the donation is not profit seeking, and the profit generated cannot be distributed to its participants. Such evidence can be the provisions of the legal acts regulating the activities of the foreign NPO or references to the official sources of the legal acts regulating the activities of the foreign NPO, if these legal acts are in English.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain a corporate income tax deduction, the donation must meet the following conditions:

- donation must be made to the Lithuanian NPOs having status of a recipient of a sponsorship or to the foreign NPOs (*cf.* 2.1.1.) and possess the required documents (*cf.* 2.2.4.);
- donation must be done either in monetary funds or in kind (including assets, inventory, provision of services), it must be freely done, without consideration or charges.

Restrictions:

- in case donation is made in cash, the amounts paid in cash to one receiver of sponsorship or charity cannot exceed 250 basic social benefits approved by the state (EUR 12,250 in 2023) during one taxable period;
- donation (either in monetary funds or in kind) exceeding EUR 1,500 must be accompanied by a written agreement;
- donation (either in monetary funds or in kind) exceeding EUR 14,500 must be properly documented, i.e., donation/sponsorship agreement must be signed and approved by the notary.

In exchange for the donation, the recipient of the donation may undertake certain obligations in respect of the provider of donation, e.g.:

- the NPO shall publish/spread the information about the provider of donation in accordance with the provisions of the legal acts governing the advertising. However, costs incurred by the NPO when publishing/spreading the information about the provider of donation cannot exceed 10% of value of the donation received;
- the NPO shall use the donation received for the purpose specified by the provider of donation (if such purpose is set by the provider of donation in the donation/sponsorship agreement) and in accordance with the Law on Charity and Sponsorship;
- the NPO shall submit reports to the provider of donation about the use of the received donation (upon request).

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

No tax advantages are established in the Lithuanian law for taxpayers indicating a qualifying NPO as beneficiary of their will (bequest).

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

The Lithuanian NPO must possess a status of a recipient of sponsorship in order to treat the bequest received by the NPO as a donation. Otherwise, the bequest shall be treated as taxable income of the NPO for corporate income tax purpose.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes, *cf.* 2.3.2.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

No tax advantages are established in the Lithuanian law for taxpayers indicating a qualifying NPO as beneficiary of their will (bequest). However, it should be noted that legal entities (including NPOs) are not subject to inheritance tax in Lithuania. That is, the NPO will not have the obligation to pay the inheritance tax in Lithuania upon receipt of the bequest.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Cf. 2.3.4.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To avoid corporate income tax consequences, the NPO receiving the bequest must possess a status of a recipient of sponsorship. The law does not entitle the testators to ask that the NPO performs certain tasks in exchange for the bequest. Bequests are treated as donations under the Law on Charity and Sponsorship.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Yes, the same tax advantage relating to donations is available when the receiving NPO is established in a foreign country if certain conditions are met (*cf.* 2.2.1. and 2.2.4.). The burden of proof lies with the taxpayer claiming the tax advantage.

No tax advantages are established in the Lithuanian law for taxpayers indicating a qualifying NPO as beneficiary of their will (bequest).

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is not possible for foreign NPOs (as specified in 2.1.1. above) to receive an official registration in Lithuania. If a foreign NPO intends to register in Lithuania, the Lithuanian NPO must be established. The founders of the NPO (e.g., charity and sponsorship fund) can be natural and/or legal persons (either foreign or Lithuanian).

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

As mentioned above, the official registration of a foreign NPO is not possible in Lithuania. Only establishment of a domestic NPO is viable.

A fee estimate for our services in respect of establishment of a domestic NPO would be approx. EUR 3,200 (for a Public Institution (*Viešoji įstaiga*)) and EUR 3,600 (for a Charity and Sponsorship Fund (*Labdaros ir paramos fondas*)). In both cases, the proposed fee excludes VAT (if applicable) and additional expenses. For the proposed fee Ellex would prepare the needed incorporation documents, communicate with the notary regarding the certification of the documents and submit all the information to the Register of Legal Entities for incorporation purposes. Further after the incorporation Ellex will update the public register on the UBOs and interest holders in the NPO (if applicable).

Additional expenses that would be charged on top of the proposed fee in both cases could be the following:

- translation fees of the documents about the incorporator (depending on the amount of needed documents EUR 300-500);
- the fees for the approval of registering the office address of the to-be-established legal entity (starting around EUR 100);
- notary fees for certification of incorporation documents (up to EUR 400);
- registry fees (up to EUR 60).

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Donations to foreign NPOs (as outlined in points ii and iii of 2.1.10. above) can benefit from corporate income tax advantage, even if – a formal – registration is not possible for foreign NPOs in Lithuania.

A taxpayer claiming the corporate income tax deduction for a cross-border donation is obliged to submit the following documents to the Lithuanian Tax Authorities:

- a tax residence certificate of the foreign NPO;
- a copy of the articles of association or any other appropriate document proving that purpose of and activities of the NPO qualify for purpose and activities beneficial to society;
- a document stating the specific purpose for which the foreign NPO received the donation from the Lithuanian taxpayer and providing general information about this foreign NPO (name, registration code, address, etc.), signed by the head of the foreign NPO or another authorized person;
- evidence that the purpose of the foreign NPO that received the donation is not profit seeking, and the profit generated cannot be distributed to its participants. Such evidence can be the provisions of the legal acts regulating the activities of the foreign NPO or references to the official sources of the legal acts regulating the activities of the foreign NPO, if these legal acts are in English.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

No, such prove of a legal form is not required.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No, legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

There is not any list with recognised foreign NPOs published publicly by the Lithuanian institutions. Only the list of Lithuanian recognised NPOs (i.e. having status of a recipient of sponsorship) is being published on the website of the Lithuanian State Tax Authorities (the link is [here](#)).

4. CONCLUSION

Foreign NPOs (as listed in points ii and iii of 2.1.1. above) qualify for the same tax advantage as Lithuanian Recognised NPOs, i.e., corporate income tax deduction is available for donations provided by Lithuanian legal entities to NPOs. Both Lithuanian and foreign NPOs are not subject to inheritance tax upon the bequests received from Lithuanian individuals (however, the Lithuanian NPO must possess a status of a recipient of sponsorship in order to treat the bequest received by the NPO as a donation).

It is not possible for foreign NPOs to receive an official registration in Lithuania. Should foreign NPOs wish to register in Lithuania, the Lithuanian NPO must be established. The founders of the Lithuanian NPO can be either natural or legal persons (either Lithuanian or foreign).

5. ADDITIONAL CLARIFICATIONS

5.1. WHEN CLAIMING CORPORATE INCOME TAX DEDUCTION FOR A CROSS-BORDER DONATION, SHOULD THE REQUIRED DOCUMENTS TO BE SUBMITTED, BE WRITTEN IN LITHUANIAN?

If the documents are in English or Russian language, then no translation is required. In other cases (i.e. when the documents are in other foreign languages), the tax administrator may request to provide Lithuanian translation of such documents (in this case translation must be approved by the signature and seal of the translator).

5.2. IS IT POSSIBLE FOR A FOREIGN NPO TO RECEIVE A BINDING ADVANCE TAX RULING ESTABLISHING THAT THEY CAN BENEFIT FROM THE TAX ADVANTAGES?

Please kindly note that a foreign NPO itself is not entitled to Lithuanian tax advantages. A donor (i.e. a Lithuanian tax payer (a legal entity)) which makes the donation to a qualifying

foreign NPO is entitled to the tax advantages in Lithuania. As the tax treatment in this case is clear, the Lithuanian tax administrator may refuse to issue a binding ruling on this matter. The purpose of the advance binding ruling is to get a binding legal opinion of the tax administrator when the legal tax treatment is not clear (vaguely provided in the legal acts) and no authoritative guidance is issued. Therefore, in your described situation the advance binding ruling most likely could not be issued.

5.3. UNDER HEADING 2.2.1 AND 2.2.5 REFERENCE IS MADE TO “250 BASIC SOCIAL BENEFITS”. COULD YOU PLEASE CLARIFY THIS TERM AND INDICATE WHAT IT REFERS TO?

Basic social benefit (BSB) (in Lithuanian – “bazinė socialinė išmoka“ or “minimalus gyvenimo lygis“ – the latter definition was used until 2009 but it is still in the Law on Corporate Income Tax) is the indicator set by the Government of the Republic of Lithuania on a yearly basis (indexed yearly). In 2023 it is EUR 49 (the link to the legal act is here). BSB for 2024 will be set in December 2023. In general, BSB is used for determination of various benefits paid by the Social Security Authorities, amounts and limits established by the law. In the context of sponsorship, BSB is used to determine the limit of amount which can be donated to the NPO in cash without negative tax consequences for both – the donor and the NPO (Article 28 of the Law on Corporate Income Tax).

5.4. MUST A TAX CERTIFICATE/ATTESTATION BE ISSUED BY THE NPO TO THE DONOR? COULD YOU IN THIS RESPECT PLEASE CLARIFY WHETHER THE NPO (THAT HAS A VALID STATUS OF A RECIPIENT OF SPONSORSHIP) MUST ISSUE A DOCUMENT (FOR TAX PURPOSES) TO THE DONOR (SUCH AS A FICHE, ATTESTATIONS OR CERTIFICATE FOR THE GIFT), AND IF SO, CAN YOU SPECIFY THE FORM AND CONTENT OF SUCH CERTIFICATE OR ATTESTATION.

The NPO registered in Lithuania is not obliged under the law to issue a tax certificate/attestation to the donor. The donor has the possibility to check status of the NPO (whether it has a valid status of a recipient of sponsorship) on the website of the Lithuanian States Tax Authorities (the link is here) and make a print screen for its files. As mentioned under heading 2.2.5, donation (either in monetary funds or in kind) exceeding EUR 1 500 must be accompanied by a written agreement between the parties. Whereas the donation / sponsorship agreement for donations (either in monetary funds or in kind) exceeding EUR 14 500 must be approved by the notary. In the said agreements the provision stating that “the NPO confirms that it has a valid status of a recipient of sponsorship” is recommended.

LUXEMBOURG²³⁷

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current Luxembourg legal and tax framework for philanthropy and its tax advantages are the following:

- Legal requirements for associations and foundations:
 - o Law dated 7 August 2023 on Non-Profit Associations and Foundations (Memorial A N°592 2023).
- Tax advantages for donations:
 - o Art. 109 and 112 of the Luxembourg income tax law (ITL);
 - o Circular 112/2 ITL dated 7 April 2010;
 - o Circular 112/1 ITL dated 8 November 2021.

The Luxembourg authorities provide on their website an overview in French, German and English of:

- Tax benefits for individuals:
 - o <https://guichet.public.lu/fr/citoyens/impots-taxes/pension-rente/depenses-deductibles/dons-liberalites.html>;
 - o https://impotsdirects.public.lu/fr/az/l/libera_dons.html.
- Recognitions process and requirement for Luxembourg NPO:
 - o <https://guichet.public.lu/fr/entreprises/creation-developpement/forme-juridique/fondations/reconnaissance-statut-utilite-publique-asbl.html>.
- Record OF NPO recognized BY THE MINISTRY OF JUSTICE and foundations
 - o https://impotsdirects.public.lu/fr/az/l/libera_dons/organismes-agrees.html
- General information on NPO and foundations on the ministry of Justice's website:
 - o <https://mj.gouvernement.lu/fr/service-citoyens/asbl.html>.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers.

²³⁷ Answers provided by Arendt & Medernach SA (Luxembourg).

Donations to recognized NPO (ASBL) or foundations can grant the taxpayer a deduction on taxable income (for individuals or corporations) as well as reduced gift tax rates.

Bequests to recognized NPO or foundations can benefit from a reduced gift tax rate.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to organisations recognized as being in the public interest by a specific law, (ii) to non-profit organisations recognized as being in the public interest and (iii) to foundations under the Luxembourg law of 7 August 2023 regarding non-profit organisations and foundations (“**2023 Law**”).

For more information in that respect, please visit the following link:

https://impotsdirects.public.lu/fr/az/l/libera_dons.html#releve#releve.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

(a) Recognition of validly constituted non-profit organisations as being of public interest

For a Luxembourg non-profit organisation, validly constituted under the 2023 Law, to be recognised as being in the public interest by Grand-Ducal decree, it must meet the following conditions²³⁸:

- the organisation must pursue an aim of general interest of a philanthropic, social, religious, scientific, cultural, artistic, educational, sporting, therapeutic or medico-social nature, tourism-related, protective of the environment or of animals or which defends and promotes human rights, which goes beyond local interests and is not limited to the activity of its members;
- the aim pursued must be of a permanent nature;
- the organisation must have carried out projects over the last three (3) financial years with a view to implementing the aim for which it was formed.

(b) Creation of a foundation

A Luxembourg foundation is 'by nature' considered as being in the public interest. There is thus no recognition process as such. However, are considered as foundations, those which, essentially using the income from the assets allocated to them at the time of their creation and the income from the funds collected since their creation, aim to achieve a purpose which fulfils the following conditions²³⁹:

- the foundation must pursue a purpose of general interest, as defined in its articles of association, of a philanthropic, social, religious, scientific, artistic, cultural, educational, sporting, therapeutic or medico-social nature, or of a tourist,

²³⁸ Art. 33 of the 2023 Law.

²³⁹ Art. 40 of the 2023 Law.

- environmental or animal protection nature, or which defends and promotes human rights, which goes beyond local interests;
- the aim pursued is of a permanent nature.

The initial assets allocated to the foundation must amount to a minimum of EUR 100,000, this minimum being allocated in the form of a cash payment.

Moreover, the foundation does not engage in industrial or commercial operations and does not seek to make a material gain. The foundation may not procure any material gain for the founders, directors, or any other person, except in the latter case, if it is for the achievement of the general interest objective.

2.1.3. What does the recognition process look like?

- (a) Recognition of validly constituted non-profit organisations as being of public interest

Regarding validly constituted non-profit organisation, the public interest recognition process requires the organisation to file a request to the Minister of Justice, including the following²⁴⁰:

- a report with a precise description of the concrete projects carried out by the organisation over the last three (3) financial years with a view to achieving its statutory aim, on the projects in the process of being carried out and on the projects, it intends to implement over the next two (2) financial years;
- a copy of the resolution of the general meeting authorising the submission of an application for recognition as a public interest organisation;
- confirmation that the latest version of the coordinated articles of association and the documents referred to in Art. 22, Par. 1 and 2, point 1°, of the 2023 Law have been filed with the Trade and Companies' Register (i.e., deed of incorporation, any amendments to the articles of association, as well as extracts from documents relating to the appointment and termination of certain functions).

This request can be filed online via the [myguichet.lu portal](https://myguichet.lu).

The Minister of Justice examines the request and takes the opinion of the Minister of Finance.

The Minister of Justice checks that the conditions of Art. 34 of the 2023 Law (see above) have been met and that the articles of association comply with the same law. The Minister of Justice also proceeds to a honourability verification of the directors and therefore takes note of the entries in bulletin no. 2 of the criminal record of each member of the board of directors of the non-profit organisation applying for recognition of its public interest status to check that their criminal record is not incompatible with the performance of their duties. If the member of the board of directors of such an organisation holds the nationality of another country, the Minister of Justice may ask him or her to provide an extract from the criminal record or a similar document issued by the competent public authority of the country or countries of which he or she is a national.

²⁴⁰ Art. 34 of the 2023 Law.

After these checks, the public interest status will have to be recognized by Grand-Ducal decree.

(b) Approval of a foundation

For a foundation to be approved, a request needs to be addressed to the Minister of Justice, including the following documents²⁴¹:

- a draft notarial deed of the articles of association;
- a report with a precise description of the specific projects that the foundation intends to implement over the first three (3) financial years with a view to achieving its statutory purpose;
- a three-year financing plan;
- the composition of the first board of directors as determined following the deed of incorporation.

The approval request can be filed online via the myguichet.lu portal.

The Minister of Justice examines the request and takes the opinion of the Minister of Finance.

The same honourability checks as the one explained above for the non-profit organisations applies to the foundations.

After these checks, the approval of the foundation will have to be recognized by Grand-Ducal decree.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no specific fees or costs payable vis-à-vis the Luxembourg administration that are related to the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

There is no specific timeframe foreseen under the 2023 Law and it is thus difficult to foresee how long the process will take.

In practice, the process generally takes between one to three months.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no specific period of validity for the recognition of the status of public interest of a non-profit organisation.

There is also no specific period of validity of a validly constituted foundation.

²⁴¹ Art. 40 of the 2023 Law.

2.1.7. Is any specific legal form required for the Belgian NPO?

According to the 2023 Law, non-profit organisations and foundations validly constituted under foreign law are recognised by operation of law with the capacity accorded to them by the law of the State in which they are constituted, provided that their activities do not contravene public policy or public security or jeopardise relations with another State or the maintenance of international peace and security²⁴².

In case non-profit organisations and foundations validly constituted under foreign law carry out activities in Luxembourg, the requirements of the 2023 Law need to be respected.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable with respect to Luxembourg.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Luxembourg tax resident individuals as well as corporations can deduct donations made to NPOs from their taxable base subject to personal income tax/corporate income tax and municipal business tax.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donation made to duly recognized NPOs (recognized ASBL or duly constituted foundations, authorized by Grand-Ducal act) can benefit from the tax deduction.

Same tax benefits are available for donations made to all similar NPOs headquartered in another Member State of EU or EFTA and recognized as being of general interest under their domestic law.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (personal income tax); and
- companies (corporate income tax and municipal business tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Luxembourg individual residents taxpayers may claim a tax deduction for donations from their taxable income made to NPOs when filing their income tax return.

²⁴² Art. 68 of the 2023 Law.

They must report the donations on page 14 - Sec. 2.C entitled "*donations*" (*libéralités*) of the model 100 income tax return form.

To fill in this section correctly, the taxpayer must:

- provide details on the recipient of the gift, the payment date and the amount paid;
- attach the certificate issued by the organisation, serving as proof that the gift was paid.

No specific requirement applies for tax certificates related to donation made to Luxembourg NPOs.

The same tax benefits are available to Luxembourg non-tax residents asking to be assimilated to Luxembourg tax residents for tax purposes as per Art. 157 ter ITL.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In order to benefit from the tax deduction, the donation made by individuals or companies should meet the following conditions:

- the donation must generally be made in cash directly to the NPO (except for donations to some listed Luxembourg institutions where a donation in kind is possible – please see below);
- the total amount of donations per tax year made by the donor must be at least EUR 120 and must not exceed 20% of the donor's total net income or EUR 1 million. Amounts exceeding these limits can be carried forward for the next two years, subject to the same conditions and limits.

In principle, a Luxembourg proportional gift tax will be levied on any donation if the gift is recorded in a Luxembourg notarial deed and/or submitted for registration with the Luxembourg tax authorities (*Administration de l'Enregistrement et des Domaines et de la TVA*). The tax residence of the donor and the donee are irrelevant for Luxembourg gift tax purposes. Hence, a *registered* donation of movable assets to a Luxembourg NPO should in principle trigger a gift tax at a rate of 4.8% on the net fair market value of the asset transferred.

However, gifts "*from hand to hand*" (*don manuel*) are not subject to Luxembourg gift tax as they are in principle not registered, unless the Luxembourg tax resident donor dies during the year in which the gift is made, in which case it must be included in the estate for inheritance purposes.

Tax advantages are available for donations in kind in to limited NPOs provided within Art. 112 ITL (donation through "*Fonds culturel national*", "*Fonds national de soutien à la production audiovisuelle*" or donation through the "*Fonds au centre national de*

l'audiovisuel” or donation to other audio-visual organization duly recognized). Detailed requirement for donations in kind are provided in Art. 112 ITL.

In addition, any donation to a non-profit association (ASBL) or a foundation, exceeding EUR 30,000 must be authorised by way of a decree issued by the Minister of Justice.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

An inheritance tax will be levied on the net fair market value of the assets transferred to a qualifying NPO through a will. The transferred estate in favour of a qualifying NPO, as an heir, should trigger an inheritance tax at a reduced rate of 4% in Luxembourg.

Further, it should be noted that the transferred estate to the qualifying NPO should not be subject to a surcharge tax varying between 1/10 and 22/10 in case the net value the assets transferred exceeds EUR 10,000.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Tax advantages are available for bequests to both Luxembourg Recognised NPOs or foundations and Foreign Equivalent EEA NPOs.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Reduced inheritance tax rates are only available for bequest made to recognized NPOs. The normal rate between non-related parties (15%) will apply in all other situations and the surcharge varying between 1/10 and 22/10 in case the net value the assets transferred exceeds EUR 10,000 will also be applicable.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Inheritance tax will be due by the NPOs for bequest made by individuals.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Cf. 2.3.1.

No regional, provincial, cantonal or other differences exist in Luxembourg.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Any bequest to a NPO or a foundation, exceeding EUR 30,000 must be authorised by way of a decree issued by the Minister of Justice.

From the point of view of Luxembourg inheritance law, a testator with no descendants is free to allocate all or part of his assets to an NPO.

If the testator has children or descendants of children (in the event of the predecease of a child), in principle he can only validly dispose of his estate to an NPO up to a limit of half of his estate if he has one child, a third if he has two children and a quarter if he has three or more children (principle of forced heirship rules). In addition, the surviving spouse is not a particularly protected heir and can be disinherited.

In addition, from a purely civil law point of view, the testator may impose obligations on the NPO legatee as long as they are not immoral or illegal.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

The same tax advantage is available for donations made by Luxembourg tax residents (and non-residents assimilated to residents for tax purposes), to NPOs headquartered in another Member State of EU or EFTA and recognized as being of general interest under their domestic law.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is not possible for foreign NPOs to formally register but tax advantage is nevertheless available for donations made to NPOs headquartered in another Member State of EU or EFTA and recognized as being of general interest under their domestic law.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

No alternatives exist to registration, but tax advantage is nevertheless available for donations made to NPOs headquartered in another Member State of EU or EFTA and recognized as being of general interest under their domestic law.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

If an NPO is recognised as such in its home country, there is no requirement to prove the equivalence of its foreign legal form to domestic legal forms.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Regarding donation made to foreign NPOs qualifying as tax deductible for Luxembourg tax purposes (*cf.* 2.2.2.), the Luxembourg Inland Revenue (Luxembourg tax authorities), may ask the taxpayer to fill in the form number 720 for Cross-border donations including the following information:

- denomination and head office address of the NPO;
- name of the representative signing the form on behalf of the NPO;
- date of creation;
- city and country of creation;
- non-lucrative aims pursued by the NPO;
- signature of the representatives.

By filling the form, the representatives of the NPO certify that:

- “according to the laws of the State of establishment, these selfless aims are recognised as being of general interest and fiscally favoured.”;
- “the organization is exempt from taxes on income and wealth in its country of establishment for the year of the received donation and that such donations are fiscally deductible by donors residing in its country of establishment”.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

No such list exists for Foreign Equivalent EEA NPOs, since these entities cannot formally register in Luxembourg.

4. CONCLUSION

Foreign Equivalent EEA NPOs qualify for the same tax advantages as Luxembourg Recognised NPOs, i.e., tax reductions for donations by individuals, tax deductions for donations by companies, reduced gift tax rates and reduced inheritance tax rates.

Foreign Equivalent EEA NPOs should fulfil the same requirements as Luxembourg Recognised NPOs. However, it is not possible for Foreign Equivalent EEA NPOs to receive an official registration in Luxembourg to qualify for all tax advantages.

5. ADDITIONAL CLARIFICATIONS

5.1. IN WHICH LANGUAGE SHOULD THE CERTIFICATE PROVIDED BY THE ORGANIZATION, SERVING AS PROOF OF THE GIFT PAYMENT, BE SUBMITTED?

The form number 720 for Cross-border donations is available in English, French and German on the Luxembourg tax authorities website:

https://impotsdirects.public.lu/fr/formulaires/pers_physiques.html

5.2. IS IT POSSIBLE FOR A FOREIGN NPO TO RECEIVE A BINDING TAX RULING WITH RESPECT TO THE AVAILABILITY OF TAX ADVANTAGES?

In Luxembourg, Advanced Tax Agreements (ATAs) are regulated by paragraph 29a of the General Tax Law (Abgabenordnung) and the Grand-Ducal Regulation adopted on December 23, 2014. ATAs can be requested for corporate or personal tax matters and must fulfil the requirements described in paragraph 29a of the General Tax Law and the Grand Ducal Regulation adopted on December 23, 2014. Among other formalities, they should include:

- a detailed description of the operation or operations seriously and concretely contemplated that have not yet taken effect;
- a detailed analysis of legal issues, accompanied by a reasoned explanation of the applicant's legal position;
- assurance that all necessary information for the assessment of data is complete and in accordance with reality.

When the ATA request concerns corporate taxation, a fee is determined by the tax authorities (Administration des Contributions Directes) to cover administrative costs incurred in processing the request. This fee ranges from 3,000 to 10,000 euros depending on the complexity of the request and the amount of work involved.

We believe that if a foreign NPO were to submit an ATA request, such a fee would not be applicable as it pertains to the deductibility of a donation from an individual tax perspective. However, based on our experience, an ATA request typically takes some time to be processed, and a response is not expected before 6 to 9 months from the submission of the ATA to the competent tax office.

MALTA²⁴³

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current tax rules for philanthropy in Malta, including the tax advantages for donations and bequests, are contained in:

- the Income Tax Act (Cap. 123 of the laws of Malta) and subsidiary legislation made thereunder; and
- the Duty on Documents and Transfers Act (Cap. 364 of the laws of Malta).

The Malta Tax and Customs Administration can be contacted at:

- taxpayerservice.cfr@gov.mt
- servizz@gov.mt

Alternatively, one can file a request through the Contact Form on the attached link:

https://cfr.gov.mt/en/inlandrevenue/contact_us/Pages/Contact-Us.aspx

In Maltese law, a non-profit making organisation which satisfies the requirements of the Voluntary Organisation Act²⁴⁴ is referred to as a “voluntary organisation”.

The legal framework for organisations which qualify as voluntary organisations (foundations, associations, charitable trusts and temporary organisations) is the following:

- the legal requirements for foundations and associations:
 - o Second Schedule to the Civil Code, Cap. 16 of the Laws of Malta, particularly Title III “Of Foundations and Associations”;
 - o Civil Code (Second Schedule)(Fees) Regulations, S.L. 16.07, Laws of Malta;
 - o Civil Code (Second Schedule)(Notifications and Forms) Regulations, S.L. 16.08, Laws of Malta;
 - o Civil Code (Second Schedule)(Existing Organisations) Regulations, S.L. 6.10, Laws of Malta;
 - o Civil Code (Second Schedule)(Register of Beneficial Owners - Associations) Regulations, S.L. 16.17, Laws of Malta;
 - o Civil Code (Second Schedule)(Register of Beneficial Owners - Foundations) Regulations, S.L. 16.18, Laws of Malta;
- the legal requirements for trusts:
 - o Trusts and Trustees Act, Cap. 331, Laws of Malta;
 - o Trusts and Trustees Act (Fees) Regulations, S.L. 331.01, Laws of Malta;
 - o Trusts and Trustees Act (Exemption) Regulations, S.L. 331.02, Laws of Malta;

²⁴³ Answers provided by Ganado (Valletta).

²⁴⁴ Cap. 492, Laws of Malta;

- Trusts and Trustees Act (Registration of Notaries to act as Qualified Persons) Regulations, S.L. 331.05, Laws of Malta;
 - Trusts and Trustees Act (Notarial Trust Deeds Registration, Conservation and Access) Regulations, S.L. 331.06, Laws of Malta;
 - Trusts and Trustees (Protected Disability Trusts) Regulations, S.L. 331.08, Laws of Malta;
 - Trusts and Trustees Act (Register of Beneficial Owners) Regulations, S.L. 331.10, Laws of Malta;
- the legal requirements for temporary organisations:
 - Voluntary Organisations Act, Cap. 492, Laws of Malta;
 - additional legal requirements for foundations, associations, trusts and temporary organisations which qualify as voluntary organisations:
 - Voluntary Organisations Act, Cap. 492, Laws of Malta;
 - Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, S.L. 492.02;
 - Voluntary Organisations (Public Collections) Regulations, S.L. 492.03;
 - Voluntary Organisations (Charity Shops) Regulations, S.L. 492.04.

To be validly constituted, a foundation must be registered with the Registrar for Legal Persons²⁴⁵. Associations have an option to register with the Registrar for Legal Persons. Temporary Organisations are established through the submission of a form to the Commissioner for Voluntary Organisations.

If a foundation, association, trust or temporary organisation satisfies the requirements found in the Voluntary Organisations Act to qualify as a voluntary organisation, it may also²⁴⁶ be enrolled with the Commissioner for Voluntary Organisations.

The Malta Business Registry has issued Guidance Notes on the Registration of Foundations and Associations:

<https://mbr.mt/wp-content/uploads/2021/06/FAQs-Foundations-and-Associations.pdf>

The Office of the Commissioner for Voluntary Organisations provides information about voluntary organisations, including the enrolment thereof, on its website: <https://cvo.gov.mt/>.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available for donations to public benefit foundations. The tax incentives are in the form of:

- tax deductions against the donor's taxable income, and

²⁴⁵ There are a number of exceptions.

²⁴⁶ In the case of foundations, and associations which opt to register with the Registrar for Legal Persons.

- exemptions from capital gains tax on the transfer of otherwise chargeable assets, but only when the donation is made to approved philanthropic institutions.

Different tax deductions rules apply depending on the person to whom the donation is made.

As Malta does not impose any inheritance tax, there are no specific advantages which are applicable for bequests when compared to other assets inherited upon succession. Stamp duty on bequests of certain chargeable assets (such as immovable property in Malta and shares in Maltese companies) will apply without any exemption.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Donations made to specific persons as identified in subsidiary legislation²⁴⁷ under the Income Tax Act entitle the donor to deduct against its chargeable income the amounts which are donated subject to certain capping and the satisfaction of certain conditions.

The institutions and organizations which are listed in the Schedule to the Income Tax Exemption on Philanthropic Work Notice²⁴⁸ entitle any donor thereto to be exempt from any capital gains tax which would otherwise arise on the donation of chargeable assets.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

An organisation which wishes to be recognised (referred to as “enrolled” in the Voluntary Organisations Act), as a voluntary organisation must:

- be established as a foundation, association, trust or temporary organisation²⁴⁹;
- be established for any social purpose including that which qualifies as a public purpose or for public benefit²⁵⁰;

The term “**social purpose**” is defined in the Voluntary Organisations Act as any charitable or philanthropic purpose, and without prejudice to the generality of the aforesaid, includes:

- the advancement of education, including physical education and sports;
- the advancement of religion;
- the advancement of health;
- social and community advancement, including the promotion of the ethical, educational and social aspects of a particular profession or trade, but which does not include the promotion of any private economic interest;
- the advancement of culture, arts and national heritage;
- the advancement of environmental protection and improvement, including the protection of animals;
- the promotion of human rights, conflict resolution, democracy and reconciliation;

²⁴⁷ Donations (Sports and Culture) Rules, SL 123.102; Donations (National Heritage) Rules, SL 123.96; Donations (University Research, Innovation and Development Trust) Rules, SL 123.113; Donations (Creativity Trust) Rules, SL 123.137; and Donations (Community Chest Fund) Rules, SL 123.162.

²⁴⁸ Subsidiary Legislation 123.24.

²⁴⁹ Definition of “voluntary organisation” in the Voluntary Organisations Act. An organisation may also be subject to mandatory enrolment.

²⁵⁰ Art. 3(1), Voluntary Organisations Act.

- the promotion or protection of the interests of other public benefit organisations, including federations of such organisations;
- the carrying out of activities intended to raise funds to support other public benefit, non-profit or voluntary organisations or to generally support the voluntary sector as a whole or parts of it through the application, grant, transfer or otherwise making available of funds so raised to them or for their benefit; or
- any other purpose as may be prescribed by the Minister by means of regulations made by virtue of the Voluntary Organisations Act;
- shall not include a political purpose.

The term "**public purpose**" or "**public benefit**" is defined in the Voluntary Organisations Act as a social purpose which promotes or serves the general public interest or the interest of a sector of the general public, whether directly or indirectly. This criteria may not be satisfied if the Commissioner is of the opinion that the organisation does not reach sufficient levels of promotion or service to the general public interest or the interest of a sector of the general public. The organisation must not have any private benefit and its public purpose must be of a continuing nature and must apply throughout the existence of the voluntary organisation.

Be non-profit making²⁵¹ which is to be interpreted in accordance with the principles, rules and guidelines in the First Schedule to the Voluntary Organisations Act. The purposes of the organisation must not include the promotion of any private interest.

Be voluntary²⁵² which is defined as meaning the existence of two or more of the following elements (only one of these elements is necessary in the case of foundations):

- the overall control of the organisation is exercised by administrators who do not receive any remuneration for their services for carrying on functions of administrators²⁵³;
- the organisation is created by the endowment of voluntary and gratuitous grants and the organisation's affairs are supported, at least in part, by such voluntary or gratuitous grants or by services rendered on a voluntary basis;
- in the case of an association, any person can join the organisation or participate in the activities of the organisation and every participant in the organisation has the right to freely leave the organisation²⁵⁴;
- **be independent and autonomous of the Government**²⁵⁵. The organisation must also be independent and autonomous from any local council, statutory corporation, public agency and other organisation of whatever legal form controlled by the Government, and it must also be independent and autonomous from the President of Malta;
- **not be controlled by the Government**.²⁵⁶ An organisation is controlled by the Government when the Government has the power, whether directly or indirectly, to nominate, appoint, change or remove any of the administrators of the organisation;

²⁵¹ Ibidem.

²⁵² Ibidem.

²⁵³ except as permitted by the Voluntary Organisations Act.

²⁵⁴ This is subject to limitations due to the nature or size of the organisation and subject to any discretion which may be exercised in terms of the statute of an organisation by the administrators or a membership committee.

²⁵⁵ Art. 3(2)(a), Voluntary Organisations Act.

²⁵⁶ Art. 3(3)(a), Voluntary Organisations Act.

- not be a **public agency**.²⁵⁷ This is an entity which is established to carry out public administration in terms of the Public Administration Act²⁵⁸ or any other law. It also includes a statutory body;
- not be a religious organisation²⁵⁹;
- not be a political party, have political purposes or be controlled by, related or affiliated to a political party²⁶⁰;
- not be established as a **limited liability company or any commercial partnership** established under the Companies Act, Cap. 386, Law of Malta²⁶¹;
- not be established as the principal cause to trade or to carry out commercial activities.

Any organisation has a right to enrol as a voluntary organisation and enjoy the privileges granted to enrolled voluntary organisations only if:

- its social purpose qualifies as a public purpose or public benefit; and
- the organisation complies with the rules on form and content prescribed by the Commissioner for Voluntary Organisations²⁶².

In certain circumstances identified in the Voluntary Organisations Act, an organisation may be subject to mandatory enrolment²⁶³. A voluntary organisation is subject to mandatory enrolment in the following cases:

- a) it makes or intends to make public collections; or
- b) it receives or is the beneficiary of grants, sponsorships or other financial aid from the Government or otherwise enjoys the privileges contemplated by the Voluntary Organisations Act, any regulations made thereunder or any other law, or intends to be so eligible; or
- c) it is the beneficiary of any policies supporting voluntary action as these may be developed by the Government or intends to so benefit; or
- d) it receives or is the beneficiary of exemptions, privileges or other entitlements in terms of any law or intends to so benefit;
- e) it does not carry out activities as stated under paragraphs a) to d) above but has an income of more than €25,000 in any one year or has an annual income of more than €5,000 for three consecutive years²⁶⁴;
- f) it does not carry out activities as stated under paragraphs a) to d) above but it has capital assets of a value exceeding €500,000 irrespective of its income in any one year²⁶⁵;

²⁵⁷ Ibidem.

²⁵⁸ Cap. 595, Laws of Malta

²⁵⁹ Art. 3(3)(c), Voluntary Organisations Act. The term “religious organisation” is defined in the Voluntary Organisations Act.

²⁶⁰ Art. 3(3)(f), Voluntary Organisations Act. “Political party”, “political purposes” and “controlled by, related or affiliated to a political party” are all defined in the Voluntary Organisations Act.

²⁶¹ Art. 3(4), Voluntary Organisations Act.

²⁶² Art. 12A, Voluntary Organisations Act.

²⁶³ Art. 12B, Voluntary Organisations Act.

²⁶⁴ This does not apply in the case of an organisation carrying out purposes and, or activities or having sources of income other than those related to the general public or public sources, even if such organisation has a social purpose. This is determined by the Commissioner in writing. The obligation to maintain enrolment ceases to apply if the organisation’s level of income does not meet any of the relevant thresholds for more than three consecutive years.

²⁶⁵ Same as above. In this case, the obligation to maintain enrolment shall apply for at least 5 years and shall cease to apply if the organisation’s level of capital is below a value of €100,000 and remains so for a period of three consecutive years.

- g) enrolment is required by the statute, or in case of an association, if it is so resolved in a general meeting of members or if at least 35% of its members so request in writing, provided that the purpose of the organisation is a public purpose or benefit.

In the case of mandatory enrolment, the obligation to enrol arises²⁶⁶:

- a) in the case of paragraphs a) to d) above, within 90 days of the establishment of the organisation but before engaging in any activities and before receiving any benefits allocated to voluntary organisations;
- b) in the case of paragraphs e) and f) above, if the organisation exceeds:
 - the income threshold stated above; and
 - the capital threshold stated above;
 - it must enrol within 90 days from the date on which any of these thresholds is exceeded. Until such time as it is enrolled, the organisation may not receive any benefits allocated to voluntary organisations;
- c) in the case of paragraph g) above, if the organisation is under an obligation to enrol due to a clause in its statute or if its members request that the organisation be enrolled, it must be enrolled within 90 days from the relevant decision, resolution or similar event.

2.1.3. What does the recognition process look like?

As stated above, a voluntary organisation can take the form of a foundation, an association, a charitable trust or a temporary organisation. A foundation must be registered with the Registrar for Legal Persons in terms of the Second Schedule to the Civil Code. Associations have an option to register with the same Registrar. Charitable Trusts are exempt from registration with the Malta Business Registry and temporary organisations are to be enrolled with the Commissioner for Voluntary Organisations.

Once the organisation is registered with the applicable registry (if this is necessary), it may seek enrolment with the Commissioner for Voluntary Organisations.

The following documents are to be submitted to the Commissioner for Voluntary Organisations:

- the statute;
- a resolution of the administrators to enrol the organisation with the Commissioner for Voluntary Organisations;
- a resolution of the administrators accepting to act as such and to hold office after enrolment;
- an organisational chart;
- the scanned signature of the person submitting the enrolment application;
- documentation necessary in accordance with the applicable Register of Beneficial Owners regulations;
- the certificate of registration, if the organisation is registered with the Registrar for Legal Persons;
- if the organisation is a newly established organisation, a declaration that the organisation has no annual accounts and no annual returns;

²⁶⁶ Art. 12B(3), Voluntary Organisations Act.

- if the administrators do not reside locally, the voluntary organisation must appoint a local representative to represent it in Malta and it must submit the letter of appointment to the Commissioner for Voluntary Organisations;
- if the administrators do not reside locally, the following documents are also to be submitted to the Commissioner for Voluntary Organisations: a copy of their identity card (in the case of an EU Member State) or a copy of their passport (in the case of any country including EU Member States) or an apostille certificate;
- a scanned copy of the residential permit issued by the Department of Citizenship and Expatriate Affairs is required by foreign administrators residing in Malta and who do not have a local identity card;
- if the voluntary organisation has a commercial outlet, it must submit a signed statement stating that the commercial outlet is used only by its members; or the contract of lease of the commercial outlet if this is open to the public; or a document showing that the organisation has established a limited liability company to run the outlet.

A more detailed overview of the enrolment process, and the specific requirements, can be found on the following website: <https://cvoenrolment.gov.mt/>.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

An organisation which applies for registration with the Registrar for Legal Persons (foundations and associations) must pay an initial registration fee and an annual registration fee, which fee varies depending on the value of the assets of the organisation on the date when the fee is due. However, the fees due by organisations which are enrolled or are in the process of being enrolled with the Commissioner of Voluntary Organisations, are reduced to 10% of the sum due with a minimum of €35²⁶⁷.

An enrolment fee of €40 is payable by online payment registration when an application to enrol an organisation is submitted to the Commissioner for Voluntary Organisations.

If the services of an advocate or a notary public (necessary in the case of foundations which must be drawn up by public deed) or an accountant are utilised, professional fees will also be due.

2.1.5. What is the timeframe for the recognition process to be completed?

With regards to the registration of a foundation or an association (if this opts to register) with the Registrar for Legal Persons, the Registrar is bound to notify decisions refusing applications to register organisations and providing the reasons for the refusal.

Any person or organisation may appeal to the Civil Court (Voluntary Jurisdiction Section) from the refusal within 30 days of receipt thereof. If there is no response to an application to the Registrar to register an organisation, after 45 days from the date of the application to register, any person or organisation may appeal to the Civil Court (Voluntary Jurisdiction Section)²⁶⁸.

²⁶⁷ Civil Code (Second Schedule) (Fees) Regulations, S.L. 16.07, Laws of Malta.

²⁶⁸ Art. 11, Second Schedule to the Civil Code.

With regards to the enrolment of an organisation with the Commissioner for Voluntary Organisations, the Commissioner seeks to determine enrolment applications by not later than 3 months from the date of application. Failure to so determine and to notify the applicant of his decision within this 3-month period, shall be deemed to mean that enrolment has been accepted. In such case, the Commissioner may request the enrolled voluntary organisation to comply with legal requirements within 6 months so that this retains its enrolment. If such requirements are not fulfilled within this 6-month period, the Commissioner shall issue of a Cancellation Order to cancel the enrolment of the organisation after giving the organisation 30 days' notice in writing. The Commissioner may also issue a Suspension Order or a Cancellation Order if it is determined that the element of a public purpose or public benefit within the organisation is absent.

However, if the organisation applying for enrolment is a foundation which has not yet been registered with the Registrar for Legal Persons, the duty of the Commissioner to proceed with enrolment shall be suspended until the date when the foundation is registered²⁶⁹.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Enrolment certificates do not have a period of validity. However, enrolled voluntary organisations must submit documentation annually to the Commissioner for Voluntary Organisations. If such organisations are no longer eligible for enrolment, the Commissioner shall issue of a Cancellation Order to cancel the enrolment of the organisation.

The Certificates of Registration of organisations (foundations and associations) which are registered with the Registrar for Legal Persons also do not have a period of validity. In this case, an annual registration fee is due.

2.1.7. Is any specific legal form required for the Maltese NPO?

Voluntary Organisations must take the legal form of a foundation, an association, a trust or a temporary organisation and they must fulfil:

- in the case of foundations and associations, the requirements found in the Second Schedule to the Civil Code;
- in the case of trusts, the requirements found in the Trusts and Trustees Act;
- in the case of temporary organisations, the requirements found in the Voluntary Organisations Act.

They must also qualify as voluntary organisations in terms of the Voluntary Organisations Act. Please refer to our previous replies in this regard.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

This is not applicable with regards to Malta.

²⁶⁹ Art. 13(5), Voluntary Organisations Act.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Tax advantages arise in the form of deductible expenses for the following donations:

- Cash donations by companies to an athlete or sports regulatory body participating in national or international sports events where such events are approved by the Malta Sports Council;
- Cash donations made by companies to the Arts Council Malta or a cash donation to a non-profit making cultural organisation approved by the Arts Council Malta;
- Cash donations made, or a scholarship provided, by companies to a bona fide artiste who is ordinarily resident in Malta;
- Cash or asset donations (except immovable property) made by companies to certain national heritage organisations made for the purpose of research, conservation or restoration, education and exhibition of the cultural heritage;
- Donations, in cash or in kind, made to the University Research, Innovation and Development Trust;
- Donations, in cash or in kind, made to the Creativity Trust, established by the Creativity Trust Order;
- Cash donations by companies to the Malta Community Chest Fund.

The institutions and organizations which are listed in the Schedule to the Income Tax Exemption on Philanthropic Work Notice²⁷⁰ entitle any donor thereto to be exempt from any capital gains tax which would otherwise arise on the donation of chargeable assets.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes. The deductibility of expenses and/or any exemption from capital gains tax are only available if the recipient is a recognised one as referred to in 2.2.1.

2.2.3. Which persons are eligible for tax advantages?

The tax advantages are only available where the recipient of the donation is a recognised one as referred to in 2.2.1.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g. remittance of a tax certificate or tax attestations, and if so what is the form and content of such certificate or attestation.

In order to be able to claim a tax-deductible expense, the donor must:

- prove that the donation was granted to a qualifying entity (as mentioned above);
- attach to his/her tax return a certificate issued by the relevant body identifying:
 - o the name and income tax registration number of the donor and the recipient;
 - o the date and value of the donation;
 - o the purpose for which the donation was made; and
 - o such other details that may be prescribed;

²⁷⁰ Subsidiary Legislation 123.24.

- attach the relevant proof that the donation was made to his / her tax return.

The burden of proof that a donation has been made is of the donor.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

(a) Tax Restrictions

The amount of donations that are allowed as a deduction against a person's income are subject to minimum thresholds and capping in certain instances as follows:

- Donations to Arts Council Malta or a cash donation to a non-profit making cultural organisation approved by the Arts Council Malta: the deduction allowed for the donor is up to an amount equivalent to 150% of the donation or € 50,000, whichever is the lower;
- Donations to sports person participating in a national sports event or an international sports event: the deduction allowed is of the actual amount of the donation or € 60,000, whichever is the lower;
- Donations made to University research, innovation and development: the deduction allowed for the donor is required to be of a minimum amount of € 150 EUR and capped at € 50,000;
- Donations to national heritage organisations: the deduction allowed to be taken by donor is allowed in full as long as the donation exceeds € 2,320.
- Donations to the Creativity Trust: deduction allowed to be taken by donor is capped at €100,000 provided that the donation exceeds €150.
- Cash donations by companies to the Malta Community Chest Fund: deductions allowed in full as long as donation exceeds € 2,000.

(b) Regulatory Restrictions

- A voluntary organisation may be the beneficiary of a testamentary disposition as well as a donation. However, donations made to an organisation which is not registered with the Registrar for Legal Persons shall be deemed to have been made on the assumption that such organisation is registered or will be registered. The donation shall not come into effect, and to the extent performed shall be revocable, by application to the Civil Court (Voluntary Jurisdiction Section) of the donor, unless an application for the registration of the organisation with the Registrar for Legal Persons is made within one year from the donation²⁷¹.
- In terms of Maltese law, the descendants and the surviving spouse of the deceased have a right on the estate of the deceased. This is a right reserved by law in their favour and is known as the "reserved portion"²⁷².

²⁷¹ Art. 4(9), Second Schedule to the Civil Code.

²⁷² Art. 615, Civil Code.

The reserved portion due to all children, whether conceived or born in wedlock or conceived and born out of wedlock or adopted shall be:

- one-third of the value of the estate if such children are not more than four in number; or
- one-half of such value if they are five or more²⁷³.

The reserved portion due to the surviving spouse shall be:

- if the deceased spouse is survived by children or other descendants, one-fourth of the value of the estate in full ownership; or
- if the deceased spouse has left no children or other descendants, one-third of the value of the estate in full ownership²⁷⁴.

The reserved portion is the non-disposable portion of the estate of the deceased as it is granted by law to the deceased's spouse and children. The part of the estate which can be freely transferred is known as the "disposable portion".

Donations which, at the time of the opening of the succession of the donor, are found to exceed the disposable portion of the property of the donor, are reduced to such disposable portion. The reduction of donations can only be demanded by those for whose benefit the law has reserved a portion of the property of the deceased (his spouse and children) and by their heirs or other persons claiming under them²⁷⁵

(c) Conditional Dispositions

In terms of the Second Schedule to the Civil Code, an endowment may be subject to a condition, be for a fixed time or in accordance with express rules stated in the statute of the organisation.

The term "endowment" means any grant of money or other property under a gratuitous title, including rights to money or other property, existing or which may arise in the future²⁷⁶.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

As Malta does not impose any inheritance tax, there are no specific tax advantages which are applicable for bequests when compared to other assets inherited upon succession.

Under Maltese tax legislation, stamp duty is payable on any transfer causa mortis of certain chargeable assets, including immovable property situated in Malta and shares, stock, debentures, bonds and any interest in a company, corporation or a partnership. Stamp duty is payable on any transfer causa mortis by the person acquiring the chargeable asset.

²⁷³ Art. 616, Civil Code.

²⁷⁴ Art. 631, Art. 632, Civil Code.

²⁷⁵ Art. 1813 et seq, Civil Code.

²⁷⁶ Art. 34, Second Schedule to the Civil Code.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

No difference.

2.3.4. Which persons are eligible for tax advantages (e.g. individuals, companies, etc.)?

Not applicable.

2.3.5. What type of tax advantages are available if the conditions are met (e.g. a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g. made in cash, real estate, ...)? Are there any restrictions (e.g. the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g. the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

(a) Restrictions

A testamentary disposition is valid if it is made in a will which is valid in terms of Maltese law. Therefore, for example, the testator must not be subject to incapacity as any will made by a person subject to incapacity is null, even though such incapacity may have ceased prior to his death²⁷⁷.

- A voluntary organisation may be the beneficiary of a testamentary disposition. However, if the voluntary organisation is not registered (for example, it is an association which may register with the Registrar for Legal Persons but which is not obliged to do so), the testamentary disposition shall not come into effect unless an application for the registration of such organisation is submitted to the Registrar for Legal Persons within one year from the day of the opening of succession. To the extent that the testamentary disposition is performed, it shall be revocable on demand by application to the Civil Court (Voluntary Jurisdiction Section) by any person interested in the will.
- Please refer to what is stated above regarding the reserved portion, that is, that portion of the estate of the deceased which is reserved by law to the surviving spouse and his children.

Testamentary dispositions which exceed the disposable portion shall be liable to abatement and limited to the disposable portion at the time of the opening of succession. A request for abatement must be made within a specified time period²⁷⁸.

²⁷⁷ Art. 599, Civil Code.

²⁷⁸ Art. 647, Civil Code.

(b) Conditional Dispositions

Conditional and Limited Dispositions in wills are regulated by Book Second, Part II, Title III, of the Civil Code. A testamentary disposition may be subject to a condition, and therefore, a voluntary organisation may benefit from a will subject to the performance of certain tasks. However, if such condition is impossible, or contrary to law or morals, it shall vitiate the disposition to which it is attached. Moreover, if the condition is unintelligible, it is considered as if it had not been attached²⁷⁹.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR REQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

The same tax rules applicable to Maltese public benefit foundations apply to EU or EEA based public benefit foundations. Thus, as long as the EU or EEA based public benefit foundation is approved by the Minister responsible for finance, any donations made by donors may benefit from the above-mentioned tax incentives for deductibility of donations.

There exists no exemption for public benefit foundations/organisations with regard to stamp duty, and there is therefore no discrimination for cross-border bequests.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

In order to benefit from tax deductions for donations to it, a foreign equivalent public benefit foundation must first be approved by the Minister responsible for finance and included in the Schedule to the Income Tax Exemption on Philanthropic Work Notice²⁸⁰.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

The Second Schedule to the Civil Code regulates organisations, including foreign and international organisations. An international organisation is an organisation, the members of which are only States and other international organisations²⁸¹. A foreign organisation is not defined. The registration and enrolment of a foreign organisation are not limited to a particular territory.

A foreign organisation, whether it has legal personality or not, which carries on an activity in Malta on a regular basis is required to register with the Registrar for Legal Persons prior to commencing its activities. A “regular activity” is defined in the Second Schedule to the Civil Code as an activity having a duration of more than three months or which is carried out through a permanent establishment in Malta. A “permanent establishment” is defined as including a place of business, office or branch through which an activity is carried out on a

²⁷⁹ Art. 711, Civil Code.

²⁸⁰ Subsidiary Legislation 123.24

²⁸¹ Art. 1(13)(e), Second Schedule to the Civil Code.

stable and continuous basis). The obligation to register does not apply to foreign religious organisations²⁸².

If a foreign organisation does not carry out regular activities in Malta but needs to prove its recognition for the purpose of applicability of the laws of Malta, the organisation may register with the Registrar for Legal Persons by means of a notice in the prescribed form²⁸³.

When the purposes or activities of a foreign organisation are the subject of laws regulating credit institutions, insurance undertakings, investment services or funds or the provision of trustee, fiduciary, or corporate services or other licensable or regulated activities, such foreign organisation may only be registered with the prior written consent of the Malta Financial Services Authority. This applies when this is required by applicable law and where the Malta Financial Services Authority is the competent authority under such law (unless the foreign organisation is expressly exempted from obtaining such authorisation under Maltese law)²⁸⁴.

With regards to the enrolment of a foreign organisation as a voluntary organisation, this may be enrolled with the Commissioner for Voluntary Organisations. It may even be subject to mandatory enrolment if it operates in Malta in any manner and is established:

- for a public purpose or public benefit;
- as non-profit making; and
- is voluntary²⁸⁵.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

A foreign organisation which registers in Malta with the Registrar for Legal Persons and which enrolls with the Commissioner for Voluntary Organisations must follow the same procedure as Maltese voluntary organisations but specific forms apply in such case²⁸⁶. In certain cases, the applicable forms also indicate the documentation which is to be submitted to the Registrar for Legal Persons and the Commissioner for Voluntary Organisations.

Upon registration and enrolment, foreign organisations must notify the Registrar for Legal Persons and the Commissioner for Voluntary Organisations of:

- the person who has been appointed to act as its local representative;
- the persons appointed as its officers (administrators, treasurers, secretaries of the foreign organisation or any other similar post).

²⁸² Art. 2(6), Second Schedule to the Civil Code.

²⁸³ Art. 2(7), Second Schedule to the Civil Code.

²⁸⁴ Art. 2(8), Second Schedule to the Civil Code.

²⁸⁵ Art. 12F, Voluntary Organisations Act.

²⁸⁶ Reference is to be made to Form B, Form C and Form D, Civil Code (Second Schedule) (Notifications and Forms) Regulations, S.L. 16.08, Laws of Malta. Also refer to the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, S.L. 492.02, Laws of Malta.

The Registrar for Legal Persons and the Commissioner for Voluntary Organisations must also be notified within 14 days of any change thereof²⁸⁷.

The initial registration fee for the registration of a foreign organisation with the Registrar for Legal Persons is €350 and the annual registration fee is €350. If the foreign organisation is enrolled with the Commissioner for Voluntary Organisations or is in the process of being enrolled, such fees shall be reduced to 10% of the above sums, with a minimum of €35²⁸⁸. With regards to the enrolment of a foreign organisation with the Commissioner for Voluntary Organisations, the foreign organisation is to pay €40 through online payment when submitting its enrolment application.

If legal assistance is requested, legal fees may vary depending on the nature of the task and its complexity.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G. A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

It is not necessary for a foreign NPO to prove that the foreign legal form is equivalent to that required by Maltese law, that is, that the foreign NPO is a foundation, an association, a charitable trust or a temporary organisation.

Foreign organisations which have legal personality under the laws by which they are established or, if they are registered overseas, under the laws of the place of registration, are recognised as legal persons for all purposes of law, and this, with the characteristics of the legal form they take under applicable law²⁸⁹.

In the case of foreign organisations which have legal personality, the laws by which they are established or, if they are registered overseas, the laws of the place of registration, apply to all matters regarding such foreign organisations, including their form, their existence, the setting-up and effects of their statutes, and their administration, the liability of persons who control or manage or are otherwise involved in such organisations and their dissolution²⁹⁰.

A foreign organisation which does not have legal personality is recognised as an organisation and all matters regarding such foreign organisation, including its form, its existence, the construction and effects of its statute, the liability or otherwise of its promoters, members or its administrators, its administration and its dissolution are governed by the proper law applicable to its statute, either express or according to applicable law²⁹¹. However, in the case of the liability of foreign public-benefit organisations which either:

²⁸⁷ Regulation 7, Civil Code (Second Schedule) (Notifications and Forms) Regulations, S.L. 16.08, Laws of Malta. Also refer to Regulation 6, Voluntary Organisations (Annual Returns and Annual Accounts) Regulations, S.L. 492.02, Laws of Malta.

²⁸⁸ Civil Code (Second Schedule) (Fees) Regulations, S.L. 16.07, Laws of Malta.

²⁸⁹ Art. 2(1), Second Schedule to the Civil Code.

²⁹⁰ Art. 2(3), Second Schedule to the Civil Code.

²⁹¹ Art. 2(4), Second Schedule to the Civil Code.

- operate in Malta, including if they raise funds in Malta; or
- provide services available to the public within Malta.

as well as that of their administrators, are subject to the provisions of the Second Schedule to the Civil Code in so far as their activity in Malta is concerned (subject to any applicable special law²⁹²).

The limitations to trading and commercial activities which apply to foundations established in Malta, also apply to the activities in Malta of foreign foundations²⁹³.

In the case of the enrolment of a foreign organisation with the Commissioner for Voluntary Organisations, when the organisation takes the form of a foundation or an association or a trust, it must have a minimum of three administrators. The foreign organisation must also have a representative resident in Malta²⁹⁴.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

The requirements for foreign NPOs to be recognised, registered or enrolled in Malta have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

A list of all enrolled voluntary organisations is kept by the Commissioner for Voluntary Organisations: <https://cvo.gov.mt/OrganisationSearch>.

²⁹² Art. 19(8), Second Schedule to the Civil Code. A special law regulates specifically a particular legal form or forms of organisations, including civil partnerships, foundations and associations.

²⁹³ Art. 2(5), Second Schedule to the Civil Code. Also refer to Art. 32A of the Second Schedule to the Civil Code.

²⁹⁴ Art. 3(7), Voluntary Organisations Act.

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The Dutch tax framework for philanthropy and its tax advantages:

- The tax requirements for a Dutch NPO for the public benefit with the ANBI status (in Dutch: *algemeen nut beogende instelling*, "**ANBI**"):
 - o Art. 5b of the State Taxes Act (*Algemene wet inzake rijksbelastingen*); and
 - o Art. 1a of the Implementing Regulations to the State Taxes Act 1994 (*Uitvoeringsregeling Algemene wet inzake rijksbelastingen 1994*).
- Tax advantages for individuals and corporate taxpayers:
 - o Art. 3.8, and 6.32 up to 6.40 of the Income Tax Act 2001 (*Wet inkomstenbelasting 2001*);
 - o Art. 7, 8 and 16 of the Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*).
- Tax advantages for ANBIs:
 - o Art. 9 of the Corporate Income Tax Act 1969 (*Wet op de vennootschapsbelasting 1969*);
 - o Art. 32 and 33 of the Inheritance Tax Act 1956 (*Successiewet 1956*).
- The legal requirements for associations and foundations (*cf.* 2.1.6.):
 - o Sec. 2 (associations) and Sec. 6 (foundations) of Book 2 of the Dutch Civil Code (*Burgerlijk Wetboek*).

The Dutch tax authorities have published on their website an overview of general information about ANBI's, the requirements, its obligations, the tax benefits and the registration process (in Dutch and English):

- General:
 - o https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/belastingregels_algemeen_nut_beogende_instellingen;
 - o <https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit->
- Requirements:
 - o https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/aan_welke_voorwaarden_moet_een_anbi_voldoen/;

²⁹⁵ Answers provided by Houthoff (Amsterdam).

- https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/conditions_pbos/.
- Obligations:
 - [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/welke_verplichtingen_heeft_een_anbi](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/welke_verplichtingen_heeft_een_anbi;);
 - https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/publishing-anbi-information-on-a-website/.
- Tax benefits:
 - [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/welke_belastingvoordelen_heeft_een_anbi](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/welke_belastingvoordelen_heeft_een_anbi;);
 - https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/tax_advantages_pbo/.
- Registration:
 - [https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/hoe_vraagt_u_aanwijzing_als_anbi_aan](https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/bijzondere_regelingen/goede_doelen/algemeen_nut_beogende_instellingen/hoe_vraagt_u_aanwijzing_als_anbi_aan;);
 - https://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/business/business-public-benefit-organisations/public_benefit_organisations/how_apply_for_designation_as_a_pbo/.

The Dutch tax authorities have a dedicated team for ANBIs which can be reached via this [form](#). The application form can be found [here](#) ([English](#)). Cf. 2.1.3. for more information about the recognition process.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

(a) Corporate taxpayers – current

Business expenses are generally tax deductible. Business expenses are costs incurred that are related to the business of the taxpayer. Donations made in the context of Corporate Social Responsibility, marketing and/or sponsoring are, amongst other types of donations, considered business expenses because the costs are incurred for the benefit of the corporate taxpayer. These donations are therefore tax deductible for Dutch corporate income tax ("*CIT*") purposes. Donations that are made without business reasons but for shareholder reasons are non-tax deductible and qualify as a dividend distribution to the shareholders. This dividend distribution is subject to Dutch dividend withholding tax ("*DWT*") and possibly Dutch personal income tax ("*PIT*")/ CIT. Subsequently, the shareholder is deemed

to make the donation for and may benefit from tax advantages for donations (see below under *Individuals*). A portion of the non-business donations is nevertheless tax deductible for the corporate taxpayer. The tax deduction is limited to certain thresholds (*cf.* 2.2.1.). That said, the tax-deductible non-business donations falling under these thresholds are not considered as dividend distributions to the corporate taxpayer's shareholder(s). For completeness' sake, deemed dividend distributions are subject to 15% (2023) Dutch DWT, which is creditable against any Dutch PIT/CIT, unless the dividend is exempt for CIT purposes.

(b) Corporate taxpayers – proposed 2024 budget Bill

Non-business donations are no longer partially tax deductible for corporate taxpayers under this proposal. In addition, donations that are made out of shareholder motives are no longer qualified as deemed dividend distribution to the shareholder. This is different if the donation is made from the shareholder's bank account or the donation is made in cash. In latter case, the individual shareholder can apply a tax deduction if the requirements are met. If adopted, the bill enters into force as of 1 January 2024.

(c) Individuals

Business expenses are tax deductible for individuals conducting a business. Similar to corporate taxpayers, donations for Corporate Social Responsibility, marketing and sponsoring are in principle considered business expenses. Furthermore, all individuals may deduct non-business donations under specific circumstances. The tax deduction is limited to thresholds (*cf.* 2.2.1.).

(d) ANBI

ANBIs are generally not subject to Dutch CIT, unless the ANBI conducts a business, which is determined based on Dutch tax principles. A business has been defined as a permanent organisation of labour and capital with the purpose of realising profits. This is tested on a continuous basis. An entity is also considered to conduct a business if that entity competes, or is deemed to compete, with other companies that are subject to Dutch CIT. Furthermore, an ANBI that conducts a business is exempt from Dutch CIT if (i) its taxable profit in a year does not exceed EUR 15,000, or (ii) the taxable profit in the preceding four years does not exceed EUR 75,000. ANBIs are not required to file CIT returns, unless they are subject to Dutch CIT.

ANBIs which are subject to Dutch CIT may deduct employment costs of volunteers if their taxable profits are realized as a result (for 70%) of the volunteers' activities. The deductible employment costs are calculated by taking into account minimum wages for the time spent by the volunteers, unless a higher salary for those activities is customary.

ANBIs are not subject to Dutch inheritance tax or gift tax on inheritances and gifts provided the donation or bequest is made free of any obligations and instructions.

(e) Cultural ANBI

ANBIs which are for at least 90% are focussed on culture qualify as "**Cultural ANBIs**" to the extent that the Dutch tax authorities confirmed this in an appealable decision. The focus on culture must follow from the ANBI's bylaws and actual activities.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Dutch foundations, associations, churches ("*kerkgenootschap*") or foreign entities similar to a foundation, association or church (*cf.* 2.1.2.b.), which have been granted the ANBI status.

The Dutch tax authorities have published an [online tool](#) to verify whether the NPO has an active ANBI status.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

The NPO needs to meet the following requirements for the ANBI status:

- the NPO does not have a capital divided into shares and may not be a cooperative or any other legal entity issuing profit certificates to its participants;
- a non-Dutch tax resident NPO, which does not have participants or shareholders, can also be qualified as ANBI by the Dutch tax authorities if (i) its country of residence (i) is an EU Member State or (ii) concluded an arrangement with the Netherlands providing for the exchange of information and documentation relating to (corporate) income tax, gift tax and inheritance tax;
- the NPO's articles of association must clearly stipulate that the entity is a non-profit organization;
- the NPO's articles of association must determine that liquidation proceeds must be donated to another ANBI, or foreign comparable institution. In case of a Cultural ANBI the liquidation proceeds must be donated to another ANBI or non-Dutch NPO pursuing a comparable goal;
- the NPO's activities are for at least 90% for the public benefit, i.e.:
 - o wellbeing;
 - o culture;
 - o education, science, (academic) research;
 - o protection of nature and the environment, including sustainability matters;
 - o healthcare;
 - o care for the youth/elderly;
 - o development aid;
 - o animal wellbeing;
 - o religion, life philosophies, spirituality;
 - o enhancing a democratic legal order;
 - o public housing;
 - o any combination of the goals described above; or
 - o financially supporting other ANBI's.
- the NPO is allowed to have commercial activities, as long as the proceeds of these activities are spent, for at least 90%, in line with the NPO's goal and within a reasonable period;

- the NPO and the persons directly involved with the NPO must meet certain integrity requirements;
- no individual or legal entity may dispose of the capital of the NPO as if it is their own;
- the NPO may not maintain more capital than that is reasonably required in order to continue its anticipated activities;
- the NPO's policy making board members or members of the supervisory board may not receive a remuneration for their activities performed in this capacity, except for a reimbursement of the reasonable expenses and non-excessive fees for the attending of meetings. Board members who additionally perform executive tasks for the NPO may receive a remuneration for their (employment) services;
- the NPO must prepare an up-to-date policy plan showing the activities to be performed, the way funds are raised, the management of the assets (wealth of the entity) and how the funds are used. This policy plan needs to be updated annually;
- the NPO's fund raising costs and the managing expenses must be in a reasonable proportion to the NPO's costs;
- the NPO's administration must reflect the nature and size of the:
 - o reimbursement of expenses and fees of each of the members of the policy determining body of the NPO;
 - o costs that are made by the NPO in connection with fund raising and the management of expenses of the NPO, including the nature and size of other costs of the NPO; and
 - o income and capital of the NPO.

Additionally, ANBI's are obliged to publish the following information on a public website within six months after the end of a given financial year:

- statutory name;
- Legal Entities and Partnerships Identification Number ("*RSIN-number*");
- contact details;
- purpose;
- (summarized) up-to-date policy plan;
- composition of its board, remuneration policy and the names of the board members (unless mentioning the names of the board members results in danger for these board members or their family members);
- financial accounts.

Finally, substantial ANBIs must publish the aforementioned information through standardized [forms \(English\)](#). An ANBI qualifies as substantial if it (i) did not actively participate in fundraisings to obtain money or assets from third parties and incurred at least EUR 100,000 in costs during the previous year, or (ii) did participate in fundraising and obtained money or assets from third parties and realized benefits amounting to at least EUR 50,000 in the previous year.

2.1.3. What does the recognition process look like?

The NPO needs to have (i) a RSIN-number, (ii) a policy plan, (iii) articles of association (only if established before 1 July 2014), and (iv) apply for the ANBI status with the Dutch tax authorities through a specific [form \(English\)](#).

Under circumstances, the ANBI status can be granted retrospectively as from 1st of January or date of the NPO's incorporation.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no specific fees or costs payable to the Dutch tax authorities, except for incorporation costs levied by Dutch Chamber of Commerce and notary costs.

Legal and tax fees if third party assistance is required with the registration process.

2.1.5. What is the timeframe for the recognition process to be completed?

The Dutch tax authorities are required to respond to an ANBI request within eight weeks. Whether the Dutch tax authorities will actually meet this requirement depends on all facts and circumstances, like the complexity of the matter, whether the case is considered as standard, etc.

In practice, the response of the Dutch tax authorities may range from two weeks to six months.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no validity period. The ANBI status is valid until the NPO no longer meets the requirements or upon a change of law.

2.1.7. Is any specific legal form required for the Dutch NPO?

Yes, an association, foundation or church ("*kerkgenootschap*"). A Dutch NPO cannot qualify as an ANBI if it is a limited liability company, cooperative or any other legal entity issuing profit certificates to its participants. *Cf.* 2.1.2.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

As a general rule, any donations which qualify as business expenses are tax deductible for individuals, who are entrepreneurs for Dutch PIT purposes, and for corporate taxpayers (*cf.* 2. – general for more information). In addition to the general rule, donations by individuals and corporate taxpayers, which do not qualify as business expenses, are also tax deductible if certain requirements are met. The tax advantages are described below.

Individuals

The maximum tax deduction amounts to 10% of an individual's taxable income, calculated before any personal deductions. In case of a donation to a cultural ANBI, the tax deduction is increased with 25%. This increase is maximized at EUR 1,250 extra (total tax deduction is 10% *plus* EUR 1,250).

In addition, individuals can obtain tax deductions on regular gifts (*periodieke giften*). Regular gifts are gifts to ANBIs in the form of fixed and regular periodic payments ending ultimately by death. The maximum tax deduction amounts to EUR 250,000 each year.

Corporate taxpayers

The maximum tax deduction amounts to 50% of a corporate taxpayer's taxable income with a maximum of EUR 100,000. These limits are increased to 50% of the donations, with a maximum increase of EUR 2,500, if the donations are made to a cultural ANBI.

Non-business donations are no longer tax deductible under the proposed new legislation.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, only donations to ANBIs are tax deductible as described under question 2.2.1., while donations qualifying as business expenses are fully tax deductible.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (Dutch PIT);
- corporate taxpayer (Dutch CIT); and
- ANBI (Dutch gift tax).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

An ANBI is not subject to Dutch gift tax on donations to the extent the donation is free of any instructions and obligations. An ANBI does not have to file or gift tax returns. However, substantial ANBIs have a publication obligation (*cf.* 2.1.2.).

No Dutch gift tax is due on gifts made by the ANBI for the public benefit.

An ANBI is generally not subject to Dutch CIT unless it conducts a business in the Netherlands (*cf.* 2. – general).

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Individuals

(a) Donations

To obtain a tax deduction, the donation must meet the following conditions:

- the donation must be made to an ANBI;
- no cash donations;
- the donation must amount to at least EUR 60 and 1% of the individual's taxable income (before deduction of personal deductible items);
- the donation must be proved in writing; and
- the donation must be free of any obligation for the ANBI. Donors cannot ask the ANBI to perform any tasks in return for the donation.

There are no restrictions on donations to ANBIs. However, the tax deduction is limited (*cf.* 2.2.1.).

(b) Regular gifts

The regular gifts must meet the conditions set out below to obtain a tax deduction:

- the gift must be made to an ANBI;
- no cash gift;
- the gifts must be free of any obligation for the ANBI. Individuals cannot ask the ANBI to perform any tasks in return for the gifts.
- notarial deed or non-notarial deed with the obligation to make gifts for at least five years;
- in case of a non-notarial deed, the deed must include the following information:
 - o personal date of the individual;
 - o name and RSIN-number of the ANBI;
 - o the starting year of the regular gifts;
 - o the annual amount.

There are no restrictions on regular gifts to ANBIs. However, the tax deduction is not unlimited (*cf.* 2.2.1.).

(c) Corporate taxpayers

To obtain a tax deduction, the donation must meet the following conditions:

- the donation must be made to an ANBI;
- no cash donations;
- the donation must be proved in writing; and

- the donation must be free of any obligation for the ANBI. Donors cannot ask the ANBI to perform any tasks in return for the donation.

There are no restrictions on donations to ANBIs.

(d) Gift tax

To obtain the gift tax exemption, the donation must meet the following conditions:

- the donation should be made to an ANBI;
- the donation must be proved in writing; and
- the donation must be free of any obligations. Donors cannot ask the ANBI to perform any tasks in return for the donation.

There is no maximum amount of donations.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

No individuals or corporate taxpayers can benefit from tax advantages. However, any donations made in the year of death are treated in accordance with the rules set out under Sec. 2.2.

An ANBI is not subject to Dutch inheritance tax on inheritances to the extent the donation is free of any instructions and obligations. An ANBI does not have to file inheritance tax returns.

Bequests should be structured carefully to prevent that the heir must pay the Dutch inheritance tax whilst the recipient of a bequest has the net benefit. Or the heir should be made aware of being the taxpayer of Dutch inheritance tax in respect of a net bequest to an ANBI before he/she accepts the inheritance.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

ANBIs.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Yes, only inheritances accepted by an ANBI are not subject to Dutch inheritance tax.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Cf. 2.3.1.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Cf. 2.3.3.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Cf. 2.3.1.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations and bequests made to non-Dutch tax resident NPOs that have an ANBI status are eligible for the same tax advantages.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Non-Dutch tax resident NPOs can and have to register themselves for obtaining the ANBI status if they meet the requirements outlined under question 2.1.2.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Non-Dutch tax resident NPOs can qualify as ANBIs if (i) their country of residence is (i) an EU Member State or (ii) concluded an arrangement with the Netherlands providing for the exchange of information and documentation relating to (corporate) income tax, gift tax and inheritance tax

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Non-Dutch tax resident NPOs have to follow the same registration procedure, albeit that the Dutch tax authorities have a lot of information available in English.

The fees for legal and tax assistance with the registration process are in the range of EUR 8,000 and 10,000 (excluding incorporation costs, surcharges and VAT). Please note that the fees vary per case depending on the complexity of the matter.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

A non-Dutch tax resident NPO can file an objection against the decision of the Dutch tax authorities. Such objection must be filed within six weeks of the date of the decision by the

Dutch tax authorities. Another tax inspector will review the case and issue a new decision in the objection stage. It is possible to lodge an appeal to the local court within six weeks of a negative decision by the tax inspector.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, a non-Dutch tax resident NPO must prove that it has no participants or shareholders and therefore is comparable to a foundation or association.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

The non-Dutch tax resident NPO must be similar to a foundation, association or church (*cf.* 2.1.2.).

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

The Dutch tax authorities have published an [online tool](#) to check whether Dutch tax resident and non-Dutch tax resident NPOs have an active ANBI status.

4. CONCLUSION

In the Netherlands, both Dutch tax resident and non-Dutch tax resident NPOs are eligible to obtain the ANBI status if they meet the requirements. These ANBIs benefit from exemptions from Dutch gift and inheritance taxes. Furthermore, individuals conducting a business, and corporate taxpayers, making donations may deduct these donations for Dutch PIT/CIT if such donations qualify as business expenses. All individuals and corporate taxpayers can benefit from a tax deduction on donations, subject to certain limitations, made to ANBIs if these donations do not qualify as business expenses.

Non-business donations are no longer partially tax deductible for corporate taxpayers under the proposed 2024 legislation. However, donations that are made out of shareholder motives are no longer qualified as deemed dividend distribution to the shareholder.

POLAND²⁹⁶

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages are as follows:

- Reduction of taxable income (income tax base) through donations:
 - o Art. 18 of the Corporate Income Tax Act of 15 February 1992 (consolidated text: Journal of Laws of 2022, item 2587, as amended) (“*CIT Act*”) (PL: *ustawa o podatku dochodowym od osób prawnych*);
 - o Art. 26 Sec. 1 point 9 letter a) of the Personal Income Tax Act of July 1991 (consolidated text: Journal of Laws of 2022, item 2647, as amended) (“*PIT Act*”) (PL: *ustawa o podatku dochodowym od osób fizycznych*);
 - o Art. 11 of the Act of 20 November 1998 on flat-rate personal income tax on certain income of natural persons (“*Flat-Rate PIT Act*”) (consolidated text: Journal of Laws of 2022, item 2540, as amended) (PL: *ustawa o zryczałtowanym podatku dochodowym od niektórych przychodów osiąganych przez osoby fizyczne*).
- Allocation of up to 1.5% of an individual’s annual income tax to qualified public benefit organizations:
 - o Art. 45c of the PIT Act;
 - o Art. 21b of the Flat-Rate PIT Act.
- Tax advantages for bequests:
 - o no tax benefits for bequests granted to NPOs.
- Legal requirements for foundations:
 - o the Act on Foundations of 6 April 1984 (consolidated text: Journal of Laws of 2023, item 166) (PL: *ustawa o fundacjach*).
- Legal requirements for public benefit organizations:
 - o the Act on public benefit Activity and Volunteering of 24 April 2003 (consolidated text: Journal of Laws of 2023, item 571) (“*Act on Public Benefit Activity*”) (PL: *ustawa o działalności pożytku publicznego i wolontariacie*).

The Polish authorities provide on their website a Polish-language overview of:

- reduction of taxable income by donations for public benefit purposes: [Darowizna OPP \(podatki.gov.pl\)](#);
- allocation of 1.5% annual income tax of individuals (PL: [Jak przekazać 1,5% na OPP \(podatki.gov.pl\)](#));

²⁹⁶ Answers provided by Wardynski & Partners (Warsaw).

- public benefit organisations: (PL: Organizacje Pożytku Publicznego - Komitet do Spraw Pożytku Publicznego - Portal gov.pl (www.gov.pl));
- supervision of foundations and their obligations (PL: [Fundacje - Ministerstwo Rozwoju i Technologii - Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl), [Fundacje - Ministerstwo Spraw Zagranicznych - Portal Gov.pl \(www.gov.pl\)](http://www.gov.pl)).

For further tax information, please contact Tax Administration (State Fiscal Information) directly:

- by phone: +48 22 330 03 30 (mobile), 801 055 055 (landline), +48 22 330 03 30 (from abroad);
- via contact form: <https://www.podatki.gov.pl/skontaktuj-sie-z-nami>;
- via chat: <https://www.podatki.gov.pl/skontaktuj-sie-z-nami>;
- directly, physical addresses are available at: <https://www.podatki.gov.pl/skontaktuj-sie-z-nami>.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available both to individuals (as payers of personal income tax (“*PIT*”) and flat rate personal income tax in the form of lump sum tax on recorded revenues (“*Lump-Sum PIT*”) and companies and other organizations (as payers of corporate income tax (“*CIT*”), which may deduct from their taxable income (taxable base) donations made to certain qualifying NPOs (“*Qualifying NPOs*”) that are dedicated to specific public benefit objectives, up to 6% (PIT and Flat-Rate PIT payers)/10% (CIT payers) of such income (in aggregate, including certain other donations).

PIT payers (except for payers of the 19% flat rate PIT) and Lump-Sum PIT payers may choose to transfer 1.5% of their annual income tax to a selected public benefit organization (PL: *organizacja pożytku publicznego* – “*OPP*”) if certain conditions are met. However, this is not an advantage for the above-mentioned taxpayers, but for the OPPs.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

A reduction of the taxable income (income tax base) is available for donations made to organizations that meet certain subjective conditions (cumulatively), i.e.:

- operate in certain legal forms (*cf.* 2.1.7.), some of which cannot be entities of the public finance sector²⁹⁷;
- operate on a non-profit basis²⁹⁸;

²⁹⁷ Within the meaning of the Act of 27 August 2009 on Public Finances (consolidated text: Journal of Laws of 2023, item 1270, as amended).

²⁹⁸ Art. 3 Sec. 2 point 2 and Sec. 3 of the Act on Public Benefit Activities.

- carry out activities in the public interest within the framework of public tasks, implementing specific objectives listed in separate regulations²⁹⁹ (provided that the donation is earmarked for these objectives).

However, no specific formal recognition is required.

Donations may also be deducted from taxable income if they are made to equivalent organizations specified in the regulations governing public benefit activities in force in a Member State of the European Union (“EU”) other than Poland or in another country belonging to the European Economic Area (“EEA”), which carry out public benefit

²⁹⁹ Art. 4 Sec. 2 of the Act on Public Benefit Activities. Mentioned public tasks covers the following fields:

- (1) Social assistance, including assistance to families and persons in difficult life situations, and the equalisation of opportunities for these families and persons;
- (2) Support for the family and the foster care system;
- (3) Creating conditions to meet the housing needs of local communities;
- (4) Providing free legal assistance and increasing public legal awareness;
- (5) Activities aimed at professional and social integration and reintegration of people at risk of social exclusion;
- (6) Charitable activities;
- (7) Maintaining and disseminating national traditions, cultivating the Polish identity and developing national, civic and cultural awareness;
- (8) Activities for national and ethnic minorities and regional languages;
- (9) Promotion of the integration of foreigners;
- (10) Health protection and promotion, including medical measures within the meaning of specific regulations;
- (11) Activities for the disabled;
- (12) Promotion of employment and professional activation of people who are unemployed or at risk of being laid-off;
- (13) Promotion of equal rights of women and men;
- (14) Activities for retirees;
- (15) Activities supporting economic development, including entrepreneurship development;
- (16) Activities supporting the development of technology, inventiveness and innovation as well as the dissemination and implementation of new technical solutions in economic practice;
- (17) Activities supporting the development of local communities;
- (18) Science, all level of education, and upbringing;
- (19) Activities for children and teens, including their recreation activities;
- (20) Culture, art, protection of cultural assets and national heritage;
- (21) Supporting and promoting physical culture;
- (22) Ecology and animal protection, and protection of natural heritage;
- (23) Tourism and sightseeing;
- (24) Public order and security;
- (25) State defence and activities of the Polish Armed Forces;
- (26) Promotion and protection of freedom, human rights and civil liberties, as well as activities supporting the development of democracy;
- (27) Providing free civic counselling;
- (28) Rescue and civil protection;
- (29) Helping victims of accidents, natural disasters, armed conflicts and wars at home and abroad;
- (30) Dissemination and protection of consumer rights;
- (31) Promotion of European integration and the development of contacts and cooperation between societies;
- (32) Promotion and organization of volunteering;
- (33) Helping Polish communities and Poles abroad;
- (34) Activities for war veterans and victims of political repression;
- (35) Activities for veterans and injured veterans within the meaning of specific regulations;
- (36) Promotion of the Republic of Poland abroad;
- (37) Activities for the family, motherhood, parenthood, promotion and protection of children's rights;
- (38) Counteracting addictions and social pathologies;
- (39) Revitalisation;
- (40) Activities for non-governmental organizations and entities conducting public benefit activities.

Other tasks may be specified by the Polish Council of Ministers by way of regulation as belonging to the sphere of public tasks, taking into account their particular social utility and the possibility of their performance in a way that ensures a sufficient level of satisfaction of social needs (there are no such regulations at the moment) - Art. 4 Sec. 2 of the Act on Public Benefit Activities.

activities in the field of public tasks and implement these objectives³⁰⁰ (“*Foreign Qualifying NPO*”). No specific formal recognition of the Foreign Qualifying NPO is required.

There are no tax advantages for Polish taxpayers making bequests to the benefit of NPOs.

2.1.2. What are the substantive requirements for Qualifying NPOs to be qualified?

A Qualifying NPO must meet the following conditions (cumulatively):

- have a legal form as allowed by the applicable law;
- in the case of (qualified) non-governmental organizations, not qualify as units of the public finance sector;
- be established in Poland (except for foreign qualifying NPOs);
- not operate for profit;
- carry out public benefit activities in the field of public tasks, implementing specific objectives listed in separate regulations (*cf.* 2.1.1.).

A specific OPP status is not required for the NPO in order for donations made in its favour to confer a tax advantage on the donor. The OPP status is required for the NPO to be eligible for the 1.5% annual income tax of some PIT and lump-sum PIT payers if certain conditions are met.

An OPP may be an entity that meets (all) the following requirements³⁰¹:

- is (a) a non-governmental organization, (b) a legal entity or organizational unit operating on the basis of the provisions on the relationship between the State and certain churches and religious associations (subject to certain conditions), (c) joint-stock and limited liability companies, and sports clubs, which are companies operating on the basis of the provisions of the Law on Sports, which do not operate for the purpose of making a profit and use all income to achieve statutory objectives and do not allocate profit for distribution among their shareholders and employees (subject to certain restrictions³⁰²);
- carries out public benefit activities for the benefit of the general public or a specific group of persons, provided that this group is characterised by a particularly difficult life or financial situation in relation to society for at least 2 years³⁰³;
- engages in business activities only as an activity ancillary in relation to public benefit activities;
- uses the surplus of income over costs for the public benefit activity;
- has a statutory collective control or supervisory body which is separate from the management body and not subordinate to it in terms of internal control or supervision, and the members of the control or supervisory body fulfil certain conditions³⁰⁴;

³⁰⁰ Art. 18, Sec. 1j of the CIT Act, Art. 26, Sec. 6e of the PIT Act.

³⁰¹ Art. 20 of the Act on Public Benefit Activities.

³⁰² Art. 21 of the Act on Public Benefit Activities.

³⁰³ Art. 22, Sec. 1 of the Act on Public Benefit Activities.

³⁰⁴ They (a) may not be members of the management body or be married to them, live with them or to be related to them by consanguinity, affinity or subordination, (b) have not been convicted by a final judgment of an intentional crime prosecuted by public indictment or of a fiscal offence, and (c) may receive reimbursement of justified expenses or

- members of the management body have not been convicted by a final judgement of an intentional crime prosecuted by public prosecution or of a fiscal offence;
- the law or other internal regulations prohibit certain activities³⁰⁵;
- is entered in the National Court Register (PL: *Krajowy Rejestr Sądowy*; “**KRS**”)³⁰⁶.

2.1.3. What does the recognition process look like?

The status of Qualifying NPOs does not depend on a specific recognition procedure. There is no specific register of Qualifying NPOs whose donations are eligible for tax relief.

The procedure of establishing and registering (if required) a given Qualifying NPO depends on its particular legal form. The most popular NPOs are foundations governed by the Act on Foundations and their statutes³⁰⁷.

In order to establish a foundation with its registered office in Poland and start its activities, it is necessary to:

- determine the amount of the foundation fund (subject to certain restrictions regarding forms³⁰⁸) and draw up the foundation deed³⁰⁹ (the declaration of intent to establish a foundation should be submitted in the form of a notarial deed³¹⁰);
- draft a statute, i.e., a document specifying the organisation and operation of the foundation;
- registration of the foundation in the KRS³¹¹.

A foreign foundation may establish a representative office in Poland³¹², if it pursues socially or economically useful goals that are in line with the fundamental interests of Poland, in particular health protection, economic and scientific development, education and upbringing, culture and art, social welfare and assistance, environmental protection and historical monument preservation. It requires a permit of the relevant State minister (depending on the purpose of the activities of the foreign foundation). A representative office of a foreign foundation in Poland cannot be considered a Qualifying NPO, but the foreign foundation can be considered a Foreign Equivalent Qualifying NPO (if certain conditions are met).

remuneration for exercising functions in such a body that does not exceed the average monthly remuneration in the enterprise sector announced by the President of the Central Statistical Office for the previous year.

³⁰⁵ These are: (a) granting loans or securing liabilities with the organisation’s assets in favour of its members, members of bodies or employees and persons with whom the members, members of bodies and employees of the organisation are married, cohabiting or related by marriage, affinity, consanguinity or collateral affinity to the second degree, or are related by virtue of adoption, guardianship or custody, hereinafter referred to as “*close relatives*”, (b) transferring its assets to its members, members of bodies or employees and their relatives on terms other than those applicable to third parties, in particular if the transfer is made free of charge or on preferential terms, (c) use assets for the benefit of members, members of bodies or employees and their relatives on terms other than those applicable to third parties, unless such use derives directly from the statutory purpose, (d) the purchase of goods or services from companies in which members of the organisation, members of its bodies or employees and their close relatives have an interest, on terms other than those applicable to third parties or at prices higher than market prices.

³⁰⁶ Art. 22 Sec. 2 of the Act on Public Benefit Activities.

³⁰⁷ Art. 4 of the Act on Foundations.

³⁰⁸ Art. 3 Sec. 3 of the Act on Foundations.

³⁰⁹ The scope is regulated by the Act on Foundations, in particular its Art. 5 Sec. 1.

³¹⁰ Art. 3 Sec. 1 of the Act on Foundations.

³¹¹ Art. 7 of the Act on Foundations.

³¹² Art. 19 of the Act on Foundations.

An NPO may have the status of a public benefit organisation (OPP). An OPP entered into the register kept by the Director of the National Institute of Freedom – Centre for the Development of the Civil Society (PL: *Dyrektor Narodowego Instytutu Wolności – Centrum Rozwoju Społeczeństwa Obywatelskiego*) (available here: <https://niw.gov.pl/opp/wykaz-opp>) is entitled to 1.5% annual PIT reserved for Polish PIT and Flat-Rate PIT payers. The OPP may also benefit from other tax reliefs (e.g., some income tax³¹³ and other tax exemptions).

The status of an OPP requires special registration in the KRS on the basis of an application submitted using a special form together with attachments. The type of forms submitted depends on whether the organisation applying for the status was required to register in the KRS after its establishment.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Not applicable to the Qualifying NPOs in order to deduct donations made to them from taxable income.

The registration of a foundation in the KRS is subject to a fee of PLN 250, plus PLN 600 for the registration of the foundation in the Register of Entrepreneurs (including mandatory publication in the Journal of Courts) and for the submission of a power of attorney document (PLN 17 per attorney-in-fact).

The permission to act as a representative office of a foreign foundation in Poland is subject to a fee of PLN 855 and for the submitted power of attorney (PLN 17 per attorney-in-fact).

There are no official fees for registering as an OPP in the KRS.

2.1.5. What is the timeframe for the recognition process to be completed?

There is no recognition process for the Qualifying NPOs to deduct donations for their benefit from taxable income.

The KRS should approve an application for registration of a foundation within 7 days of the submission of a complete application.

An authority examining an application for registration of a representative office of a foreign foundation has 1 month to complete the procedure, and 2 months if the case is considered particularly complicated.

An application for registration as an OPP should be approved by the KRS within 7 days of the submission of a complete application.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Not applicable.

³¹³ Some CIT exemptions are available also to other categories of NPOs or their income.

2.1.7. Is any specific legal form required for the Polish Qualifying NPO?

Qualifying NPOs are the following:

- non-governmental organisations which are legal persons or organisational units without legal personality, which have been granted legal capacity by a separate law, including foundations and associations which do not operate for profit and are not units of the public finance sector within the meaning of the Act on Public Finances³¹⁴, or enterprises, research institutes, banks and commercial law companies which are legal entities of the State or of local government (political parties, European political parties, trade unions and employers' organizations, professional self-governments, foundations established by political parties, European political foundations are excluded³¹⁵);
- legal persons and organisational units operating on the basis of the provisions on the relations of the State with certain churches and religious associations (under certain conditions);
- associations of local government units;
- social cooperatives;
- joint-stock companies and limited liability companies and sports clubs, which are companies operating under the provisions of the Act on Sports³¹⁶, which do not operate with the aim of making a profit and use all their income to achieve statutory objectives and do not allocate any profit for distribution among their shareholders, members and employees.

These entities must comply with all relevant formal requirements set out in Polish regulations applicable to specific legal forms of Qualifying NPOs, e.g., the Act on Foundations in relation to foundations, the Act on Associations in relation to associations, etc.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

See above.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Polish taxpayers may deduct from their taxable income (tax base) donations made to Qualifying NPOs, which are dedicated to specific public benefit objectives, up to 6% (PIT and Flat-Rate PIT payers)/10% (CIT payers) of such annual taxable income.

As a general rule, if an eligible taxpayer receives income from different sources, he may make the deductions from income in any proportion, provided that the total amount of deductions made from income sources does not exceed the aforementioned 6%/10% threshold³¹⁷.

³¹⁴ Act of 27 August 2009 on Public Finances (consolidated text: Journal of Laws of 2023, item 1270, as amended).

³¹⁵ Art. 3 Sec. 4 of the Act on Public Benefit Activities.

³¹⁶ Act of 25 June 2010 on Sports (consolidated text: Journal of Laws of 2022, items 1599 and 2185).

³¹⁷ Art. 18 Sec. 8 of the CIT Act. No specific provision in the PIT Act and Lump-Sum PIT Act.

The available threshold includes the value of all eligible donations to NPOs and some other donations, i.e. donations for the purpose of religious worship (with the exception of donations for charitable and welfare activities carried out by churches and religious associations³¹⁸, which are fully excluded from the donor's tax base) and, in the case of PIT payers, also donations of blood by honorary blood donors (in the amount of the product of the cash equivalent defined by special regulations³¹⁹), certain vocational training to public schools providing such training³²⁰ and to public institutions and centres³²¹, and certain donations for the reconstruction of some historical monuments in Warsaw³²²).

The deduction is applied if the amount of the donation is documented by a proof of payment to the recipient's bank account and, in the case of a non-monetary donation, by a document stating the value of the donation and the recipient's declaration of acceptance³²³.

The value of donations in kind (for the purpose of determining whether they are included in the aforementioned 6%/10% taxable base) is determined by CIT payers at arm's length³²⁴ and, in the case of PIT payers, on the basis of the donation recipient's declaration³²⁵. In the case of donations in kind, if the object of the donation is goods subject to Value Added Tax ("VAT"), the amount of the donation is considered to be the value of the goods plus VAT, to the extent that it exceeds the amount of input VAT that the taxpayer is entitled to deduct under the VAT rules for making the donation³²⁶. In practice, this limitation on VAT may apply to donors who are VAT payers (entrepreneurs).

The amount of deduction is not indexed.

2.2.2. Does it make a difference whether an NPO is recognised or not?

No. The conditions for granting a tax advantage to Polish taxpayers do not include any specific recognition of the NPO receiving the donation, but the tax advantage depends primarily on the purposes for which the donation is made (which should be within the statutory activity of the NPO) and some subjective characteristics of the NPO.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals who pay PIT (except for those paying the 19% flat-rate PIT, which can be elected for business profits) and lump-sum PIT (in the form of lump-sum tax on recorded income); and
- CIT payers.

³¹⁸ Referred to in the Act on the Relationship between of the Polish State and Churches/Religious Associations.

³¹⁹ Art. 11 Sec. 2 of that Act and the Number of Donated Litres of Blood or its Components.

³²⁰ Art. 4 Sec. 28a of the Education Law Act of 14 December 2016.

³²¹ Art. 2 Sec. 4 of the Education Law Act of 14 December 2016.

³²² Art. 7 Sec. 1 of the Act of 11 August 2021 on the Preparation and Execution of the Reconstruction of the Saski Palace, Brühl Palace and Tenement Houses at Królewska Street in Warsaw.

³²³ Art. 18 Sec. 1c of the CIT Act, Art. 26 Sec. 5 point 2 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³²⁴ Art. 18 Sec. 1b of the CIT Act in conjunction with Art. 14 of the CIT Act.

³²⁵ Art. 26 Sec. 7 point 2 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³²⁶ Art. 18 Sec. 1b of the CIT Act, Art. 26 Sec. 6 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

NPOs that are Polish CIT payers may benefit from certain tax exemptions. In particular, taxpayers whose activities (as stated in their statutes or articles of association) are in the field of science, technology, education (including higher education), culture, physical culture, sport, environmental protection, support of social initiatives for the construction of roads and telecommunications networks in rural areas and water supply to rural areas, charity, health protection and social assistance, professional and social rehabilitation of the handicapped and religious worship may be exempt from income tax on the part of their income allocated to the aforementioned purposes³²⁷. The exemption shall not apply to:

- income derived from activities consisting in the production of electronic equipment, fuel products, tobacco products, spirits, wine, beer, other alcoholic products containing more than 1.5% of alcohol, and products made of or with precious metals, or to income earned from trading in those products; however, the exemption shall apply to the income of entities referred to in Art. 7.1 (1), (2), and (4) to (8) of the Law on Higher Education and Science derived from activities consisting in the production of electronic equipment;
- income derived from activities involving the transfer of tangible or intangible assets for use without payment in accordance with the provisions on leasing;
- income, irrespective of when it is received, used for purposes other than those mentioned above.

The exemption applies if the income is allocated to the purposes referred to above and is spent - at any time - on those purposes, and the payment of taxes other than tax-deductible expenses.

NPOs in the form of OPPs may enjoy additional tax benefits, i.e.:

- exemption from income tax on the part of income allocated to statutory activities, excluding economic activities (the tax exemption for OPPs is much more certain and broader than in the case of other NPOs);
- exemption from property tax on immovable property or parts thereof used for the provision of non-profit statutory services of public interest by OPPs;
- exemption from civil law transaction tax related to non-profit activities within the meaning of the provisions on non-profit activities and volunteer work;
- stamp duty exemption for a notification or an application for the performance of an official act, or an application for the issue of a certificate or permit - in connection with non-profit activities within the meaning of the provisions on non-profit activities and volunteer work.

³²⁷ Art. 17 Sec. 1 point 4 of the CIT Act.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g. made in cash, real estate,...)? Are there any restrictions (e.g. the amount, reserved share for protected heirs,...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In order for the donor to receive a tax deduction, the donation must meet the following conditions:

- the donation must be made free of charge;
- it must be made to a Qualifying NPO (including a Foreign Equivalent Qualifying NPO);
- it must be for a qualified public benefit;
- it cannot be made to natural person³²⁸;
- it cannot be made to legal persons or organisational units without legal personality whose economic activity involves the production of electronic equipment, fuel products, tobacco products, spirits, wine, beer and other alcoholic products containing more than 1.5 vol. of alcohol, and products made of or with precious metals, or trade in those products³²⁹;
- the value of a donation is documented by a proof of payment to the donation recipient's payment account or bank account other than a payment account, and in the case of a gift other than cash - by a document indicating the value of the gift and the donation recipient's declaration of acceptance of the gift³³⁰.

Information on donations qualifying for the tax benefit should be disclosed in the donor's annual tax return, including, for example, the amount of the donation, the amount deducted, and data enabling the identification of the donation recipient, in particular the recipient's name, address and tax identification number (or a number assigned for the purposes of tax identification in a Member State of the EU other than Poland or in another Member State of the EEA in which the donation recipient's registered office is located).

There is no minimum donation amount. Donations may be made in cash or in kind.

The donation may include the donor's recommendation (PL: *polecenie darczyńcy*) for a specific behaviour or action.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

There are no tax advantages for bequests made to NPOs in Poland.

³²⁸ Art. 18 Sec. 1a point 1 of the CIT Act, Art. 26 Sec. 5 point 1 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³²⁹ Art. 18 Sec. 1a point 2 of the CIT Act, Art. 26 Sec. 5 point 2 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³³⁰ Art. 18 Sec. 1c of the CIT Act, Art. 26 Sec. 5 point 2 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit,...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g. made in cash, real estate,...)? Are there any restrictions (e.g. the amount, reserved share for descendants and surviving spouse,...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations may be deducted from taxable income if they are made to foreign equivalent NPOs, as defined in the regulations on NPOs in force in a Member State of the European Union (“*EU*”) or in another Member State of the European Economic Area (“*EEA*”) other than Poland, which carry out NPO activities in the field of public tasks and implement these objective (“*foreign equivalent qualifying NPOs*”).

In the case of donations to foreign equivalent qualifying NPOs, they may be deducted from taxable income if the criteria for donations to Polish qualifying NPOs are met and:

- the donor obtains a declaration from the taxpayer receiving the donation that at the time of making the donation it was an organisation equivalent to the Polish qualifying NPO (i.e., it meets the substantive criteria and implements the qualifying objectives and carries out public benefit activities in the field of public tasks)³³¹; and
- there is a legal basis under a double taxation prevention treaty or another ratified international treaty to which Poland is a party for the tax authority to obtain tax

³³¹ Art. 18 Sec. 1j point 1 of the CIT Act, Art. 26 Sec. 6e point 1 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

- information from the tax authority of the country in the territory of which the organisation is based³³²;
- the amount of the donation made, the amount of the deduction made and the data enabling the identification of the recipient³³³, in particular his name, address and taxpayer identification number or a number obtained in a Member State of the EU or another country belonging to the EEA where the recipient is based, used for tax identification purposes, should be disclosed in the donor's annual income tax return³³⁴.

There are no tax advantages for bequests made to NPOs, including NPOs from the other jurisdictions.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

It is not necessary for the Foreign Equivalent Qualifying NPO to be officially registered in Poland in order for the taxpayer to benefit from the reduction of taxable income (if the conditions for such reduction are met).

A Foreign Equivalent Qualifying NPO may not register as an OPP in order to receive 1.5% of the income tax of individuals entitled to allocate this amount to the selected OPP.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

No specific registration is required for Foreign Equivalent Qualifying NPOs to allow donations for their benefit to be deducted from taxable income (if other conditions are met).

If deemed appropriate, a Foreign Equivalent Qualifying NPO could prepare a defence file (in case the tax benefits for the beneficiaries are challenged), which already indicates how and why the Foreign Equivalent Qualifying NPO meets the requirements that would also apply to Polish Qualifying NPOs. The Foreign Equivalent Qualifying NPO could provide the Polish donor(s) with a copy of this file, which could then be submitted to the tax authorities in response to their challenge.

³³² Art. 18 Sec. 1j point 2 of the CIT Act, Art. 26 Sec. 6e point 2 of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³³³ Art. 26 Sec. 6b of the PIT Act and Art. 11 Sec. 2 of the Lump-Sum PIT Act.

³³⁴ Art. 18 Sec. 1g of the CIT Act.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

There is no direct requirement to specifically prove the equivalence of the foreign legal form with the Polish legal forms of Qualifying NPOs. However, there is a general requirement that the foreign NPO should be equivalent to the Polish Qualifying NPO. Therefore, it cannot be excluded that Polish tax authorities will claim that this includes the equivalence of the legal form.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No, all legal limitations have been presented above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED(FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

There is no official close-ended list of Polish Qualifying NPOs nor of Foreign Equivalent Qualifying NPOs.

4. CONCLUSION

Foreign Equivalent Qualifying NPOs are entitled to the same tax advantages for Polish taxpayers as Polish Qualifying NPOs, i.e., reduced taxable income up to 6% (PIT and lump-sum PIT payers)/10% (CIT payers) of such income (aggregated value including some other donations).

Foreign Equivalent Qualifying NPOs should meet the same requirements as Polish Qualifying NPOs. Some additional measures must be taken.

5. ADDITIONAL CLARIFICATIONS

5.1. IS THERE A SPECIFIC FORM FOR SHOWING EQUIVALENT STATUS TO POLISH AUTHORITIES? IF YES, CAN YOU PROVIDE IT? DOES IT NEED TO BE IN POLISH?

Unfortunately, there is no specific form for showing equivalent status to Polish authorities. It is subject to an analysis on a case-by-case basis which is usually reflected in a dedicated defense file. There is no requirement to keep such defense file in Polish. However, since any tax proceedings in Poland are held only in Polish and the tax authorities may request a sworn translation of an English or other foreign language documentation (as a rule a short deadline of 7 days is established to provide such sworn translation), a bilingual version of the defense file should be considered to be easily presented (upon request of the tax authorities).

5.2. SHOULD DOCUMENTS PROVING NPO QUALIFICATION FOR TAX DEDUCTIONS AND THE DEFENSE FILE BE PROVIDED IN POLISH?

See above.

PORTUGAL³³⁵

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations available to corporate and individual taxpayers:
 - o [Tax Benefits Statute, in particular Art. 61 to 66.](#)
- Tax advantages for NPOs:
 - o [Corporate Income Tax Code, in particular Art. 10 and Art. 54 \(4\).](#)
- Tax advantages for NPOs in respect of bequests:
 - o [Stamp Duty Code](#) in particular Art. 1(5) and Art. 6 (1) (c) (d).
- The legal requirements for associations and foundations, including in respect of their recognition:
 - o [Portuguese Civil Code](#), in particular the rules in respect of legal entities (Art. 157 to 194, with Art. 167 to 184 and 185 to 194 being specifically applicable to associations and foundations, respectively);
 - o [Framework Law for Foundations](#), approved by Law 24/2012, of July 9;
 - o [Ordinance no. 75/2013](#), of February 19.
- Legal framework applicable to specific NPOs (having public utility status or having a social welfare nature):
 - o [Framework Law on the Public Utility Status](#), approved by Law 36/2021, of June 14;
 - o [Statute of Private Institutions of Social Solidarity](#), approved by Decree-Law 119/83, of February 25.
- Registry of NPOs (including of foreign NPOs):
 - o [Registry of Foundations](#), approved by Decree-Law 157/2019, of October 22;
 - o [Legal Framework applying to the Legal Entities National Registry](#), approved by Decree-Law 129/98, of May 13.
- Other relevant laws:
 - o [International Agreement between Portugal and the Holy See of May 18, 2004](#);
 - o [Framework Law in respect of the Social Economy](#), approved by Law 30/2013, of May 5.

The General Secretariat of the Presidency of the Portuguese Council of Ministers provides an overview (only available in Portuguese) of the legal framework applying to foundations, including recognition, registry and foreign foundations, at

³³⁵ Answers provided by Morais Leitão, Galvão Teles, Soares da Silva & Associados (Porto).

<https://www.sg.pcm.gov.pt/fundacoes.aspx>. Information in respect of the public utility status may be found at <https://www.sg.pcm.gov.pt/pessoas-coletivas-de-utilidade-publica.aspx>. Relevant information in respect of foundations is further available (only in Portuguese) at the Portuguese Centre for Foundations, at <https://cpf.org.pt/fundacoes/como-criar-uma-fundacao>.

The Portuguese authorities provide information in respect of private institutions of social solidarity (available in English) at <https://eportugal.gov.pt/en-GB/servicos/registar-instituicao-particular-de-solidariedade-social-ipss->.

For additional questions, the General Secretariat of the Presidency of the Portuguese Council of Ministers can be contacted directly at:

- fundacoes@sg.pcm.gov.pt (foundations);
- utilidade publica@sg.pcm.gov.pt (public utility status).

To what concerns the application of the tax benefits, for any clarification the contact number of the Portuguese Tax Authorities is +351 217206707.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Yes, there are some tax advantages available to corporate and individual taxpayers regarding donations provided to NPOs. Nevertheless, the type of tax benefit will depend on the nature of the donor, the activity of the NPO, on the object subject to the donation and on the purposes of the donation.

In a nutshell, individuals and corporate entities that provide donations to NPOs may benefit from tax deductions (and in some cases, the amount considered may be increased) to their taxable income.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

As per Portuguese tax law, donations made to public or private entities, whose activity consists predominantly of carrying out initiatives in the social, cultural, environmental, sporting or educational areas may benefit from tax incentives regarding CIT and Personal Income Tax (“*PIT*”).

There are, nevertheless, specific tax benefits granted to NPOs whose activity is predominantly scientific in nature, NPOs that pursue activities of a cultural nature or interest as well as NPOs granted with public utility status.

Regardless of the activity pursued by the NPO, the application of the tax benefits depends always from the prior recognition of the NPO from the General Secretariat of the Presidency of the Portuguese Council of Ministers, as better explained in Sec. 2.1.2.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

In Portugal there are different types of NPOs, namely, associations, cooperatives and foundations. Regarding the latter, we note that these can be of private or public nature as well as half private half public.

Therefore, and considering the above, we note that depending on the type of NPO, the establishment and registry process will vary. Furthermore, additionally to the registration, the given NPO may be able to request as well the public utility status – which recognition is not automatic and entails a different registration process.

As to the granting of the public utility status, certain private entities (associations, cooperatives, foundations and religious brotherhoods) automatically benefit from such status to the extent they are Private Social Welfare Institutions. These correspond to social welfare (“*solidariedade social*”) associations, cooperatives and foundations, further encompassing mutual help (“*socorros mútuos*”) associations and religious brotherhoods (“*irmandades da misericórdia*”).

Private institutions of social welfare are non-profit, private legal entities, envisaging the solidarity in society, through the granting of assets, rendering of services and other well-being and quality of life initiatives envisaging the implementation of the citizens’ social rights (e.g., childhood, including endangered children and young people, support; family support; elderly people support – a purpose of this kind is required to be said entity’s main purpose).

In order to be recognised as a private institution of social solidarity, registry is required, in most cases such registry being made before the Portuguese Directorate-General for Social Security.

Such registry depends on the following requirements being met:

- regularity of the incorporation of the relevant private legal entity;
- verification of the requirements in respect of the qualification and purposes of the relevant private legal entity (as mentioned above);
- conformity of the articles of association/by-laws with the legal regime of the Statute of Private Institutions of Social Solidarity;
- feasibility and social interest of the statutory purposes.

For purposes of the above, a copy of the incorporation document of the relevant entity, as well as its articles of association/by-laws and an “*action plan*”/activities plan is to be provided. An opinion by the territoriality competent Social Security centre is also required (to be obtained *ex officio* by the aforementioned Directorate-General).

In addition to the private institutions of social solidarity (which, as noted above, are automatically granted a public utility status), under the Framework Law on the Public Utility

Status, the public utility status can be granted to other private entities – associations, foundations and cooperatives –, including permanent establishments of foreign legal entities. It is required, for such purpose, that the relevant entity envisages a purpose of general, regional or local interest and cooperates, in order for such purpose to be achieved, with the central, regional or local public authorities. It is required that such purpose (a) benefits society in general, or one or more categories of persons other than the legal entity’s members or founders, or persons related to them, and which are included in one of the sectors specified in the law (e.g., historical, artistic or cultural, sports, local development, social solidarity, teaching, citizenship, equality and non-discrimination, etc.) or (b) in the case of associations and cooperatives, to the extent the purposes are primarily, but not exclusively, for the benefit of the legal entity’s members, such purposes are included in one of the aforementioned sectors and a minimum number of members is met (at least double the number of members of the corporate bodies).

It is further required that the relevant legal entity:

- in the case of associations or cooperatives, does not establish any discriminatory criteria for the admission of their members (exceptions apply, though);
- the relevant entity has been effectively active for at least **three years**;
- the relevant entity has the staff, infrastructure, facilities and equipment, whether their own, contracted or voluntary, necessary to ensure the pursuit of its purposes and the activities it proposes to carry out;
- has an **up-to-date nominal register of its members** (not applicable to foundations);
- has a **public website**, accessible without restriction, where the activity and accounts reports for the last five years, the updated list of governing body members and the updated texts of the statutes and internal regulations are made available;
- has **financial records in accordance with the accounting system for the non-profit sector**, the Accounting Standardisation System (“*Sistema de Normalização Contabilística*”) or the Accounting Standardisation System for Public Administrations (“*Sistema de Normalização Contabilística para Administrações Públicas*”), as applicable.

2.1.3. What does the recognition process look like?

Cf. 2.1.2.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no specific fees or costs payable vis-à-vis the Portuguese administration that are related to (i) the registry of NPOs, (ii) the granting of the public utility status; (iii) the recognition process for tax purposes.

If third party assistance is requested, legal or consultancy fees payable to the third party may vary for assisting the NPO throughout the recognition process.

2.1.5. What is the timeframe for the recognition process to be completed?

Registry of Private Institutions of Social Solidarity (standard regime, i.e., excluding dual-purpose private institutions of social solidarity): a maximum of 120 days (60 for the

aforementioned opinion to be provided and another 60 for the decision to be taken by the Directorate-General for Social Security) is established for the registry procedure to occur; in practice, however, the full registry process will usually take up at least 4 to 18 months, in particular for dual-purpose entities (e.g., acting in the fields of social security and also health, for example as concerns mental patients).

Registry of Foundations:

- standard regime: 90 business days for the decision to be taken;
- simplified regime: 30 business days for the decision to be taken.

Nevertheless, in practice, particularly due to the wide margin of administrative discretion and the heavy workload of the body responsible for investigating the administrative procedure - the General Secretariat of the Presidency of the Council of Ministers - it is not possible for us to provide a pragmatic forecast of the timeframe for recognition.

Granting of the public utility status: 60 days (in order for the municipality where the registered office of the relevant legal entity is located to provide its opinion) plus 120 days for the decision to be taken; in practice, however, the full registry process will generally take at least 4 to 10 months, in particular for dual-purpose entities (e.g., acting in the fields of social security and also health, for example as concerns mental patients).

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

To what concerns the registry of Private Institutions of Social Solidarity (standard regime, i.e., excluding dual-purpose private institutions of social solidarity) and Foundations the answer is no.

In regards to the granting of the public utility status, the latter is valid as a rule for 10 years (exceptions apply: 15 and 20 years), after which it has to be renewed (for successive 10 years period).

2.1.7. Is any specific legal form required for the Belgian NPO?

Cf. 2.1.2.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

As noted above (2.1.2.), permanent establishments of foreign legal entities can be granted with the public utility status. This requires the relevant foreign legal entity to pursue its purposes in Portugal in a stable manner, further registry of such permanent establishment being required (under the Registry of Foundations, as regards foundations, or under the Legal Framework applying to the Legal Entities National Registry, as regards other foreign NPOs).

To the extent the NPO being registered is a foundation, registry depends on an authorization being granted by the entity in charge of the recognition of foundations (in Portugal, the Prime Minister, with powers being currently delegated to the Secretary of State of the Presidency of the Council of Ministers) and upon the verification of the fulfilment of the requirements applicable under the law under which the foundation was incorporated; among others, this

implies that the purpose being carried out is of social interest/benefits society in general and that sufficient assets (in principle, at least EUR 250,000, which may not be entirely in cash) are available. In addition to this, the requirements mentioned above for the granting of the public utility status are also applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Corporate Income Tax:

Corporate entities that donate to eligible NPOs are granted with a wide range of tax benefits, which will vary depending on the object pursued by the NPO, as follows³³⁶:

Cultural Foundations:

In particular, donations to NPOs which main activities are focused on cultural actions may be able to benefit from tax advantages for CIT purposes provided the following requirements are met:

- the NPO is involved in activities in the fields of theatre, opera, ballet, music, organization of festivals and other artistic events and film, audio-visual and literary production; and
- the NPO is granted with a declaration issued by the Minister of Culture recognizing the application of the cultural patronage regime as well as that the activities/actions carried out are of cultural interest.

In case the conditions mentioned in (i) and (ii) are satisfied, the following tax benefits apply:

- donations are considered costs in the amount corresponding to 130%, up to a limit of 8% of the volume of sales or services provided, if they are intended exclusively for environmental, sporting and educational purposes; and
- donations are considered costs in the amount corresponding to 140% of their total, when they are provided under multi-annual contracts signed for specific purposes, which set the objectives to be pursued by the NPOs, and the amounts to be provided by the donors.

Scientific Foundations:

Regarding donations provided to NPOs whose activity is predominantly scientific in nature, there are some tax benefits that may be applicable, provided that prior to the donation the Portuguese Minister of Education and Science issues an order attesting the application of the donation specifically to a scientific activity.

The tax benefits are the following:

³³⁶ Please note that for the purposes of our tax analysis by “NPO” we meant a non-profit legal entity with sufficient assets that are irrevocably allocated to the pursuit of a socially beneficial purpose i.e., foundation. However, we note that the tax analysis provided applies as well to other types of NPOs, namely, associations, cooperatives and similar entities pursuing the same activities.

- donations are considered costs in the amount corresponding to 130%, up to a limit of 8‰ of the volume of sales or services provided, if they are intended exclusively for a scientific activity;
- donations are considered costs in the amount corresponding to 140% of their total, when they are provided under multi-annual contracts signed for specific purposes, which set the objectives to be pursued by the NPOs, and the amounts to be provided by the donors.

Foundations that pursue purposes of a predominantly social nature.

Regarding donations provided to foundations focused on social matters, the applicable tax benefits will depend on the nature of the donation, namely, whether it qualifies as an initial or a spontaneous funding.

To what concerns the initial funding (*dotação inicial*), donors will only benefit from tax advantages provided that (i) such funding is officially recognized and accepted by the Minister of Tax Affairs and (ii) their statutes provide that, in the event of extinction, the assets revert either to the State or, entities with public utility and social solidarity status.

In case the conditions mentioned in (i) and (ii) are satisfied, the following tax benefits apply:

- donations are considered costs in the amount corresponding to 140% of their total, when they are intended exclusively for social purposes;
- donations are considered costs in the amount corresponding to 120%, if they are intended exclusively for environmental, sporting and educational purposes;
- donations are considered costs in the amount corresponding to 130% of their total, when they are provided under multi-annual contracts signed for specific purposes, which set the objectives to be pursued by the beneficiary entities, and the amounts to be awarded by the taxable persons.

On the other hand, donations made by corporate entities that do not concern the initial funding will only benefit from any tax benefit provided the NPO has been granted with the public utility status. Provided this is the case, the following tax benefits apply:

- donations are considered costs **in the amount corresponding to 140% of their total, up to a limit of 8‰ of the volume of sales or services provided** when they are intended exclusively for the (i) support of children and the elderly, (ii) support and treatment of drug addicts or AIDS, cancer or diabetes patients; and (iii) promotion of initiatives aimed at creating work opportunities and social reintegration for people, families or groups in situations of exclusion or risk of social exclusion;
- donations are considered costs in the amount corresponding **to 150% of their total, up to a limit of 8‰ of the volume of sales or services provided**, when intended to specific social matters, inter alia, Prenatal support for adolescents and women at risk and the promotion of initiatives to this end and support for means of information, advice, referral and help for pregnant women in a socially, psychologically or economically difficult situation;
- donations of any other nature are considered costs in the amount corresponding to 130% of their total, up to a limit of 8‰ of the volume of sales or services provided.

Personal Income Tax:

To what concerns individual taxpayers the following tax benefits apply³³⁷, regardless of object of the NPO:

General rule³³⁸:

- cash donations are deductible from the personal income tax in an amount corresponding to **25% of the amount donated**, provided the donation is not subject to any limitation³³⁹;
- cash donations are deductible from the personal income tax in an amount corresponding to **25% of the amounts donated, up to a limit of 15% of the taxable amount**, in all other cases;
- **church donations** (donations made to churches, religious institutions, non-profit organizations belonging to religious denominations or instituted by them);
- cash donations are considered costs in the amount corresponding to 130% of their total and are deductible from the personal income tax in an amount corresponding to 25% of the amounts donated, up to a limit of 15% of the taxable amount.

Furthermore, given the thresholds established, it is possible to carry forward to the following three tax periods the amounts not yet deducted by the taxpayer, up to a limit of 10% of the tax due in each tax period, provided that the annual value of donations exceeds EUR 50.000,00 and the deduction cannot be made in full due to insufficient tax collection and/or compliance with the thresholds established.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, given that it is a formal requirement for the set-up of a NPO that the Secretary of State of the Presidency of the Council of Ministers officially approves and recognizes its establishment within the Portuguese legal system.

Furthermore, as mentioned above, regardless of the nature of the NPO, in practice, only when there is an official order issued by the Portuguese Government attesting the nature of the NPO (whether social, scientific or cultural) the tax benefits may be applicable.

In this regard, we note that it is the Portuguese Tax Authorities understanding that the tax benefits foreseen in Portuguese tax law can only be applied to NPOs who carry out their main activity in Portugal.

2.2.3. Which persons are eligible for tax advantages?

The tax benefits foreseen in Portuguese tax law are applicable to individuals (PIT) as well as corporate entities (CIT).

³³⁸ We note that, for the time being, these tax benefits are only enforceable until 2025.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences?

Cf. 2.2.1.

In general, the tax advantages are the following:

- individuals may benefit from a tax reduction of 25% of the amount donated (some limitations may apply) of their personal income tax;
- corporate entities may be entitled to a tax deduction for the full amount donated to their corporate income tax and, in some cases, the donation amount considered may be increased;
- furthermore, to what concerns the taxation of NPOs, we note that the Portuguese tax regime foresees a specific regime, which will vary depending on whether the NPO is granted with public utility status (*utilidade pública*). Thus, NPOs without public utility are subject to Corporate Income Tax ("*CIT*") at the tax rate of 21%, notwithstanding the donations/bequests, when directly applied to the fulfilment of their statutory purposes, being exempt from taxation.

On the other hand, NPOs granted with public utility are, in principle, exempt from CIT³⁴⁰ – in this regard, please note that it is possible to check which NPOs were granted with the public utility status on the official website of the Portuguese Government at <https://eportugal.gov.pt/fichas-de-enquadramento/fundacoes-e-pessoas-coletivas-de-utilidade-publica/pesquisa/-/pmc/lista>.

- donations and bequests made to NPOs are exempt from Stamp Duty³⁴¹;
- in general, there are not regional or municipal differences;
- NPOs may be exempt from Municipal Property Tax and Property Transfer Tax.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The tax benefits foreseen in Portuguese tax law apply to donations in cash and in kind (goods, real state). Regarding donations to scientific foundations, there is a specific tax rule indicating that in respect to the assignment of human resources, the value considered for tax purposes corresponds to the costs incurred by the employer with the remuneration plus social security contributions, if applicable.

Furthermore, we note that cash donations of more than EUR 200 must be made by a means of payment that allows the donor to be identified, such as bank transfer, check or direct debit. As per Portuguese law, and to what concerns bequests, there is a portion of the individual's heritage that cannot be disposed of/donated.

³⁴⁰ This exemption does not include income arising from business activities not related with the statutory purposes.

³⁴¹ In some cases, Stamp Duty will be due on the donation of real estate but at a reduced rate (i.e., 0,8% against the general rate of 10,8%).

If donors request NPOs to perform certain tasks in consideration for the donation, it will not be eligible for the tax benefit regime.

The NPO must issue a statement indicating the donation amount, the applicable tax benefit as well as confirming that the donation was provided without consideration.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Portuguese tax law does not foresee any tax benefit to taxpayers who indicate a NPO as beneficiary of their bequest given that, in essence, no tax is applicable in this regard.

This being said, we note that as per Portuguese tax law, it is the beneficiary of the transfer (either concerns cash or goods) who is subject to tax i.e., Stamp Duty, and not the donor.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Cf. 2.3.1.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Cf. 2.3.1.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Cf. 2.3.1.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Cf. 2.3.1.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Cf. 2.3.1.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

As mentioned in answer 2.2.2., it is the Portuguese Tax Authorities understanding that the tax benefits foreseen in Portuguese tax law can only be applied to NPOs who carry out their main activity in Portugal.

(Please find the Portuguese Tax Authorities ruling in this regard at Portuguese Tax Authorities at

https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/informacoes_vinculativas/beneficios_fiscais/Documents/FD_PIV_17966.pdf).

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

As mentioned in answer 2.2.2., it is the Portuguese Tax Authorities understanding that the tax benefits foreseen in Portuguese tax law can only be applied to NPOs who carry out their main activity in Portugal.

Registration of the permanent establishment of a foreign foundation is possible, further being possible for such permanent establishment to be granted public utility status under Portuguese law (also for tax purposes).

This registration requires prior authorization from the General Secretariat of the Presidency of the Portuguese Council of Ministers which will only be granted upon the compliance with either the requirements established in the law under which the NPO was established or, failing that, the requirements set out in Portuguese law.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Registration of the permanent establishment of a foreign foundation is possible for all foreign NPOs.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

No, the registration process differs from the one applicable to domestic NPOs. The registration process is free, nevertheless, the fees for the legal assistance will depend on a number of factors, namely, the law firm chosen, the activity to be carried out by the NPO and the size of the NPO.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

As mentioned above in answer 3.1., it is possible for Foreign NPOs to be registered as a permanent establishment of a foreign foundation.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

If an NPO is recognised as such in its home country, there is no requirement to prove the equivalence of its foreign legal form to domestic legal forms. Please also refer, however, to 2.1.8. above.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

As mentioned in answer 3.1., Foreign NPOs that want to be registered in Portugal as a permanent representation are required to be granted with an authorization from the General Secretariat of the Presidency of the Portuguese Council of Ministers which will only be provided upon the compliance with either the requirements established in the law under which the NPO was established or, failing that, the requirements set out in Portuguese law.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

There is an official website in which all registered domestic NPOs and permanent representation of foreign NPOs are listed – please check the link [Pesquisa de Fundações e Pessoas Coletivas de Utilidade Pública - ePortugal.gov.pt](http://Pesquisa.de.Fundacoes.e.Pessoas.Coletivas.de.Utilidade.Publica.-ePortugal.gov.pt). Nonetheless, we note that as per the official website, there is no permanent representation of a Foreign NPO registered in Portugal up until today.

4. CONCLUSION

General rule, only donations provided to domestic NPOs are eligible to benefit from the tax benefits foreseen in Portuguese tax law, namely, tax deductions regarding donations provided by corporate entities and tax reductions in respect to donations executed by individuals.

Foreign NPOs that aim to benefit from these tax benefits should be registered in Portugal as a permanent representation of the Foreign NPO and their activity should be carried out within the Portuguese territory. This registration requires prior authorization from the General Secretariat of the Presidency of the Portuguese Council of Ministers which will only be granted upon the compliance with either the requirements established in the law under which the NPO was established or, failing that, the requirements set out in Portuguese law.

Alternatively, foreign NPOs could benefit from the TGE Network, enabling donors, subject to conditions, to financially support non-for-profit organisations that are located in other Member States, whilst benefiting from the domestic tax advantages that are available in their country of residence.

ROMANIA³⁴²

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

- Government Ordinance no. 26/2000 regarding associations and foundations – this is the functioning law for NPOs;
- Law no. 227/2015 regarding the Tax Code, as subsequently amended and completed (“*Tax Code*” hereinafter): Art. 15, Art. 25, Art. 42, Art. 56, Art. 62, Art. 68, Art. 1231;
- Law no. 32/1994 on sponsorship (“*Sponsorship Law*” hereinafter): (Art. 1, Art. 4-6, Art. 9-10) – this regulates the conditions to be met by the parties to a sponsorship. For the purpose of the Romanian law, payers of corporate tax get tax breaks only for donations which qualify as “*sponsorship*”.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

For NPOs, donations, as well as money or goods **received** through sponsorship are non-taxable income. Also, the amounts received from the income tax owed by individuals as detailed below, are non-taxable for NPOs.

For businesses i.e., persons authorized to carry out economic activities and companies, amounts **given** as donations are not allowed for deductibility when computing the tax on profits due, however, in certain conditions, a tax credit is available as set out below at point 2.2.1.

Also, individual taxpayers can decide on the destination of an amount representing up to 3.5% of the income tax owed to support non-profit entities that are established and operate as provided by the law. This is not a tax deduction for the individual, but only a redistribution of the tax amount from the state to the NPO.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

In order to benefit of amounts given by legal persons (for which the tax law prescribes certain tax benefits) and by individuals (part of the income tax due by individuals redirected to NPOs) the NPOs should be established/recognised and operate in Romania as provided by the law and, at the time of the payment of such amounts, the NPOs appear in the Register of entities/cult units (“*Register*” hereinafter) – Note that this register is difference from the

³⁴² Answers provided by Nestor Nestor Diculescu Kingston Petersen SCA (Bucharest).

Register of NPOs mentioned below. This one referred here is a special register kept by the tax authority, however any NPO should be able to enter this register also as long as it meets the administrative requirements and provides the needed documents.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

In order to qualify for the tax advantages, an NPO must carry out in Romania an activity in the fields of cultural, artistic, educational, scientific - fundamental and applied research, humanitarian, religious, philanthropic, sports, human rights protection, medical-sanitary, social assistance and services, environmental, social and community protection, representation of professional associations, as well as maintenance, restoration, conservation and valorisation of historical monuments.

2.1.3. What does the recognition process look like?

Foreign NPOs may be recognized in Romania **subject to reciprocity** and provided the following conditions are met: (i) the foreign NPO is validly established in its country of jurisdiction; and (ii) its statutory purpose does not contravene Romanian public order (it does not do activities which are contrary to the Romanian laws). Recognition would entail (i) approval via governmental decision; and (ii) registration in the Registry of associations and foundations kept by the Bucharest Tribunal.

Certified copies of the following documents, together with legalized translations thereof, would be required for registration purposes with the Registry of associations and foundations:

- the establishment document of the foreign NPO;
- the statute of the foreign NPO;
- the resolution of the competent body of the foreign NPO approving to request recognition in Romania;
- the statute of the future Romanian presence (representative office) of the foreign NPO, containing provisions related to the headquarters, legal capacity and persons representing the foreign NPO;
- the governmental decision for the approval of the request to recognize the foreign NPO in Romania.³⁴³

Following submission of the above, a court decision approving the recognition should be published.

Based on the public register, we have identified another Belgian NPO that has been registered in Romania.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Administrative costs to be born in Romania for establishing/recognizing an association or foundation in Romania do not usually exceed EUR 200.

³⁴³ The request for obtaining governmental approval is addressed to the General Secretary of the Government, however the law does not provide for a clear procedure to be followed. There is a likelihood that additional documents be required for the purpose of issuing this approval.

2.1.5. What is the timeframe for the recognition process to be completed?

An association or foundation acquires legal personality/is recognized in Romania by registration in the Registry of associations and foundations. According to the law, the registration is approved by the designated judge within three (3) days as of submission of all required documents and becomes effective on the date the court decision becomes final. In practice, due to the court's workload and administrative aspects beyond the parties' control, effectively establishing an association or foundation may take 1-6 months, while recognition of a foreign non-profit entity may well take 9-12 months, due to the prior governmental approval required by law and lengthy term of appeal for the court decision approving the recognition. From a timing perspective, the procedure for establishing a new association/foundation in Romania is significantly more advantageous than that of recognizing an existing international NPO.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no such period of recognition. The recognition is done for an indefinite period.

2.1.7. Is any specific legal form required for the Belgian NPO?

Under Romanian law, natural and legal persons that wish to carry out activities of general interest or activities for the benefit of certain collectivities can establish non-profit entities in the form of associations or foundations. The recognition of is available also to these types of entities i.e., foreign legal entities without patrimonial purpose specifically, associations and foundations. However, recognition of a foreign NPO in Romania is subject to reciprocity in the home state of the NPO.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable, based on the information available so far.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Tax advantages exists in Romania only for legal persons that grant money or goods, within a sponsorship agreement.

The tax law provides tax facilities applicable to companies paying corporate income tax ("*CIT*³⁴⁴" hereinafter) that offer sponsorships to non-profit legal entities, according to the Sponsorship Law. The sponsorship expense is not tax deductible when calculating the CIT, but it can be deducted from the CIT due as fiscal credit.

The tax law provides for certain ceilings regarding the tax credit, representing the minimum of:

- the amount calculated by applying 0.75% to the turnover; and

³⁴⁴ 16% on taxable basis (income less expenses, plus/minus fiscal adjustments).

- the amount representing 20% of the CIT due.

To benefit from a tax credit (i.e., so that the sponsored amount can be deducted from the CIT owed), the tax law requires that the beneficiary of the sponsorship be registered, on the date of the conclusion of the sponsorship agreement, in the Register held by the tax authority, for which tax deductions are granted.

Companies paying CIT that carry out sponsorships are required to submit Form 107 "*Informative declaration regarding the beneficiaries of sponsorships*", relating to the year in which they recorded the respective expenses, by the deadline set for the submission of the annual CIT return.

Moreover, if the minimum amount mentioned above (i.e., the minimum of 0.75% of the turnover or 20% of the CIT due) has not been used in full, CIT payers can require to the tax authority the redirection of a part of the CIT for carrying out sponsorships within a maximum of 6 months from the date of submission of the annual CIT return.

The amounts of the CIT owed that can be redirected are calculated by subtracting from the minimum amount established according to the law the amounts representing sponsorship granted to the beneficiary entities during the respective year.

To exercise the option of redirecting the CIT, taxpayers are required to fill out and submit Form 177 "*Request regarding the redirection of the corporate income tax/tax on the income of micro-enterprises*". The obligation to pay the amount redirected from the CIT rests with the tax authorities after carrying out the analysis of the taxpayer, e.g., verification of settlement of CIT obligations and verification of the form from the perspective of possible filling errors, within 45 days.

In order to carry out the redirection of the CIT for sponsorships, it is necessary that the debit representing the CIT be paid to the state budget.

Similar to the CIT payers, the tax law provides tax facilities for companies paying tax on the income of micro-enterprises ("*TIM*³⁴⁵" hereinafter) that provide sponsorships to non-profit legal entities carrying out activities in the philanthropic field, according to the Sponsorship Law.

Thus, the amounts representing sponsorships made to support non-profit entities, which on the date of conclusion of the sponsorship agreement are entered in the Register, are deducted from the TIM up to the level of the value representing 20% of the TIM due for the quarter in which the sponsorship expense was recorded. Companies paying TIM that carry out sponsorships are required to submit Form 107 "*Informative declaration regarding the beneficiaries of sponsorships*", relating to the year in which the sponsorship expenses were recorded, including, as the case may be, the beneficiaries of the amounts carried over from previous quarters, generally by January 25, inclusive of the following year (i.e., there may be other submission deadlines, for example, in case of termination of the TIM regime).

³⁴⁵ 1% (currently) on turnover.

Moreover, if the amount established—i.e., 20% of the TIM due for the quarter in which sponsorship were recorded, reduced by the amounts carried over for the purchase of fiscal cash registers (if it is the case)—was not used in full, companies paying TIM can request the redirection of the TIM, within the limit of the difference thus calculated for the entire fiscal year, for such sponsorship activities, within 6 months from the date of submission of the tax declaration related to the IVth quarter.

To exercise the option to redirect the TIM, taxpayers should fill out and submit Form 177 "*Application regarding the redirection of the corporate income tax/tax on the income of micro-enterprises*". The obligation to pay the amount diverted from the TIM rests with the tax authorities after carrying out the analysis of the taxpayer, e.g., checking the settlement of TIM obligations and checking the form from the perspective of possible filling errors.

In order to carry out the redirection of TIM for sponsorships, it is necessary that the debit representing TIM be paid to the state budget. The redirection of TIM for the sponsorship of non-profit legal entities can only be carried out if the beneficiary of the sponsorship is registered on the date of payment of the respective amount by the tax authorities in the Register for which tax deductions are granted and is done by the tax authorities within 45 days.

2.2.2. Does it make a difference whether an NPO is recognised or not?

Yes, the NPO should be registered in the Registry in order that the sponsor to benefit from the tax advantages. The registration in such Registry (kept by the Romanian tax authorities) is admitted only if NPOs meets the following cumulative conditions:

- carries out the activity in the field for which it was established;
- has fulfilled all the statutory tax obligations;
- there are no outstanding fiscal obligations to state budget, older than 90 days of maturity/payment term;
- submitted to the annual financial statements, if the case;
- was not declared inactive, according to the Romanian Tax Procedure Code.

Given the above, it can be concluded that NPO should be fully authorised in Romania, by establishment a NPO or by recognition of a foreign one, as well as to be inscribed in the Register kept by the tax authority.

2.2.3. Which persons are eligible for tax advantages?

As mentioned above, legal entities that pay CIT or TIM.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Please see our comments above. No regional/provincial etc differences.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

The tax advantages are available only in the context of sponsorships if they are made in accordance with Sponsorship Law.

As per such law, sponsorship is the legal act by which two persons agree on the transfer of the ownership of some material goods or financial means to support non-profit activities carried out by one of the parties, called the beneficiary of the sponsorship. It requires a sponsorship agreement concluded in written form, specifying the object, value and duration of the sponsorship, as well as the rights and obligations of the parties.

The beneficiary of sponsorship can be, among others, any non-profit legal entity, which carries out or will carry out an activity in Romania in the fields of: cultural, artistic, educational, educational, scientific - fundamental and applied research, humanitarian, religious, philanthropic, sports, human rights protection, medico-sanitary, assistance and social services, environmental, social and community protection, representation of professional associations, as well as maintenance, restoration, preservation and enhancement of historical monuments.

The sponsor or the beneficiary is obliged to inform the public of the sponsorship in a way that does not harm, directly or indirectly, the sponsored activity, good morals or public order and tranquillity.

Within the sponsorship it is forbidden for the sponsor or beneficiary to carry out advertising or commercial advertising, previous, concurrent or subsequent in favour of them or other persons. The sponsor who, directly or indirectly, seeks to direct the activity of the beneficiary does not benefit from the tax facilities.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

There is no tax advantage available when indicating a NPO as beneficiary of will.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

No tax advantages are available to foreign NPO (which are not recognised in Romania as per the procedures described above).

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

The registration of foreign NPOs is possible and required for tax advantages i.e., tax advantages are available to sponsors of NPOs as described above, only after foreign NPOs undertake the recognition process in Romania.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

There is no such limitation. However, the recognition into Romania is available only if there is reciprocity.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

The recognition of a foreign NPO is much more complicated than incorporating a local NPO. Only a limited number of recognitions have been done and given that the process involves checking the reciprocity conditions, preparation of a statute of the representative office, issuance of a Government Decision for the recognition (i.e., the Romanian Government approving the recognition), and also a Court decision, at this stage we cannot provide a capped estimation of all costs. For the preparation of the documentation itself the fees could be around EUR 10,000, however it is difficult to estimate now the amount of follow-up work needed for obtaining the Government decision on the recognition.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Please refer to our comments above regarding the documents necessary for recognition. However, the authorities are entitled to request any information they consider necessary for having a complete picture.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Not applicable.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

Yes, there is a National Register for NPOs. Currently it contains around 30 entities, and we have also found one from Belgium. You can find the list at the following link: https://www.just.ro/wp-content/uploads/2023/10/16_10_2023PersJurStraine.pdf.

4. CONCLUSION

The NPOs must be established/recognised and run in Romania in accordance with the law in order to benefit from amounts given by legal entities (for which the tax law specifies specific tax benefits) and by individuals (part of the income tax owed by individuals redirected to NPOs). At the time of the payment of such amounts, the NPOs should be registered in the Register and such registration is available only to Romanian NPOs or foreign NPOs recognised in Romania in accordance with the recognition procedures described above.

5. ADDITIONAL CLARIFICATIONS

5.1. MUST A FOREIGN ORGANIZATION ESTABLISH A LOCAL BRANCH TO BENEFIT FROM FISCAL ADVANTAGES IN ROMANIA?

Not necessarily. For companies, tax advantages are available if they are corporate income tax or payer of tax on micro-enterprises income. While the latter can be only Romanian companies, corporate income taxpayers can be a foreign company that has a permanent establishment in Romania (even if no branch is established) or even a foreign company residing in Romania, according to the place of effective management. Regarding the foundation, it is required only to undergo the recognition process in Romania.

5.2. WHEN PREPARING DOCUMENTS FOR RECOGNITION, SUCH AS THE STATUTE OF THE REPRESENTATIVE OFFICE, SHOULD THEY BE IN ROMANIAN?

Yes, all documents filed with the Romanian authorities must be translated into the Romanian language.

5.3. DOES THE SPONSORSHIP AGREEMENT, SPECIFYING OBJECT, VALUE, ETC., NEED TO BE IN ROMANIAN?

The agreement can be concluded in any language; however, in the case of an audit or any situation that involves Romanian authorities, such documents should be translated and made available in Romanian.

SLOVAKIA³⁴⁶

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Legal framework for donations:
 - o [Sections 628 to 630](#) of the Act No 40/1964 Coll. the Civil Code, as amended. (“*Civil Code*”).
- Legal framework for bequests:
 - o [Sections 460 to 487](#) of the Civil Code.
- Tax advantages for donations and bequests:
 - o [Section 12\(7\)\(b\) of the Act No. 595/2003 Coll](#) on Income Tax, as amended (“*Income Tax Act*”).
- The legal requirements for associations and foundations:
 - o [Act No. 83/1990 on Associating of Citizens](#), as amended;
 - o [Act No. 34/2002 on Foundations and on the Change of Civil Code](#), as amended;
 - o [Act No. 147/1997 on Non-Investment Funds](#), as amended.
- The recognition process and requirements of NPOs:
 - o [Act No. 213/1997 on Non-Profit Organizations Providing Generally Beneficial Services](#), as amended; and
 - o Section 12 (2) and (3) of the Income Tax Act [Act No. 346/2018 on Registration of NGOs and Amendment of Certain Laws](#).

The Slovak Financial Administration does provide some general guidance on application of tax laws on its official portal. Though certain parts are available in English, these mostly relate to general information on organisation of Financial Administration and structure of taxes in Slovakia. The guidance for taxpayers is mostly available only in Slovak, including information on:

General treatment of incomes of foreign persons (available in English):

- <https://www.financnasprava.sk/en/businesses/taxes-businesses#ZahranicnaOsobaPrijem>;
- <https://www.financnasprava.sk/en/individuals/taxes-individuals/income-tax/taxation-of-incomes-of-a-sr-no>.

Procedural aspects of assigning a fraction of paid tax to NPOs (available only in Slovak):

³⁴⁶ Answers provided by PRK Partners s.r.o. attorneys at law (Bratislava).

<https://podpora.financnasprava.sk/603009-V%C3%BD%C5%A1ka-podielu-zaplatenej-dane>.

Information on incomes that are not subject to income tax (available only in Slovak):

- <https://www.financnasprava.sk/sk/obcania/dane/dan-z-prijmov/informovanie-dan-prijem#PrijmyKtoreNieSuPredmetomDane>;
- <https://www.financnasprava.sk/sk/obcania/dane/dan-z-prijmov/informovanie-dan-prijem#PrijmyOslobodeneOdDane>;
- <https://podpora.financnasprava.sk/062304-Pr%C3%ADjem-z%C3%ADskan%C3%BD-darovan%C3%ADm>.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Under Sec. 12(7) of the Income Tax Act, income of legal entities obtained by donation or by bequests is not subject to income tax (the only exception being the donations from pharmaceutical companies to healthcare providers which are deemed a taxable income in their entirety). There is no other tax on that kind of income.

For the person making a donation/bequest no tax advantages arise from making such. A donation is not deemed related to any taxable income, and therefore it is a non-tax-deductible expense by definition. Furthermore, no specific rule exists in Slovak income tax law that would enable deduction of value of donation (or any portion thereof) from taxable base/payable tax of the donor.

However, there is a specific regime, which is not *stricto sensu* a donation, but its effects are similar. The regime provides for an exemption from income tax of so-called “*charitable advertisements*” up to EUR 20,000 (EUR 30,000 from 1 January 2024) per NPO per tax period. This being an advertisement income it is generally expected that on the side of the client (entity ordering the advertisement) the expense will be tax deductible. The proceeds from charitable advertisements can be used only for a limited catalogue of purposes (reference is made to Sec. 50(5) of the Income Tax Act, see further below) by the end of the year following the year in which the proceeds were received. At the same time, there is a tax advantage in the form of a regime enabling to allocate a fraction (up to 3%) of payable income tax to a qualified NPO. *Cf.* 2.1.1.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Donations:

With regard to traditional donations in accordance with Sec. 628 to 630 of the Civil Code, no special authorisation or qualification is required.

Tax Allocation Regime for NPOs:

There is a special regime enabling to allocate a fraction (up to 2%) of payable income tax to a qualified NPO. This does not give any specific tax advantage to the taxpayer, but provides for a (very) limited control over the use of proceeds from the income tax of the particular taxpayer.

Pursuant to Sec. 50 et seq. of the Income Tax Act, taxpayers who file a tax return and are not in tax arrears may allocate a percentage of the tax they paid to a foundation, association, NGO, etc.

Sec. 50(1)(a) or (b) of the Income Tax Act provides that, depending on who makes the allocation, it is possible to allocate 1%, 2% or 3% of the income tax. Individuals may allocate a proportion of 2% of the tax paid. If they have volunteered more than 40 hours in a particular tax period, they can allocate up to 3% of the tax paid.

A legal entity may only allocate 2% if it has actually donated an amount equal to at least 0.5% of its payable tax to another organisation for a public benefit purpose in the previous year up to the tax return date. Otherwise, only 1% may be allocated.

Pursuant to Sec. 50(5) of the Income Tax Act, an allocation of a proportion of the tax paid may be provided to the recipient if the recipient's scope of activity is:

- protection and promotion of health; prevention, treatment, re-socialisation of drug addicts in the field of health and social services;
- the promotion and development of sport;
- provision of social assistance;
- the preservation of cultural values;
- the promotion of education;
- protection of human rights;
- protection and creation of the environment;
- science and research;
- organisation and mediation of voluntary activities.

The recipient must fulfil the conditions stated in the law, in particular (i) be registered in the central register of recipients maintained by the Notarial Chamber of the Slovak Republic, (ii) be registered in the register of legal entities, (iii) be not in arrears with social and health insurance, and (iv) prove that a bank account has been set up (to receive the allocated funds from the Tax Authorities).

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Under Slovak law, all NGOs are registered in a publicly available register of NGOs. As the Income Tax Act provides that donation and bequests are not taxable, donors do not benefit from any tax advantages (such as a reduced tax rate or decrease of income tax base).

Therefore, Slovak law does not provide procedures for the recognition of NPOs for the purpose of tax benefits of their own or for their donors.

A NPO must be a legal entity established under the Non-Profit Organisations Act which provides services of general benefit on predetermined terms and conditions which are equal for all beneficiaries and whose profits may not be used for the benefit of its founders, members of its organs or its employees, but must be used in their entirety for the provision of services of general benefit.

The name of the NPO must include the designation "*non-profit organisation*" or the abbreviation "*n.o.*" and must be distinct from the name of other already registered NPOs.

The Non-Profit Organisations Act defines services of general benefit as, in particular:

- the provision of health care;
- the provision of social assistance and humanitarian care;
- the creation, development, protection, restoration and presentation of spiritual and cultural values;
- the protection of human rights and fundamental freedoms;
- education, upbringing and development of physical culture;
- research, development, scientific and technical services and information services;
- creation and protection of the environment and protection of public health;
- services to promote regional development and employment;
- the provision of housing, management, maintenance and renovation of the housing stock.

However, the above enumeration is only demonstrative, i.e., not exhaustive.

2.1.3. What does the recognition process look like?

On the issue of recognition, *cf.* 2.1.2. Slovak law does not provide procedures for the recognition of NPOs for the purpose of tax benefits of their own or for their donors.

We therefore outline below the necessary requirements for the registration or establishment of an NPO in our legal environment.

A NPO may be established by a natural person, legal entity or state. A NPO may be established by a single person.

A NPO shall be established by a memorandum of association signed by all the establishers. The authenticity of the signatures of all persons establishing the NPO must be officially certified.

A NPO shall be incorporated on the date on which the decision of the registration office on registration has become effective.

A written application for registration of a NPO in the register must be submitted by the founder or a person authorised in writing by him within 60 days of the establishment of the NPO. The authenticity of the applicant's signature must be officially certified.

The application for registration includes the memorandum of association, the statute, a written declaration by the founder of the ultimate beneficial owner with the data pursuant to

a special regulation and an affidavit by the founders. The statute must be signed by all the founders. The founders' affidavit must indicate in which NPOs the founders or members of the bodies of the NPO have been or are involved.

Once a NPO has been registered in the register, it is not possible to change, delete or add a founder.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

Pursuant to item no. 34 of the Administrative Fees Act, the administrative fee for the registration of an NPO in the register is EUR 66. Legal fees for the preparation of memorandum of association, statute and relating documents and the NPO's registration will vary based on their complexity, usually between EUR 2,000 and EUR 5,000.

2.1.5. What is the timeframe for the recognition process to be completed?

Not applicable, Slovak law does not provide for procedures for the recognition of NPOs for the purpose of tax benefits of their own or for their donors.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

Not applicable, Slovak law does not provide for procedures for the recognition of NPOs for the purpose of tax benefits of their own or for their donors.

2.1.7. Is any specific legal form required for the Belgian NPO?

Not applicable.

Slovak law does not provide for procedures for the recognition of NPOs for the purpose of tax benefits of their own or for their donors.

In general, a legal entity with its registered office outside the territory of the Slovak Republic, which is a NPO according to the law of the state in the territory of which it has its registered office or its organisational branch, may operate on the territory of the Slovak Republic under the same conditions and to the same extent as a Slovak NPO, if it meets the requirements of the Slovak law for the activities of the NPOs.

An NPO is a legal entity, and the name of the NPO must include the designation "*non-profit organization*" or the abbreviation "*n.o.*". NPOs are never incorporated as a company such as a limited liability company or a joint stock company, etc.

The Income Tax Act does not expressly foresee that a foreign NPO could be eligible for the allocation of fraction of tax paid. In fact, upon briefly reviewing the current list of NPOs, it does not seem that any foreign entity is registered.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

The value of donations cannot be treated as a tax expense in Slovakia.

According to the definition of a tax expense in Sec. 2 (i) of the Income Tax Act, a tax expense is an expense (cost) for the achievement, provision and maintenance of taxable income which has been proven to have been incurred by the taxpayer, booked in the taxpayer's accounts or recorded in the taxpayer's records.

In the light of the above, donations to NPOs cannot, therefore, be treated as expenses necessary for obtaining or securing profits.

Furthermore, no specific rule exists in Slovak income tax law that would enable deduction of value of donation (or any portion thereof) from taxable base/payable tax of the donor.

There is no donation tax in Slovakia.

2.2.2. Does it make a difference whether an NPO is recognised or not?

No.

2.2.3. Which persons are eligible for tax advantages?

There are no tax advantages on donors' side.

On the side of recipients, essentially, everyone is eligible for tax advantages (i.e., donations not being subject to income tax) (with the exception of donations made by pharmaceutical companies to providers of healthcare services).

What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

No tax advantages are available. No specific rule exists in Slovak income tax law that would enable deduction of value of donation (or any portion thereof) from taxable base/payable tax of the donor.

Outside of income tax, there is another possibility of tax advantages in the area of property taxes. The tax administrator may, by a generally binding regulation, provide for a reduction or exemption from tax on land, buildings or flats owned by legal persons not established or set up for business purposes (i.e., NPOs).

In this case, we are only referring to the tax administrator's option to grant such advantages, as opposed to tax exemptions arising directly from the law.

2.2.4. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

No tax advantages are available. No specific rule exists in Slovak income tax law that would enable deduction of value of donation (or any portion thereof) from taxable base/payable tax of the donor.

Pursuant to Sec. 628(1) of the Civil Code a donation agreement may only be concluded without any consideration. Theoretically it is possible to impose conditions, but it is possible that the deviation from the no-consideration as a primary definition mark of a donation may result also in different tax treatment on the side of the recipient (potentially the income becoming a taxable income).

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Bequests are not subject to income tax in Slovakia. There is no inheritance tax in Slovakia.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Essentially, everyone is eligible for tax advantages (i.e., bequests are not subject to income tax).

2.3.3. Does it make a difference whether an NPO is recognised or not?

No.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Essentially, everyone is eligible for tax advantages.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Bequests are not subject to income tax in Slovakia. There is no inheritance tax in Slovakia.

Apart from that, there is no special rule in the Slovak Income Tax Act that would allow the deduction of the value of a bequest (or part of it) from the tax base/tax payable by the testator (or any other person).

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

There are no conditions.

Furthermore, any conditions made in the will by the testator are without legal relevance. In general, if such conditions were included in the will, they would not, in fact, produce any legally relevant consequences (i.e., will not be binding) for the NPO included in the will.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Essentially yes, as donations and bequests are not subject to income tax in Slovakia, there is no donation or inheritance tax in Slovakia, and they will not be considered a Slovak sourced income (and e.g., subject to withholding tax) either. The tax treatment in the residency state of a foreign NPO is not affected by this.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

No registration is required in order to claim tax benefits.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G. A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable, Tax treatment of donations and bequests is the same for domestic and foreign entities.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

No.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

No.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

Yes, there is a publicly available register in which it is possible to search for non-profit organizations, foundations, non-investment funds, associations and also organizations with international elements.³⁴⁷

4. CONCLUSION

As mentioned above, the most important point appears to be the fact that Slovak tax law does not consider income from donation and inheritance to be income subject to income tax.

At the same time, the donors do not receive any tax or other benefits in connection with the donation. The donation is considered a non-deductible expense for income tax purposes.

Foreign NPOs can operate in Slovakia if they meet the same requirements for registration as Slovak NPOs. Besides the favourable tax regime for income tax on income from so-called charitable advertising, the Slovak Income Tax Act also provides for a special regime allowing to allocate a fraction (up to 3%) of the income tax payable to a qualified NPO.

³⁴⁷ Available online at: <https://ives.minv.sk/rmno/>.

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

Please initially note that applicable Slovenian legislation does not govern NPOs on a general level, but instead recognizes several different forms in which a legal entity may be established and qualified as an NPO – most importantly these forms are institutions (*zavodi*), associations (*društva*) and foundations (*ustanove*). Considering the operations and current legal form of King Baudouin Foundation, we focused our below review on foundations, as these seem to be the legal form that is closest to the King Baudouin Foundation.

Slovenian legislation does not foresee that foreign foundations could be recognized in Slovenia in the sense of establishing a local branch (similar to, for example, a branch of a limited liability company, etc.). Furthermore, only Slovenian foundations and other similar Slovenian legal entities are allowed to register as non-governmental organizations (hereinafter: **NGO**) in the public interest. The status of an NGO in the public interest is important when considering certain tax advantages. As a result, if the King Baudouin Foundation would like to operate in Slovenia as a foundation and register as an NGO in the public interest, it would have to establish a new (legally separate) Slovenian foundation. However, please also note that certain tax advantages are available to Slovenian citizens even without the foreign foundation being present or registered in Slovenia, as explained in more detail below.

The current legal and tax framework for philanthropy in the Republic of Slovenia is the following:

Legal framework

Applicable legislation:

- legal requirements for establishing a foundation: Art. 2, 4, 5, 6, 7, 9, 12, 13, 15, 27 and 34 of the Foundations Act (hereinafter: ZU); and
- legal requirements for registering as an NGO in the public interest: Art. 2, 3, 4, 5, 6, 8, 11, 13, 18 and 20 of the [Non-Governmental Organisations Act](#) (hereinafter: **ZNOrg**).

For additional questions, Slovenian authorities can be contacted via:

- for questions relating to the establishment of a foundation, the competent authority is the [Ministry of the Interior](#), Internal Administrative Affairs Directorate, Public Assembly and Weapons Division, reachable via:
 - o phone number: +386 1 428 47 59; or
 - o e-mail address: gp.mnz@gov.si.

³⁴⁸ Answers provided by Odvetniki Šelih & partnerji, o.p., d.o.o. (Ljubljana).

- for questions relating to the registration as an NGO in the public interest, the competent authority is the [Ministry of Public Administration](#), Local Self-Government, Non-Governmental Organisations and Political System Directorate, reachable via:
 - phone number: +386 1 478 85 30; or
 - e-mail address: gp.mju@gov.si.

Some information may also be found on websites of the relevant authorities (primarily in Slovenian language, with English available only on some sites):

- requirements for establishing a foundation:
 - <https://spot.gov.si/sl teme/ustanova/>; and
 - <https://www.gov.si teme/drustva-in-ustanove/>.
- the process of registering as an NGO in the public interest:
 - <https://www.gov.si/en/topics/non-governmental-organisations/>.

Tax framework

Applicable legislation

Tax advantages for donations:

- For physical persons:
 - Art. 20, 25, 46, 66, 142 and 107 of the [Personal Income Tax Act](#) (hereinafter: **ZDoh-2**);
 - Art. 3 of the [Decree on the appropriation of the part of the personal income tax for donations](#).
- For legal entities:
 - Art. 9, 27 and 59 of the [Corporate Income Tax Act](#) (hereinafter: **ZDDPO-2**);
 - Art. 3 of the [Rules concerning definitions of profitable and non-profitable activity](#).

Tax advantages for bequests:

- Art. 2, 3, 9 and 13 of the [Inheritance and Gift Tax Act](#) (hereinafter: **ZDDD**);
- Art. 80 and 82 of the [Inheritance Act](#) (hereinafter: **ZD**).

General rules for tax procedure:

- Art. 355 of the [Tax Procedure Act](#) (hereinafter: **ZDavP-2**).

In addition, any interested party may also reach out to the Financial administration of the Republic of Slovenia (hereinafter: **FURS**) for additional questions. However, please note that the respective consultants can generally be approached only in Slovenian language. FURS consultants can be reached via:

- for questions relating to the taxes of the physical persons:
 - o phone number: +386 8 200 1001; or
 - o the contact form available at the following website: <https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Documents/ContactFormEx.aspx?ca=FO>.

- for questions relating to taxation of legal entities:
 - o phone number: +386 8 200 1003; or
 - o the contact form available at the following website: <https://edavki.durs.si/EdavkiPortal/OpenPortal/CommonPages/Documents/ContactFormEx.aspx?ca=PS>.

- general email of the General Financial Office of FURS: gfu.fu@gov.si.

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Yes, tax advantages are available to individuals, legal entities and persons³⁴⁹ with income from activities.

Individuals may allocate a part of their income tax for donations (funds may be donated only to qualifying Slovenian entities, see below for more details), while legal entities and persons with income from activities can claim tax relief for donations and use it to reduce their tax base.

In relation to bequests (which can only be given by individuals), individuals have no special tax advantages.

On the other hand, NPOs also have tax advantages from received donations/bequests, as such income is exempted from their tax base and can be exempt from inheritance and gift tax (if applicable).

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

There is no general rule, as each individual tax advantage is subject to separate regulation, using different definitions of beneficiaries:

- Allocation of part of individual's income tax for donations:

³⁴⁹ "Persons with income from activities" includes mainly self-employed entrepreneurs, but also other natural persons who conduct their activities based on other regulations (e.g., notaries, self-employed lawyers, self-employed journalists, etc.). Tax relief may only be claimed if such persons determine their tax base by considering actual income and actual expenses (instead of lump sum taxation).

- recipients of part of individual's income tax may only be non-governmental organizations that have the status of an NGO in the public interest³⁵⁰ and are included on the list of beneficiaries that is prepared by the Government of the Republic of Slovenia³⁵¹;
 - in addition, political parties, representative trade unions, registered churches and other religious communities, as well as school or kindergarten funds may also benefit from the above donations.
- Tax relief for donations:
- legal entities and persons with income from activities can claim tax relief (in the amount of 1% of the taxable income) for donations made in cash and in kind for humanitarian, disability, social welfare, charitable, scientific, educational, health, sports, cultural, ecological, religious and generally useful purposes;
 - contrary to the rules applicable to individuals, there is no requirement for the receiving entity to be registered as an NGO in the public interest. However, the rules do foresee that the above tax relief may only be claimed if the donation is made to a resident of Slovenia, EU Member State or EEA Member State, provided that the respective entity is established for the purpose of carrying out (one or several of) the above enumerated activities as non-profit activities.³⁵²

In addition to the above tax advantages that can be claimed/used by the donor, the applicable legislation also provides the following tax advantages to beneficiaries:

- Exemption of received donations/bequests from tax base:
 - institutes, associations, foundations, religious communities, political parties, chambers and representative trade unions are not obliged to pay corporate income tax from received donations/bequests, if the respective entity (i) is established in accordance with a special law to perform a non-profit activity and (ii) actually operates in accordance with the purpose of establishment and operation³⁵³;
 - notwithstanding the above, the above entities do pay corporate income tax on any income derived from the pursuit of a profit-making activity.
- Exemption of received donations/bequests from inheritance or gift tax
 - private legal entities established by law to carry out religious, philanthropic, charitable, medical, social welfare, educational, research or cultural activities, or to carry out protection and rescue activities are exempt from paying the inheritance or gift tax. This exemption may only apply if the received donation or inheritance is intended for one of the above-mentioned purposes.³⁵⁴

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Slovenian legislation does not define any generally applicable requirements for Recognised NPOs. Instead, as it follows from the above, a wide range of different legal entities may take advantage of different tax advantages, from foundations to political parties, etc.

³⁵⁰ Art. 142 of ZDoh-2.

³⁵¹ The list of beneficiaries for the year 2023 is available [here](#).

³⁵² Art. 59 of the ZDDPO-2 and Art. 66 of ZDoh-2.

³⁵³ Art. 9 in connection with Art. 27 of ZDDPO-2.

³⁵⁴ Art. 9 of ZDDD.

The Rules concerning definitions of gainful and non-for-profit activity do set out certain conditions for an activity to be considered (non)gainful. Under the said rules, the taxable person's activity is gainful if at least one of the following conditions is met:

- the activity is carried on the market for profit; or
- the taxable person competes on the market with other persons liable under ZDDPO-2.³⁵⁵

As a result, income from the pursuit of any above activity shall be considered as income from the pursuit of a gainful activity, whereby the noted rules also set out examples of proceeds that are generally considered to be derived from a non-for-profit activity³⁵⁶ and those deriving from gainful activities. However, there are no general definitions or requirements that would differentiate entities between gainful and non-for-profit.

As mentioned above, the possibility of receiving part of individual's income tax is reserved to NGOs that have the status of an NGO in the public interest. Due to this, the responses to questions from 2.1.2. to 2.1.6. refer to such NGOs.

For an entity to attain **recognition as an NGO** in Slovenia, it must fulfil the following criteria:

- it must be established as a legal entity of private law with its seat/registered office in the Republic of Slovenia;
- it must be founded by domestic or foreign natural or legal persons;
- the entity must be non-for-profit, indicating that:
 - o it was not established with the aim of engaging in profit-making activities or for the purpose of generating profit or advancing the profit-making endeavours of its founders or members; and
 - o its legal framework designates the use of profit or surplus income solely for achieving its defined purpose or goals, refraining from distributing assets among founders, members, or others. In case of termination, after settling all obligations, its assets are to be transferred to another NGO with a similar purpose or a non-profit legal entity under public law:
 - the entity needs to maintain independence from other entities. This means that representatives of certain entities, such as the state, local communities, public law entities, holders of public authority, international intergovernmental organizations, political parties, trade unions, chambers, companies, or individuals engaged in independent profitable activities in the market, should collectively possess less than a quarter of the votes in its governing bodies;
 - the entity should not be organized as a political party, church, religious community, trade union, chamber, or any similar affiliations.

For an NGO to be further declared an **NGO in the public interest**, the following additional conditions must be met:

³⁵⁵ Art. 2 of the Rules concerning definitions of profitable and non-profitable activity.

³⁵⁶ For example: donations, membership fees, bequests, legacies, etc. (Art. 3 of the Rules concerning definitions of profitable and non-profitable activity).

- the NGO's activity in a particular field must extend beyond the interests of its founders or members and be considered generally beneficial;
- in case of a membership organization, its members should not be legal entities under public law;
- the primary activity stated in the act of establishment of the NGO should be an activity in the public interest;
- the NGO has to be operational for a minimum of two years preceding the application for the status;
- the NGO should demonstrate significant achievements in its field of activity;
- over the last two years before the application, the NGO must predominantly utilize its resources for activities in the public interest, regularly carrying out programs, projects, or other activities aligned with its objectives;
- the NGO must develop a program for future activities, committing to the regular pursuit of activities in the public interest for a duration of at least two years;
- the NGO must not be a subject of a final judgment imposing a fine for a serious tax offense or an offense of a particularly serious nature, and it should not be a subject of a final judgment on a criminal offense; and
- the NGO should not be subject to bankruptcy or winding-up proceedings.

2.1.3. What does the recognition process look like?

An NGO may be granted the status of an NGO in the public interest in the fields of culture, education, health care, social care, family policy, development of democracy, protection against discrimination, protection of human rights, etc.³⁵⁷

In order for the NGO to be considered as an NGO in the public interest, the NGO must file its application at the competent ministry³⁵⁸ (designation of the responsible ministry depends on the field in which the NGO operates).

After granting the application, the responsible ministry enters the NGO in the public interest in the Register of NGOs in the public interest, which is available on [this website](#).³⁵⁹

For more information in connection with obtaining the status of an NGO in the public interest and the procedure of being entered into the relevant register, please also see [this website](#).

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There is no official administrative fee required for filling the application for the registration of an NGO in the public interest.

2.1.5. What is the timeframe for the recognition process to be completed?

There is no legally prescribed timeframe for the registration of an NGO as an NGO in the public interest. The duration of the procedures varies from one ministry to another and can, based on the provided information, take several months. It's important to note that the

³⁵⁷ Par. 2 of Art. 6 of ZNOrg.

³⁵⁸ Art. 8 of ZNOrg.

³⁵⁹ Art. 20 of ZNOrg.

process may be prolonged if the authority Requests additional documents or information. In such cases, the NGO is typically given an additional 15 days to supply the ministry with the required additional documents, and the decision-making term is extended accordingly.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

There is no validity period for which an NGO may be recognised as an NGO in the public interest.

However, the ministry which has granted the status of an NGO in the public interest, may withdraw the status if the NGO:

- no longer fulfils the prescribed conditions or no longer carries out activities in the public interest;
- fails to comply with its reporting obligations,³⁶⁰ despite a warning from the competent ministry, even within a subsequent period of 30 days; or
- renounces (in writing) the status granted.³⁶¹

2.1.7. Is any specific legal form required for the Belgian NPO?

A Belgian (or any other non-Slovenian) NPO could not be recognized as an NGO in Slovenia.

As already noted above, different forms of Slovenian entities can be recognized as an NPO. Consequently, there are several different legal forms in which an entity may be established and be considered as non-for-profit. Considering the activities and current legal form of the King Baudouin Foundation, the legal form of a foundation seems to be the most similar form in which it could conduct similar activities in Slovenia.

Under provisions of ZU, a foundation is legally defined as a private law entity with assets dedicated to a specific purpose. Notably, a foundation may be established by a domestic or foreign legal entity/physical person.

For the establishment of a foundation the following conditions must be met:

- the purpose of a foundation must be generally beneficial³⁶² or charitable³⁶³ and, as a rule, permanent³⁶⁴;
- the circle of persons who are to be considered as beneficiaries must be limited, but not specified by names or limited to family members only³⁶⁵;

³⁶⁰ Under Art. 11 of the ZNOrg, following the granting of a status of the NGO in the public interest, the latter must by 31st of March of each year report to the ministry which granted it the status. As part of such a report, the NGO must present a report on its activities and a report on the use of funds, both for the previous two calendar years, with evidence of its activities and major achievements; and a programme of future activities for at least two calendar years.

³⁶¹ Par. 1 of Art. 13 of ZNOrg.

³⁶² Under Par. 2 of Art. 2 of ZU, the purpose of a foundation is considered to be generally beneficial if the foundation has been established for purposes in the fields of science, culture, sport, education and training, health care, child and disabled care, social welfare, environmental protection, conservation of natural treasures and cultural heritage, for religious purposes and similar.

³⁶³ Under Par. 3 of Art. 2 of ZU, the purpose of a foundation is considered to be charitable if it has been established for the purpose of helping persons who are in need of such help.

³⁶⁴ Art. 2 of ZU.

³⁶⁵ Par. 4 of Art. 2 of ZU.

- the value of the founding capital shall be adequate for the attainment of the purpose of the foundation³⁶⁶;
- the founders should adopt an act of establishment, which fulfils the conditions laid down by ZU³⁶⁷;
- the establishment of the foundation should not counter public order.³⁶⁸

The founder(s) may establish a foundation through a legal act *inter vivos* or in the event of death.³⁶⁹ For the foundation to be officially established, an act of establishment must be adopted in the form of a notarial deed. The notary responsible for drafting the deed is obliged to submit it – within 15 days after the act of establishment is adopted – to the ministry whose jurisdiction corresponds to the purpose for which the foundation is established. The notary is required to provide, along with the act of establishment, evidence of the actual existence of the capital designated for establishing the foundation and consents of the members of the initial board of trustees regarding their appointment.³⁷⁰

The ministry is then responsible for approving the act of establishment within 30 days of receiving it. The ministry approves the act if the latter fulfils the set conditions, the purpose of the foundation is of general utility or charitable, the founding assets are guaranteed, and the establishment is not contrary to public policy.³⁷¹ Upon issuance of the ministry's approval:

- the foundation is considered a legal entity;
- the Ministry of the Interior automatically registers the foundation in the Register of Foundations (accessible at the [following website](#)); and
- assets can be transferred to the foundation, enabling it to commence activities aligned with its established purpose.³⁷²

Please note that in case the foundation ceases its operations and is liquidated or bankrupt, the residue of the assets of the liquidation or bankruptcy estate must be assigned to another foundation carrying out the same purpose, in accordance with the will and purpose of the founder. If there is no such foundation, the assets shall be assigned to a foundation pursuing a similar purpose.

For more information in connection to the establishment of a foundation in Slovenia, please also see the following websites:

- <https://spot.gov.si/sl/teme/ustanova/>; and
- <https://www.gov.si/teme/drustva-in-ustanove/>.

³⁶⁶ Art. 9 of ZU.

³⁶⁷ Art. 11 in relation to Art. 6 of ZU.

³⁶⁸ Art. 11 of ZU.

³⁶⁹ Art. 5 of ZU.

³⁷⁰ Art. 7 of ZU.

³⁷¹ Art. 11 of ZU.

³⁷² Art. 12 and 13 of ZU.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

As already noted in response 1 above, Slovenian legislation does not foresee that foreign foundations could be recognized in Slovenia in the sense of establishing a local branch (similar to, for example, a branch of a limited liability company, etc.). Furthermore, only Slovenian foundations and other similar Slovenian legal entities are allowed to register as NGOs in the public interest.

As already noted in point 2.1.2. above, Slovenian legislation does not define any general requirements for domestic entities to be able to register as an NPO. Instead, the non-for-profit aspect is observed primarily in relation to the actual activities carried out by the respective entity and partly also from the nature of the proceeds obtained by an entity, as described in more detail above.

Additionally, the ZU also provides a possibility for legal entities established for generally beneficial or charitable purposes (without engaging in profitable activities) to use the word “*fundacija*” (could be translated as charitable organization) in their name or trade name.³⁷³

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

There are two different tax advantages available:

- Individuals
 - o individuals can allocate 1% of their annual income tax (assessed according to ZDoh-2) for donations.³⁷⁴ As mentioned above, the beneficiaries of such donations include only non-governmental organizations that have the status of an NGO in the public interest, political parties, representative trade unions, registered churches and other religious communities, as well as school or kindergarten funds. At the beginning of each year, the Government of the Republic of Slovenia publishes a list of entitled beneficiaries, from which individuals may choose³⁷⁵;
 - o the amount of the donation (part of the 1%) may be split between several beneficiaries, whereby an individual share must be rounded to the tenth of a percent.³⁷⁶
- Legal entities and persons with income from activities
 - o the latter may claim a tax relief which reduces their tax base for the amount of the donation. The amount of such reduction is limited to 1% of the taxpayer's taxable income in the tax period³⁷⁷;
 - o there is also a possibility of an additional reduction by a further:
 - 0.2% of the taxpayer's taxable income in the tax period for donations for cultural and sports purposes; and

³⁷³ Art. 34 of ZU.

³⁷⁴ Art. 142 of ZDoh-2.

³⁷⁵ The list of beneficiaries for the year 2023 is available [here](#).

³⁷⁶ Art. 3 of the Decree on the appropriation of the part of the personal income tax for donations.

³⁷⁷ Par. 1 of Art. 59 of ZDDPO-2 and Par. 1 of Art. 66 of ZDoh-2.

- 3.8% of the taxpayer's taxable income in the tax period for donations into professional sport.³⁷⁸

For an amount that exceeds this (additionally reduced) amount, the taxpayer can reduce the tax base in the following three tax periods together with the reduction of the tax base for these purposes for the current tax period.³⁷⁹

2.2.2. Does it make a difference whether an NPO is recognised or not?

Allocation of the income tax for donations by individuals (*cf.* part 1 of 2.2.1.) can only be made to organizations that have the status of an NGO in the public interest (and other subjects that are not relevant for the matter at hand). *Cf.* 2.1.2. to 2.1.6.

On the other hand, no special recognition is required for beneficiaries of donations made by legal entities or persons with income from activities in order for them to benefit from the tax advantage described under point 2) of the response to the above question 2.2.1.

2.2.3. Which persons are eligible for tax advantages?

For allocation of part of the income tax for donations by individuals: any individual who is a Slovenian tax resident and is assessed income tax under provisions of ZDoh-2.

For tax relief for donations by legal entities/persons with income from activities: any legal entity that is a taxpayer according to provisions of ZDDPO-2³⁸⁰ or any person who earns income through independent self-employment,³⁸¹ regardless of the purpose and result of the activity.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Beneficiaries of donations may benefit from the following tax advantages:

- exemption of received donations/bequests from tax base:
 - o institutes, associations, foundations, religious communities, political parties, chambers and representative trade unions are not obliged to pay corporate income tax from received donations/bequests, provided that the respective beneficiary (i) is established in accordance with a special law to perform a non-for-profit activity and (ii) actually operates in accordance with the purpose of establishment and operation. Notwithstanding the latter, such beneficiaries do pay corporate income tax on income derived from the pursuit of a profit-making activity³⁸²;

³⁷⁸ Par. 2 of Art. 59 of ZDDPO-2 and Par. 2 of Art. 66 of ZDoh-2.

³⁷⁹ Par. 5 of Art. 59 of ZDDPO-2 and Par. 5 of Art. 66 of ZDoh-2.

³⁸⁰ And, of course, shows a positive tax base for the period, which can be reduced by this relief. Also, according to Art. 59.a of the ZDDPO-2 and Art. 67. of ZDoh-2, the total reduction of the tax base is limited to 63% of the tax base.

³⁸¹ Art. 46 of ZDoh-2.

³⁸² Art. 9 in connection with Art. 27 of ZDDPO-2.

- corporate income tax is calculated by the taxpayer (in this case the beneficiary) with the tax return in which he can consider the tax exemption from donations.³⁸³ In case of any subsequent tax audit, the beneficiary may be asked to prove that the funds received were indeed donations and that the beneficiary therefore correctly excluded them from the tax base.
- exemption of received donations/bequests from inheritance or gift tax:
 - private legal entities established by law to carry out religious, philanthropic, charitable, medical, social welfare, educational, research or cultural activities, or to carry out protection and rescue activities are exempt from paying the inheritance or gift tax. This exemption may only apply, if the received gift or inheritance is intended for one of the above-mentioned purposes³⁸⁴;
 - the taxpayer (in this case the beneficiary) must declare the donation/gift to FURS within 15 days of receipt³⁸⁵ and request a tax exemption in relation to it.

There are no regional, provincial, cantonal or other differences with respect to the above.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Applicable legislation does generally not limit the type of donations for which tax advantages can be considered. Therefore, the donations may be in cash or in kind.

With respect to certain tax advantages, the amount of the donation that may be considered exempt is limited. *Cf.* 2.2.1.

The Rules concerning definitions of gainful and non-for-profit activity define donations as (i) unconditional payments or contributions in money or in kind or (ii) they are amounts or things that the taxpayer receives from individuals and legal entities without the obligation to repay and do not refer to payments for products or services whose customers are these individuals or legal entities.³⁸⁶ Consequently, donors cannot request that the recipient of a donation performs certain tasks in exchange.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

There are no special tax advantages for the taxpayers when indicating a certain NPO as a beneficiary of their will (bequest).

³⁸³ Art. 335 of ZDavP-2.

³⁸⁴ Art. 9 of ZDDD.

³⁸⁵ Art. 13 of ZDDD.

³⁸⁶ Indent 1 of Par. 1 of Art. 3 of the Rules concerning definitions of profitable and non-profitable activity.

However, as mentioned above, an exemption of bequests received from the tax base and an exemption of bequests from inheritance and gift tax is available to certain beneficiaries. *Cf.* 2.1.1.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

The scope of beneficiaries depends on the type of tax advantage:

- exemption of received donations/bequests from tax base:
 - o the exemption is limited to institutes, associations, foundations, religious communities, political parties, chambers, and representative trade unions, provided that the respective beneficiary (i) is established in accordance with a special law to perform a non-for-profit activity and (ii) actually operates in accordance with the purpose of establishment and operation.³⁸⁷
- exemption of received donations/bequests from inheritance or gift tax:
 - o private legal entities established by law to carry out religious, philanthropic, charitable, medical, social welfare, educational, research or cultural activities, or to carry out protection and rescue activities are exempt from paying the inheritance or gift tax. This exemption may only apply if the received donation or inheritance is intended for one of the above-mentioned purposes.³⁸⁸

2.3.3. Does it make a difference whether an NPO is recognised or not?

No special recognition is required in order to benefit from any of the above-described tax advantages.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Only an heir of the first order of succession or a legatee who is equal to an heir of the first order of succession (applicable only for individuals) is exempt from paying inheritance or gift tax.³⁸⁹

As for the side of beneficiaries receiving bequests, *cf.* 2.3.2.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Cf. 2.1.1.

There are no regional, provincial, cantonal or other differences.

³⁸⁷ Art. 9 in connection with Art. 27 of ZDDPO-2.

³⁸⁸ Art. 9 of ZDDD.

³⁸⁹ Point 1 of Par. 1 of Art. 9 of ZDDD.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

In terms of types of bequests for which tax advantages can be considered, there are no specific restrictions, they can be in cash or in kind. The same goes for the amount.

Generally, testators can ask the beneficiary to perform certain tasks in exchange for the bequest if they specify a legacy in their will, as the testator can impose some duty on the one to whom he/she leaves some benefit from the bequest.³⁹⁰

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

The response depends on the type of the tax advantage:

- allocation of part of the income tax for donations:
 - o Foreign beneficiaries are not able to benefit from this tax advantage, as one of the conditions to be entitled to it is to obtain the status of an NGO in the public interest, whereby the later must have its registered office in the Republic of Slovenia. Cf. 2.1.2. to 2.1.6.
- tax relief for donations:
 - o Yes, donations to residents of other EU Member States or EEA, which (if) are established according to special regulations to perform certain activities as a non-profit, are also included. Cf. 2.1.1.
- exemption of donations/bequests received from the tax base:
 - o Foreign entities are not Slovenian tax residents under the ZDDPO-2. Therefore, donations/bequests received by such an entity will not be subject to taxation under ZDDPO-2, due to which this tax advantage cannot be applied.
- exemption of donations/bequests from inheritance and gift tax:
 - o The applicable legislation only generally provides that private legal entities established by law to carry out religious, philanthropic, charitable, medical, social welfare, educational, research or cultural activities, or to carry out protection and rescue activities are exempt from paying the inheritance or gift tax.³⁹¹ It is not completely clear whether this exemption from paying inheritance tax also applies to non-Slovenian beneficiaries. However, the law does not anyhow limit the scope of beneficiaries only to resident of Slovenia. Therefore, it could be argued that this tax advantage may also be claimed by foreign entities that otherwise meet the said conditions.

³⁹⁰ Art. 80 and 82 of ZD.

³⁹¹ Point 2 of Par. 2 of Art. 9 of ZDDD.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOS FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

In order for a Slovenian taxpayer to benefit from tax relief for donations (part b of the above response), the foreign beneficiary is not required to register with FURS or any other Slovenian authority. It is on the taxpayer to sufficiently prove that the donation fulfils the criteria – including criteria relating to the beneficiary – to be exempt from the tax base.

As for the exemption of paying inheritance and gift tax, the entity paying the tax would in this case be the beneficiary of a bequest. Therefore, the latter would have to present appropriate documentation to FURS, for the latter to waive the obligation to pay the respective tax.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Not applicable.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

Not applicable.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

As noted above, Slovenian legal entities and persons with income from activities may also benefit from the tax relief for donations made to residents of other EU Member States or EEA, whereby the burden of proof that such a donation meets the requirements is with the taxpayer.

Considering the above, the foreign NPO (or other similar organization that meets the criteria) could establish a defence file for cases where FURS could potentially challenge the tax treatment of a certain donation and therefore contest the possibility of the taxpayer taking advantage of the tax relief. Such file should primarily show that the foreign beneficiary meets the set requirements, i.e., that the entity is established for the purpose of carrying out humanitarian, disability, social welfare, charitable, scientific, educational, health, sports, cultural, ecological, religious or generally useful purposes, and that it performs these activities as non-for-profit activities.³⁹² The file should especially include:

- a copy of the statutes of the foreign organisation (including the description of the charitable purpose);
- documents indicating that the organisation qualifies in its jurisdiction for receiving tax deductible donations; and
- documents indicating that the activities of a foreign organization can be classified under one of the purposes indicated above.

³⁹² Art. 59 of the ZDDPO-2 and Art. 66 of ZDoh-2.

Such a file could then serve the taxpayer to prove that the said conditions are met.

Alternatively, if the foreign NPO wishes to have additional legal certainty, the relevant Slovenian taxpayer can file an advance tax ruling request with FURS to receive a binding confirmation as to the foreign NPO's qualification. Such a request must include a detailed description of relevant facts and related evidence. If a request is made, FURS must inform the taxable person no later than 15 working days after receipt of a complete application whether it will issue the binding information. The information must then be issued in the following 6 months. The binding information shall not be binding on FURS if it is based on inaccurate or incomplete information provided by the taxable person in the application, or if the activity of the taxable person does not have the economic substance indicated in the application. In this case, the tax authority shall withdraw the binding information and the revoked information shall have no legal effect. Furthermore, FURS may also amend a binding information issued if it subsequently finds that it has applied substantive law incorrectly in issuing it and it was issued in relation to an intended activity which is of a recurrent nature or which is not yet completed at the time of revocation.³⁹³ The cost of obtaining a binding information depends on the time required to issue it: an hourly rate of EUR 50 per each hour of work applies.³⁹⁴

3.3. IS IT NECESSARY FOR FOREIGN NPOS TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

There is no formal requirement to prove the equivalence of the foreign NPO's foreign legal form to domestic legal forms.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOS TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Apart from the limitations already set out above, no.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOS? IF SO, PLEASE PROVIDE A LINK OR COPY.

No, such list does not exist.

4. CONCLUSION

Donations made to non-Slovenian EU/EEA NPOs or other similar organizations by Slovenian legal entities may, if the required conditions are met, benefit from the tax relief in the amount of 1% (or an increased amount for certain donations) of the taxable income. For this tax advantage to apply, the non-Slovenian EU/EEA NPO is not required (and also in practice cannot) register with Slovenian authorities beforehand. Instead, the burden of proving that the donation meets the criteria for the tax relief is on the taxpayer.

³⁹³ Art. 14 of ZDDPO-2.

³⁹⁴ Art. 6 of the Rules on the implementation of the Tax Procedure Act.

Non-Slovenian EU/EEA NPOs on the other hand cannot benefit from the allocation of part of individual's income tax for donations, as the latter may only be provided to (registered) NGOs in the public interest, which must have a registered office in Slovenia.

Tax treatment of bequests is more unclear, as it is not completely clear whether the exemption from paying inheritance tax also applies to non-Slovenian beneficiaries. However, as the applicable legislation does not limit this anyhow, it could be argued that this tax advantage could also be claimed by a foreign beneficiary.

5. ADDITIONAL CLARIFICATIONS

5.1. FOR PROVING DONATION CRITERIA AND THE DEFENCE FILE, SHOULD THESE DOCUMENTS BE IN SLOVENIAN OR DOES ENGLISH SUFFICE?

Pursuant to the applicable regulations, Slovenian language should generally be used in all communication with public authorities, and if a certain piece of documentation is in a language other than Slovenian, it should be provided to the authorities together with a certified translation into Slovenian language.

However, from our experience, the Financial Administration of the Republic of Slovenia (FURS) generally also accepts accompanying documentation (which is also the documentation mentioned in our previous email, i.e. foreign status legal regulation, documents of the registration authority, non-resident statutes etc.) in English. Nevertheless, it cannot be completely ruled out that FURS would request a translation into Slovenian in some specific case (perhaps especially in the case of more extensive and complex accompanying documentation). They would have the right to do so, but in such case the translation could be provided subsequently, upon request.

5.2. CLARIFICATIONS REGARDING THE EXEMPTION OF DONATIONS/BEQUESTS FROM INHERITANCE AND GIFT TAX

We received explanation from the Financial Administration of the Republic of Slovenia (FURS) regarding Article 9 of the Slovenian Inheritance and Gift Tax Act (ZDDD), which regulates exemption of donations/bequests from inheritance and gift tax.

As we mentioned in point 3 of the completed questionnaire for Slovenia, ZDDD in Article 9 only generally provides that private legal entities established by law to carry out religious, philanthropic, charitable, medical, social welfare, educational, research or cultural activities, or to carry out protection and rescue activities are exempt from paying the inheritance or gift tax. Therefore, it was not completely clear to us whether this exemption also applies to non-Slovenian beneficiaries, although we assumed that this should be the case as ZDDD does not mention any limitations of the scope.

In accordance with the above, we submitted a question (without mentioning any names) to the FURS with the aim of obtaining more detailed explanation of their interpretation of this rule.

In general, our assumption turned out to be correct. FURS emphasized that ZDDD does not distinguish between Slovenian/non-Slovenian beneficiaries, because of which both can, in principle, use the exception from article 9.

In this context, FURS firstly emphasized that the following must be observed:

- Article 3/1 of the ZDDD, which defines taxpayers, stipulates that taxpayers are also private legal entities;
- Article 3/2 of the ZDDD enumerates taxatively what is considered a private legal entity for the purpose of ZDDD, namely: societies, foundations, institutions, private institutes and economic interest associations. These are regulated in the following Slovenian acts - Societies Act, Foundations Act. Institutes Act and Companies Act.

Based on the above, according to FURS, for a non-Slovenian beneficiary to be able to use exception from Article 9 of the ZDDD, the following must be fulfilled:

1. Non-Slovenian beneficiary must be foreign private legal entity which is comparable to those listed in Article 3/2 of the ZDDD, meaning that It must be established under comparable legislation and therefore sufficiently analogous to the Slovenian legal order. The taxpayer must prove that it corresponds to one of the status forms (from Article 3/2 ZDDD) under Slovenian regulation;
2. It is necessary to unequivocally establish the non-profit purpose, that is, that the foreign private legal entity also operates in accordance with the status form established above. The latter most unambiguously derives from the act of incorporation, usually the articles of association, foundational act, etc.;
3. Gift/inheritance must be intended for the performance of such (i.e. non-profit) activity by a legal entity.

FURS strictly adhered to the interpretation of Article 9 of the ZDDD. Nevertheless, we believe that, based on explanations, we can establish an important conclusions based on the connection between the Article 3 of the ZDDD and the first condition for the use of exception under Article 9 of the ZDDD as established by the FURS (which is that non-Slovenian beneficiary must be foreign private legal entity which is comparable to those listed in Article 3/2 of the ZDDD), namely: because of Article 3/2 of the ZDDD, all other forms of private legal entities (i.e. those not mentioned in Article 3/2 of the ZDDD) are de facto exempt from paying this tax. In case of non-Slovenian beneficiaries, according to the first condition for the use of exception under Article 9 of the ZDDD as established by the FURS, other forms of private legal entities are all foreign private legal entities, which are NOT comparable to those listed in Article 3/2 of the ZDDD (meaning that they are not established under comparable legislation and therefore not sufficiently analogous to the Slovenian legal order).

To sum up the above, for easier understanding, there are 2 options:

1. Non-Slovenian beneficiary is a foreign private legal entity, which is NOT comparable to those listed in Article 3/2 of the ZDDD: in such case it is de facto exempt from paying this tax (because it is not considered a taxpayer within the meaning of Article 3 of the ZDDD);

OR

2. Non-Slovenian beneficiary is a foreign private legal entity, which is comparable to those listed in Article 3/2 of the ZDDD: in such case it can be exempt from paying this tax if it establish the non-profit purpose and gift/inheritance is intended for the

performance of such (i.e. non-profit) activity (because it is considered a taxpayer within the meaning of article 3 ZDDD, it can be exempt from this tax only if it meets the conditions from article 9 ZDDD).

What we miss in the explanations is mainly how to assess whether foreign private legal entity is comparable to those listed in Article 3/2 of the ZDDD (i.e. whether it is established under comparable legislation and is therefore sufficiently analogous to the Slovenian legal order).

SPAIN³⁹⁵

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy is mainly the following (please note that regional legislation might be applicable to NPOs that operate only in a single Autonomous Community and not a national level):

- Tax regime for gifts and inheritances:
 - o Law 49/2002, of 23 December, on the tax regime for non-profit organisations and tax incentives for patronage ([Law 49/2002](#))³⁹⁶.
- Legal requirements for foundations and associations:
 - o Law 50/2002, of 26 December, of Foundations ([Law 50/2002](#));
 - o Organic Law 1/2002, 22 March, regulating the Right of Association ([Organic Law 1/2002](#)).
- Recognition process and requirements of NPOs:
 - o Foundations: Law 50/2002 and Art. 24 et seq. of Royal Decree 1611/2007, of 7 December, approving the Regulations of the Register of Foundations under State jurisdiction ([Royal Decree 1611/2007](#));
 - o Associations: Organic Law 1/2002 and Royal Decree 1740/2003 of 19 December 2003 on procedures relating to public utility associations ([Royal Decree 1740/2003](#)).

The Spanish Ministry of Culture and Sports provides on its [website](#) an overview in Spanish of the recognition requirements and process for foundations.

The Spanish Ministry of Internal Affairs provides on its [website](#) an overview in Spanish of the recognition requirements and process for associations that could benefit from the tax regime applicable to NPOs.

The Tax Authorities provide in their website an overview in English and Spanish of:

- the tax regime applicable for NPOs compliant with Law 49/2002:
 - o Tax Agency: Tax system for non-profit organisations ([agenciatributaria.gob.es](#)).
- qualifying gifts and tax benefits for individuals:
 - o Tax Agency: Donations made to entities included in the scope of Law 49/2002 ([agenciatributaria.gob.es](#)).

For additional questions, the administration can be contacted directly at:

³⁹⁵ Answers provided by Uría Menéndez (Barcelona).

³⁹⁶ Please note that Law 49/2002 is currently undergoing a process of legislative changes.

- Foundations: by phone at +34 911 589 981 or by email at soporte.fundacional@mjusticia.es. Alternatively, it is possible to book an appointment before the Ministry of Culture and Sports by means of the following email addresses (juridico.fundaciones@cultura.gob.es and cuentas.fundaciones@cultura.gob.es);
- Associations: it is possible to book an appointment before the Ministry of Internal Affairs by completing and sending this [form](#) to the following email addresses (rna@interior.es and utilidadpublica@interior.es).

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Tax advantages are available to individuals and corporate taxpayers with respect to donations in favour of eligible NPOs. In particular, these donations can grant the taxpayers tax deductions and deemed capital gains resulting from these donations are generally tax exempt. Additionally, no Gift and Inheritance Tax is levied on the donation (as this tax is levied on the recipient and only if he or she is an individual) and the donations are generally exempt of the income taxes to which NPOs are subject (Corporate Income Tax or Non-Residents Income Tax).

Inheritances in favour of eligible NPOs (either in the form of a specific legacy or upon their designation as heir) are by definition not subject to Gift and Inheritance Tax (which is levied on the recipient and only if he or she is an individual) and are generally exempt of the income taxes to which NPOs are subject (Corporate Income Tax or Non-Residents Income Tax).

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

Tax advantages are available for donations to Spanish NPOs that comply with the requirements set forth in Title II of Law 49/2002 (Recognised NPOs). There is no need for formal recognition, as the compliance with the requirements automatically allows NPOs and taxpayers who make donations to them to benefit from the tax advantages.

Non-resident NPOs operating in the Spanish territory or NPOs that are established in the European Union (EU) or in a country in the European Economic Area (EEA) that do not operate in Spain can also benefit from the tax advantages provided they are equivalent to the Spanish ones and meet the requirements set forth in Law 49/2002 (Foreign Equivalent NPOs)³⁹⁷.

³⁹⁷ Art. 2 of Law 49/2002.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

The following are the main requirements that NPOs must meet in order to be eligible to apply the tax regime set forth in Law 49/2002³⁹⁸:

- to pursue an aim of general interest such as, amongst others, the defence of human rights, the cooperation for the development of the third world, the defence of the environment, the aid to people in risk of exclusion for economic reasons, the defence of democratic principles, etc.;
- at least 70% of the income received must be used for these aims of general interests (with some exceptions);
- not to perform economic activities outside the scope of its aim (income obtained in other activities cannot represent more than 40% of the NPO's total income);
- the founding members, directors, etc. and their family members must not be the main beneficiaries of the NPO's activities and must not benefit from any special condition;
- the aforementioned positions must not be remunerated (unless they provide other services or are to be reimbursed of the expenses incurred);
- the NPO must be registered with the corresponding registry;
- the NPO must comply with the corresponding accounting obligations;
- the NPO must comply with the reporting obligations established in the law;
- the NPO must prepare an annual economic memory reflecting certain required information;
- in case of dissolution, the assets of the NPO must be delivered to an entity that also fulfils these requirements or to other entities that also pursue aims of general interest.

2.1.3. What does the recognition process look like?

The NPO must notify the Tax Authorities that it intends to apply the tax regime set forth in Law 49/2002, by means of filing a Tax Form 036 (using the following [link](#)).

Following this notification, no express recognition by the Tax Authorities will be necessary, and the NPO can automatically start to apply the tax regime as long as it fulfils all the legal requirements described in our previous answer. Every year the NPO will need to file its economic memory with the Tax Authorities (unless their total income does not exceed EUR 20,000).

As already mentioned, one of those requirements is to be registered in the corresponding registry, which varies depending on the specific legal form of the NPOs.

For instance, for Spanish foundations to be recognized, they must submit an application before the Registry of Foundations³⁹⁹ that includes, *inter alia*, (i) the deed of creation of the NPO⁴⁰⁰, (ii) a financial endowment of at least EUR 30,000, (iii) the bylaws and (iv) the chosen governing body. The Ministry of Justice offers a checklist with all the documents required to register (the guide is only available in Spanish and can be found [here](#)).

³⁹⁸ The full list of requirements can be found in Art. 3 of Law 49/2002.

³⁹⁹ The Ministry of Justice offers a [draft](#) of application which can be used in the process of registering the Spanish NPOs with the Registry of Foundations.

⁴⁰⁰ According to Art. 9, Par. 3 and 4 of Law 50/2002, NPOs can also be created mortis causa by will provide some requirements set forth in Art. 10 of Law 50/2002 are met.

Non-resident foundations that want to operate in Spain must also register, which will require evidencing before the Registry of Foundations that it has been validly constituted in accordance to its applicable law⁴⁰¹.

Regarding associations, in order to apply the NPO tax benefits, they must submit an application before the Ministry of Internal Affairs in order to be declared as pursuant of a public utility purpose (*asociaciones declaradas de utilidad pública*). This request can only be granted if the association has (a) successfully submitted an application to be registered with the Registry of Associations that must include, *inter alia*⁴⁰², (i) the foundation act, (ii) the bylaws, and (iii) proof of the payment of the fees; and (b) if the association has been registered for at least two years.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

There are no specific fees or costs payable vis-à-vis to the Tax Authorities with regards to the application of the NPOs tax regime or the registration in Spain of foreign foundations.

If third party assistance is requested (e.g., legal or consultancy fees), these will vary depending on the scope of the services and the circumstances of each NPO.

2.1.5. What is the timeframe for the recognition process to be completed?

As mentioned above, the application of the regime does not require an express recognition from the Tax Authorities, and the special tax regime will be applicable once all the requirements have been met and the option to apply the regime has been notified by means of Tax Form 036.

As one of those requirements is for the NPO to be validly registered with the relevant public registry, please note that this process is subject to the following timeframe (although, in practice, registration process may take longer than provided by law depending on the complexity of the NPO):

- Foundations: two months counting from the submission of the application to be registered with the Registry of Foundations⁴⁰³;
- Associations: six months counting from the submission of the application requesting to be declared an association pursuant of a public utility purpose⁴⁰⁴.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

As long as the requirements of Law 49/2002 are fulfilled, the tax regime will continue to be applicable. No renewal is requested.

⁴⁰¹ Art. 7 of Law 50/2002.

⁴⁰² The full list can be found in Art. 43 of Royal Decree 949/2015, 23 October, approving the Regulations of the National Register of Associations ([Royal Decree 949/2015](#)).

⁴⁰³ Art. 28.6 of Royal Decree 1611/2007, of 7 December, approving the Regulation on the Register of Foundations under State jurisdiction.

⁴⁰⁴ Art. 3.9 of the Royal Decree 1740/2003, 19 December, on proceedings relating to associations pursuant of a public utility purpose.

2.1.7. Is any specific legal form required for the Spanish NPO?

They must have of the following legal forms (Art. 2 of Law 49/2002):

- foundations;
- associations that have been declared as pursuant of a public utility purpose (asociaciones declaradas de utilidad pública);
- non-governmental organizations with one of the preceding legal forms;
- sport federations;
- federations or associations composed of other NPOs;
- non-Spanish resident entities with a permanent establishment in Spain and analogous to any of the preceding legal entities;
- non-Spanish resident entities without a permanent establishment in Spain if they are resident in another EU/EEA and are analogous to any of the preceding legal entities.

These entities must fulfil all related formal requirements as set out in the Spanish legislation on their respective legal form.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

As explained above, domestic entities can be registered with their respective registry.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Upon making donations to Recognised NPOs or to Foreign Equivalent NPOs, taxpayers can benefit from the following tax advantages:

- tax deduction for individual persons or companies for donations under certain conditions;
- tax deduction for non-resident individual persons or companies operating in the Spanish territory;
- exemption of any tax levied on the capital gains and positive income arising from the donations;
- exemption of the Tax on the Increase in the Value of Urban Land.

Additionally, no Gift and Inheritance Tax is levied on the donation (as this tax is levied on the recipient and only if he or she is an individual) and the donations are generally exempt of the income taxes to which NPOs are subject (Corporate Income Tax or Non-Residents Income Tax).

2.2.2. Does it make a difference whether an NPO is recognised or not?

The tax advantages derived from donations to NPOs are only applicable if the NPO is a Recognized NPO or a Foreign Equivalent NPO.

However, donations made to foundations and associations that are not “*Recognised NPOs*” can also benefit from tax advantages, although less attractive. For instance, taxpayers can deduct 10% of the donated amount in their Personal Income Tax⁴⁰⁵.

Additionally, in some regions, there are tax advantages for the Personal Income Tax of individuals for donations made to NPOs that do not necessarily have to be Recognised NPOs.

2.2.3. Which persons are eligible for tax advantages?

Tax advantages are available to:

- individuals (on the Personal Income Tax, Non-Residents Income Tax, and Tax on the Increase in the Value of Urban Land); and
- companies (on the Corporate Income Tax, Non-Residents Income Tax, and Tax on the Increase in the Value of Urban Land).

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

For individuals:

- individuals are entitled to a tax deduction of the donated amount of cash donations in their Personal Income Tax, the deductions consist of⁴⁰⁶:
 - o 80% of the first EUR 150;
 - o 35% of the rest of the amount donated (40% if the recipient received equivalent or superior amount of a donation by the taxpayer in the two immediately preceding tax periods).
- non-resident individuals operating in the Spanish territory may apply a deduction with a limit of 10% of the total taxable base in the tax year⁴⁰⁷;
- exemption of the Personal Income Tax or Non-Residents Income Tax levied on the capital gains and positive income arising from the donations⁴⁰⁸;
- exemption of the Tax on the Increase in the Value of Urban Land if the donation is immovable property.

For companies:

- companies are entitled to a tax deduction of 35% of the donated amount in their Corporate Income Tax (40% if the recipient received an equivalent or superior amount of donations by the taxpayer in the two immediately preceding tax periods)⁴⁰⁹;

⁴⁰⁵ Art. 68.3.b) of Law 35/2006, of 28 November, on Personal Income Tax and partially amending the laws on Corporate Income Tax, Non-Resident Income Tax and Wealth Tax.

⁴⁰⁶ Art. 19 of Law 49/2002.

⁴⁰⁷ Art. 21 Par. 1 of Law 49/2002.

⁴⁰⁸ Art. 23 Par. 1 of Law 49/2002.

⁴⁰⁹ Art. 20 of Law 49/2002.

- non-resident companies operating with a permanent establishment can apply the abovementioned deduction⁴¹⁰;
- non-resident companies operating without a permanent establishment can apply the deduction of ⁴¹¹:
 - 80% of the first EUR 150;
 - 35% of the rest of the amount donated (40% if the recipient received an equivalent or superior amount of donations by the taxpayer in the two immediately preceding tax periods).
- exemption of the Corporate Income Tax or Non-Residents Income Tax levied on the capital gains and positive income arising from the donations⁴¹²;
- exemption of the Tax on the Increase in the Value of Urban Land if the donation is immovable property.

Taxpayers benefiting from the tax advantages applicable to donations must obtain a certificate issued by the Recognized NPO receiving the donation. The certificate needs to be obtained after each donation and submitted to the tax authorities if requested by them⁴¹³.

The certificate issued by the Recognized NPOs must include the following:

- statement that it is a Recognised NPO;
- tax identification number and personal identification details of the donor and the NPO;
- express mention that the recipient entity is included in those regulated in Art. 16 of Law 49/2002;
- date and amount of the donation;
- official document accrediting that the delivery of the asset gifted (if the donation is not monetary);
- the purpose to which the donation will be destined to;
- express mention of the irrevocable nature of the donation;
- the Recognized NPO needs to file yearly a tax form informing of all the qualifying donations received during the previous year (Tax Form 182, to be filed in January).

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

To obtain a tax deduction, the donation can be one of the following types⁴¹⁴:

- donations of money, goods or rights,
- membership fees to associations that do not correspond to the right to receive a present or future benefit,
- the constitution of a right of usufruct over goods, rights or securities, made without consideration,

⁴¹⁰ Art. 21 Par. 2 of Law 49/2002.

⁴¹¹ Art. 21 Par. 1 of Law 49/2002.

⁴¹² Art. 23 Par. 1 of Law 49/2002.

⁴¹³ Art. 24 Law 49/2002.

⁴¹⁴ Art. 17 Par. 1 of Law 49/2002.

- donations of assets that are part of the Spanish Historical Heritage;
- donations of cultural assets of guaranteed quality in favour of entities whose aims include museum activities and the promotion and dissemination of historical and artistic heritage.

The donations must be irrevocable, pure and simple. In any other case (e.g., if the donation was revoked due to the causes foreseen in the Civil Code) any tax deductions applied must be reversed⁴¹⁵.

In regards to the limitations, the maximum base of the deduction applicable to individuals is 10% of the Personal Income Tax net taxable base in the fiscal year.

The maximum base of the deduction applicable to companies is 10% of the Corporate Income Tax taxable base in the fiscal year⁴¹⁶. The amounts exceeding can be deducted in the following 10 years.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

The acquisition of assets in the context of an inheritance is only subject to taxation on the recipient, which will be taxed either in the Gifts and Inheritances Tax (if the recipient is an individual) or the Corporate Income Tax/Non-Residents Income Tax (if it is a legal entity). Therefore, a Recognised NPO will not be subject to Gifts and Inheritances Tax by definition (as it is a legal entity) and will be generally exempt for any income received (including from bequests/inheritance) in the Corporate Income Tax/Non-Residents Income Tax if it meets all requirements of Law 49/2002.

No taxes are levied on the testator in the context of an inheritance and, therefore, there are not specific tax advantages when indicating a qualifying NPO as beneficiary of their will (bequest).

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable.

2.3.4. Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

⁴¹⁵ Art. 17 Par. 2 of Law 49/2002.

⁴¹⁶ Art. 20 of Law 49/2002.

2.3.5. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.6. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations to Foreign Equivalent NPOs are eligible for the same tax advantages as Spanish Recognised NPOs, provided that they are considered analogous to a Spanish Recognised NPO.

Prior to 1 January 2021, the possibility that a foreign NPO that did not operate in Spanish territory could be considered as a Foreign Equivalent NPO was not expressly foreseen in the law, even though it was in practice admitted by the administrative bodies such as the General Directorate of Taxation (see, for instance, binding ruling V4637-16 of 2 November). As of today, this possibility is specifically provided for in the law, following a legal amendment with the purpose of abiding by EU law⁴¹⁷.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

From a legal perspective, non-resident NPOs that have a stable activity in Spain must register with the relevant Spanish registry ⁴¹⁸.

However, registration in Spain is in principle not required in order to benefit from the tax advantages for NPOs, provided that they are registered in their country of origin. Please note that one of the requirements to apply the tax regime is for the NPO to be registered. It can be reasonably concluded that the registration requirement is met whenever the registration is done in the competent registry of their respective country, even though the law does not provide further clarity in this respect.

⁴¹⁷ Art. 2 of Law 49/2002.

⁴¹⁸ Art. 7 Par. 1 of Law 50/2002 (regarding foundations) and Art. 28 Par. 3 of Law 1/2002 (regarding associations). Please note that not every foreign association can be considered a Foreign Equivalent NPOs as it must be equivalent to the Spanish association declared as pursuant of a public utility purpose.

Therefore, in principle, registration in Spain should not be mandatory for foreign NPOs to be regarded as a Foreign Equivalent NPO and benefit from the tax regime, even though it would be advisable (especially if the NPO has a significant presence in Spain).

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

The legal registration is possible in case of NPOs that want to operate in Spain regardless of their country of residence.

The benefits of the special tax regime for NPOs will be applicable to foreign NPOs that have a permanent establishment in Spain and are analogous to the Spanish qualifying NPOs.

If the foreign NPO does not have a permanent establishment in Spain, the tax regime will only apply if such NPO is a resident in the EU or EEA.

The tax regime for NPOs will not be applicable, in any of the previous cases, to foreign NPOs that are resident in a non-cooperative jurisdiction, unless it can be demonstrated that their incorporation and operation is based on valid economic reasons⁴¹⁹.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

In essence, the registration process would be the same as for Spanish entities, but the focus for foreign NPOs is to evidence that they have been validly constituted according to its personal law⁴²⁰.

From a tax perspective, even though no express recognition by the Tax Authorities will be necessary prior to the application of the regime, an analysis should be conducted to verify that the Foreign NPO can be considered analogous to a Spanish NPO and it substantially complies with the requirements set forth in Art. 3 of Law 49/2002.

There are no specific fees or costs payable vis-à-vis the Tax Authorities with regards to the application of the NPOs tax regime or the registration in Spain of foreign foundations. Regarding the fees for legal assistance in the process, these will vary depending on the scope of the services and the circumstances of each NPO. Subject to further review of the background and particularities of the relevant NPO, our fees for a work of this nature are normally in the range of EUR 8,000 - EUR 10,000.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Even though registration is possible, a defence file proving equivalence would definitely be advisable if the NPO wishes to apply the benefits of the special tax regime for NPOs.

⁴¹⁹ Art. 2 in fine of Law 49/2002.

⁴²⁰ The requirements for foundations can be found in Art. 32 of Royal Decree 1611/2017 and for associations in Art. 12 of Royal Decree 949/2015.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, it is necessary as described above.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Legal limitations have been set out above.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

Registered foundations and associations (either domestic or foreign) can be consulted in the [Registry of Foundations](#) and the [Registry of Associations](#), respectively. Please note, however, that these registries are purely for legal purposes and do not have a tax nature. No registries are available regarding NPOs recognised for tax purposes.

4. CONCLUSION

Following a recent legal amendment (which was preceded by a favourable administrative interpretation based on EU law), Foreign Equivalent NPOs qualify for the same tax advantages as Spanish Recognised NPOs, i.e., tax deductions and exemptions for donations by individuals and companies (residents and non-residents).

Foreign Equivalent NPOs should meet the same requirements as Spanish Recognised NPOs. The fulfilment of the requirements automatically allows the application of the tax regime (as in the case of Spanish Recognised NPOs), without need for an express recognition by the Tax Authorities.

Additionally, it is possible for foreign NPOs to register in the competent registry if their intention is to operate in Spain with a certain stability.

In the case of foreign NPOs resident in the EU or the EEA, in principle, the registration in Spain is not mandatory to apply the special tax regime, although should Foreign Equivalent NPOs that do not operate in Spain but are resident in the EU or the EEA wish to obtain full legal certainty as to its equivalence with Spanish Recognised NPOs or foreign NPOs operating in Spain, an advanced binding tax ruling can be requested from the General Directorate of Tax (although this process currently extends between six to twelve months).

5. ADDITIONAL CLARIFICATIONS

5.1. SHOULD THE CERTIFICATE FILLED BY THE NPO AND GIVEN TO THE TAXPAYER, AS WELL AS THE YEARLY TAX FORM, BE IN SPANISH?

With regard to the certificate, it would be more practical to have it issued in Spanish. The purpose of the certificate is to prove the taxpayer's right to the relevant tax benefits in case that this is required by the Tax Authorities. In that scenario, the certificate would need to be

either in Spanish or otherwise be translated by a sworn translator in order to be accepted by the Tax Authorities (which generally accept only documents in Spanish).

As per Form 182 (by means of which NPOs inform the Tax Authorities of donations received during a certain year), the webpage used to complete the tax form online has an English version. However, this only allows to use the interface in English as the final tax form, once filed, will be in Spanish. Find below some screenshots for your reference:

5.2. IS AN ADVANCED BINDING TAX RULING REQUIRED EACH TIME TO CHECK FOR FULL EQUIVALENCE WITH LOCAL NPOS FOR FISCAL ADVANTAGES OR IS A GENERAL TAX RULING AVAILABLE?

As of today, we are not aware of any binding ruling which provides certainty on the actual formal requirements that a foreign NPO must met to be considered as analogous to a Spanish one. Therefore, in order to obtain full certainty of compliance with the requirements, it would be advisable to request an ad hoc tax ruling.

SWEDEN⁴²¹

1. WHAT ARE THE CURRENT LEGAL AND TAX REGULATIONS FOR PHILANTHROPY IN YOUR COUNTRY? COULD YOU PROVIDE US WITH ANY RELEVANT LINKS OR RESOURCES RELATING TO THE RECOGNITION PROCESS AND TAX ADVANTAGES FOR NPOS IN YOUR COUNTRY?

The current legal and tax framework for philanthropy and its tax advantages:

- Tax advantages for donations:
 - o Ch. 67 Sec. 20-26 of the Swedish Income Tax Act (the “ITA”) and the Swedish Act on the authorisation of gift recipients for tax reduction for gifts (Sw. Lag (2019:453) om godkännande av gåvomottagare vid skattereduktion för gåva) (the “Gift Recipients Act”) regulate which donations may be subject to a tax reduction for Swedish tax resident individuals.
- Tax advantages for bequests:
 - o Swedish law offers no tax advantages for bequests.
- The recognition process and requirements of non-profit foundations (Sw. *ideella stiftelser*) and non-profit associations (Sw. *ideella föreningar*) (“NPOs”):
 - o Ch. 7 of the ITA contains the legal requirements for NPOs to be exempt from corporate income tax;
 - o Sec. 6-8 of the Gift Recipients Act contain the legal requirements for NPOs to be registered as gift recipients.

The Swedish Tax Agency (“STA”) provide on their website an overview in Swedish of:

- The recognition requirements:
 - o For a non-profit foundation to be registered as a gift recipient for tax purposes:
 - <https://skatteverket.se/foreningar/driva/ansokaomattbligavomottagare.4.8bcb26d16a5646a1488e95.html>.
- The recognition process:
 - o The main requirement to be registered as a gift recipient is that the NPO is exempt from income tax in accordance with Ch. 7 of the ITA:
 - A non-Swedish NPO applying to register as a gift recipient would have to prove that it would have been exempt from income tax if it had been a Swedish NPO. Therefore, all requirements are handled in one application. Cf. 2.1.1. to 2.1.3.
- Which gifts qualify as to give the individual a tax reduction:
 - o <https://skatteverket.se/privat/skatter/arbeteochinkomst/skattereduktioner/skattereduktionforgavor.4.5fc8c94513259a4ba1d800064144.html>.

For additional questions, the administration can be contacted directly at:

⁴²¹ Answers provided by Advokatfirman Vinge KB (Stockholm).

The STA have a message service on their website. It is possible to ask general questions, also relating to ongoing cases. If the question is related to personal or confidential data, or specific information that applies to an individual or organisation, they prefer a call.

Phone number: +46(0)771-567 567

Message service (in English):

<https://skatteverket.se/serviceankar/otherlanguages/inenglishengelska/contactus/emailus.4.4c5def2714bbf25766d2d81.html>

2. ARE ANY TAX ADVANTAGES AVAILABLE TO TAXPAYERS IN YOUR COUNTRY WITH RESPECT TO DOMESTIC DONATIONS AND BEQUESTS? PLEASE PROVIDE GENERAL COMMENTS, IN THE FOLLOWING QUESTIONS MORE DETAILED QUESTIONS WILL BE ASKED.

Sweden does not levy gift tax.

Swedish NPOs fulfilling certain requirements are exempt from income tax on certain income.

Swedish tax resident individuals making donations to certain Swedish and non-Swedish NPOs may be entitled to a tax reduction.

It is currently being investigated whether to introduce rules regarding tax incentives for donations made by legal persons to NPOs. No proposal has yet been published.

2.1. QUALIFYING NPOS

2.1.1. Which NPOs qualify to receive donations and bequests that can benefit from a tax advantage?

For donations to Swedish and non-Swedish NPOs to qualify for the tax advantages further described in Sec. 2.2.1. below, the NPO must be registered with the Swedish Tax Agency (the “*STA*”) as an approved gift recipient (Sw. *godkänd gåvomottagare*).

To be registered as an approved gift recipient, the NPO must, somewhat simplified, fulfil the following requirements:

- the NPO was during the previous tax year tax exempt according to Ch. 7 Sec. 3 of the ITA, or, in respect of a non-Swedish NPO, should have been tax exempt if it was a Swedish NPO;
- the objective of the NPO is to promote/favour social aid activities or scientific research, or the NPO itself carries out such activities;
- it is likely that the NPO:
 - o will be exempt from income tax during the two subsequent tax years;
 - o will use the donations in the way intended by the donors;
 - o it is evident from the NPO’s accounts which donations have been received and how they have been used;
 - o the NPO has at least one authorised or approved auditor.

In order for an NPO to be or considered as tax exempt according to Ch. 7 Sec. 3 of the ITA, the NPO must, somewhat simplified, fulfil the following requirements:

- the objective of the NPO is in the public interest (e.g., sports, culture, politics, religion, healthcare, education, scientific research, social issues and environmental issues);
- at least 90% of the NPO's activities must contribute to the fulfilling of the NPO's objective (which is in the public interest);
- at least 75% of the NPO's income must be used to fulfil the NPO's objective (which is in the public interest).

It should be noted that “*tax exempt*” in this regard, means that the NPO is only liable for corporate income tax on professional economic activity within the meaning of the ITA.

2.1.2. What are the substantive requirements for Recognised NPOs to be recognised?

Cf. 2.1.1.

2.1.3. What does the recognition process look like?

A specific application form, which is only available in Swedish, must be completed and filed with the STA together with sufficient supporting documentation. For non-Swedish NPOs, the following form applies:

- <https://www.skatteverket.se/foretag/etjansterochblanketter/blanketterbroschyrer/blanketter/info/4693.4.71004e4c133e23bf6db80004367.html>.

The following documentation must be filed together with the application form:

- documentation showing that the NPO is equivalent to a Swedish foundation, non-profit association, or registered religious community (Sw. registrerat trossamfund);
- annual report and activities report (Sw. verksamhetsberättelse) for the previous financial year;
- a budget for the current year;
- a plan for how to report which donations will entitle the donor to a tax reduction and what the donations will be used for.

A non-Swedish NPO must certify to file required Financial Income Statements (Sw. *kontrolluppgift*) with the STA in respect of received donations, *cf.* 2.4.

If the STA has no questions, the NPO will be registered as a gift recipient.

2.1.4. What are the fees and costs associated to the recognition process of NPOs in your country, if any?

To our best knowledge the recognition process with the STA is free of charge.

2.1.5. What is the timeframe for the recognition process to be completed?

According to information provided by an STA officer, the processing time is currently approx. four (4) weeks, but may from time to time be longer or shorter.

2.1.6. Is there a validity period for the recognition, and if so, does it require renewal?

The validity period of a recognition is 3 years, i.e., if an NPO is recognised during year 1, the validity period reaches to the end of year 4. The validity period may be prolonged if a new application is filed before the end of the original validity period and provided that the NPO still fulfils the relevant requirements.

An NPO may at any point in time request the STA to deregister it as a gift recipient. The STA may deregister a NPO if the requirements are no longer met during the validity period.

2.1.7. Is any specific legal form required for the Belgian NPO?

Yes, the legal form of a non-Swedish NPO must be equivalent to a Swedish foundation, non-profit association, or registered religious community.

2.1.8. If there is no possibility for registration in your jurisdiction for domestic entities, are there any other aspects that need to be taken into account?

Not applicable.

2.2. DONATIONS

2.2.1. Which tax advantages can taxpayers receive when donating to NPOs in your country?

Swedish tax resident individuals may get a tax reduction with an amount of 25% of the donated amount. In order for an individual to get such tax reduction, each donation must amount to at least SEK 200 and the total yearly donations must amount to at least SEK 2,000 per year. The maximum tax reduction is SEK 3,000 per year (i.e., corresponding to donations of SEK 12,000 per year).

2.2.2. Does it make a difference whether an NPO is recognised or not?

The NPO must be registered as an approved gift recipient for the individual to get a tax reduction, *cf.* 2.1.1.

2.2.3. Which persons are eligible for tax advantages?

Swedish tax resident individuals (*Sw. obegränsat skattskyldiga*) that are at least 18 years old and have sufficient taxable income during the year the donation is made.

2.2.4. What type of tax advantages are available for qualifying NPOs? Are there any regional, provincial, cantonal or other differences? Are there any formalities to be fulfilled to benefit from the tax advantage, e.g., remittance of a tax certificate or tax attestations, and if so, what is the form and content of such certificate or attestation.

Sweden does not levy gift tax. Swedish NPOs fulfilling certain requirements are exempt from income tax on certain income, *cf.* 2.1.1.

NPOs registered as approved gift recipients must on a yearly basis provide certain information to the STA in the form of Financial Income Statements regarding donations entitling to a tax reduction.

2.2.5. What are the legal conditions for donations to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for protected heirs, ...)? Can donors ask any that the NPO performs certain tasks in exchange for the donation (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

For Swedish tax resident individuals to get a tax reduction, the donation must be made in cash to a registered approved gift recipient for the support/favour of social aid activities or scientific research.

Further, a donation should be made without a demand for compensation in order to be considered a donation for tax purposes. It cannot be compensation for work or service performed in return.

2.3. BEQUESTS

2.3.1. Which tax advantages can taxpayers receive in your jurisdiction when indicating a qualifying NPO as beneficiary of their will (bequest)?

Not applicable.

2.3.2. Which NPOs are qualified to receive bequests with a tax advantage?

Not applicable.

2.3.3. Does it make a difference whether an NPO is recognised or not?

Not applicable.

Which persons are eligible for tax advantages (e.g., individuals, companies, etc.)?

Not applicable.

2.3.4. What type of tax advantages are available if the conditions are met (e.g., a deduction, an exemption, a tax credit, ...)? Are there any regional, provincial, cantonal or other differences?

Not applicable.

2.3.5. What are the legal conditions for bequest to obtain tax advantages (e.g., made in cash, real estate, ...)? Are there any restrictions (e.g., the amount, reserved share for descendants and surviving spouse, ...)? Can testators ask that the NPO performs certain tasks in exchange for the bequest (e.g., the care of a third party, such as a disabled child, or laying flowers on someone's grave)?

Not applicable.

3. ARE THE SAME TAX ADVANTAGES RELATING TO DONATIONS OR BEQUESTS AVAILABLE WHEN THE RECEIVING NPO IS FOREIGN TO YOUR COUNTRY? PLEASE DESCRIBE.

Donations to non-Swedish NPOs that are registered as approved gift recipients entitle Swedish tax resident individuals to the same tax advantages (tax reduction) as donations to Swedish NPOs that are registered as approved gift recipients.

3.1. IS REGISTRATION POSSIBLE AND/OR REQUIRED FOR FOREIGN EQUIVALENT NPOs FOR BENEFITTING FROM ALL TAX ADVANTAGES (INCOME TAX DEDUCTIBILITY, GIFT AND INHERITANCE TAXES) IN YOUR JURISDICTION?

Yes, registration of the non-Swedish NPO is required in order for Swedish tax resident individuals to get a tax reduction for donations to such non-Swedish NPO.

3.1.1. If registration is possible, is it limited to NPOs from EU or EEA Member states or is this possibility extended to EFTA, UK and/or all foreign NPOs?

Non-Swedish NPOs must be resident in a country that meets one of the following requirements in order to be able to be registered as a gift recipient:

- being a member of the EEA;
- having entered into a tax treaty with Sweden that contains an article on information exchange;
- having entered into an agreement on information exchange in tax matters with Sweden.

3.1.2. If registration is possible, should the same registration process be followed as for domestic NPO? What would be the price for legal assistance in this process? If applicable, please provide an estimate.

The registration processes for Swedish and non-Swedish NPOs are similar.

However, non-Swedish NPOs must also show that they would qualify as an NPO for the public interest if they were a Swedish NPO. Cf. 2.1.1 and 2.1.2.

3.2. IF IT IS NOT (YET) POSSIBLE TO REGISTER, WHAT ARE THE ALTERNATIVES (E.G., A DEFENCE FILE PROVING EQUIVALENCE) FOR THE FOREIGN NPO?

Not applicable.

3.3. IS IT NECESSARY FOR FOREIGN NPOs TO PROVE THAT THE FOREIGN LEGAL FORM IS EQUIVALENT TO THE DOMESTIC LEGAL FORMS?

Yes, supporting documentation must be filed.

3.4. ARE THERE ANY OTHER LEGAL LIMITATIONS OR REQUIREMENTS FOR FOREIGN NPOs TO BE RECOGNISED AND ENJOY TAX EXEMPTIONS IN YOUR COUNTRY?

Not applicable.

3.5. DO THE TAX AUTHORITIES OR ANY OTHER INSTITUTION PUBLISH A LIST WITH RECOGNISED (FOREIGN) NPOs? IF SO, PLEASE PROVIDE A LINK OR COPY.

Yes, see the following link:

https://skatteverket.se/privat/skatter/arbeteochinkomst/skattereduktioner/skattereduktionfor_gavor.4.5fc8c94513259a4ba1d800064144.html

4. CONCLUSION

Donations to registered non-Swedish NPOs, may qualify for the same tax advantages as donations to registered Swedish NPOs, i.e., tax reductions for donations made by Swedish tax resident individuals. In order to be able to register, non-Swedish NPOs must fulfil the same requirements as Swedish NPOs.

5. ADDITIONAL CLARIFICATIONS

5.1. SHOULD THE DOCUMENTATION FOR THE APPLICATION, INCLUDING PROOF OF EQUIVALENCE AND REPORTS, BE IN SWEDISH?

In general, the language used by the STA is Swedish. The Financial Income Statement and application form are therefore only available in Swedish. The STA states that there is not always necessary to translate information to Swedish, depending on what sort of document and language it concerns. Documents written or translated to English should in general be accepted, as most officers at the STA understands English.

5.2. SHOULD THE FINANCIAL INCOME STATEMENT IDENTIFYING THE DONOR, SUBMITTED BY THE NPO TO THE STA, BE IN SWEDISH?

See above.

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* *

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DISCLAIMER: This guide is intended to provide a general overview of current main legal and tax regulations for philanthropy in all EU Member States. It should not be considered or relied upon as legal or tax advice. Rules, laws and regulations are constantly in progress. This guide is based on the situation as per November 2023. Use of this guide does not create a legal relationship between the King Baudouin Foundation or the above-mentioned law firms, and the user. Please consult a local and/or foreign legal and tax adviser should you wish to obtain specific legal and tax advice or wish to proceed with cross-border philanthropy.

