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Legal Environment for Philanthropy in Europe

Czech Republic

COUNTRY PROFILE

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I. Legal framework for foundations

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

The present legal regulation of foundation law in the Czech Republic is to be found in the new Civil Code (further also “CzCC”) that entered into effect on 1 January 2014. This new regulation brought many changes in the field of foundation law, as well as the abolition of the former Act on Foundations and Foundation Funds (1997) and the Act on Public Benefit Institutions (1995). For the text of the new Czech CC (translation to English, German, French and Russian languages) see [the website of the Czech Ministry of Justice](#). As regards content, a broader space for assertion of founders’ will has been opened, and it also incorporates some common trends, which can be observed in Europe in the field of foundation law in the beginning of the 21st century (e. g. liberalisation of foundation purpose, foundation governance, allowing of economic activities etc.).

The new Czech Civil Code is favourable to the creation and operation of foundations (nadace), foundation funds (nadační fond) and also institutions (ústav), which could be presented as the counterpart to the English term foundations.

Foundation is a non-member based type of legal person, characterized by its purpose, assets and degree of organisation. It can be created to serve permanently any socially or economically beneficial purpose (but not for business-purposes). It can operate with an income generated from a registered endowment, as well as from donations; and it can pursue (with some limits) economic activities and seek other resources. The legal regulation for foundations is somewhat “overregulated” (it contains more than 70 statutory provisions). It is equally evident that the regulation was drafted mainly with public-benefit purpose foundations “in mind”, but even the purpose can also be private. A foundation fund is a “simpler”, less regulated and more flexible type of organisation, which does not create a registered endowment.

The Czech Civil Code also introduced a new type of non-member based legal person: institution (ústav). Unfortunately, due to historic reasons, the institution remains (de lege lata in the CzCC) outside of the category of “foundations”, even if there are many similarities.

In addition, there are foundations that exist under canon law. These are Roman Catholic religious and pious foundations – “independent pious foundations” (piae foundationes autonomae), which are established as independent organisation units of the Church and endowed with legal subjectivity under the universal canon law (Canon Law Code CIC/1993 - Codex iuris canonici). Public foundations (public funds, which are based on separate laws) also exist in the Czech Republic.

Functionally similar instruments for asset administration without legal personality are left aside: i.e. the trust-like vehicle Svěřenský fond (trust fund) and Přidružený fond (affiliated fund). These are not legal persons, although their functions can be very similar. The trust fund is quite similar (but not similar) to a fiducia/trust regulated under the Civil Code of Quebec, on which this type of instrument in the CzCC is based.

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

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

The purpose of a foundation and foundation fund is open, as long as it is a socially or economically beneficial purpose (“any lawful purpose”).

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

Foundations/foundation funds are legal persons operating for any legal purposes (other than business purposes). The CzCC abandons the previous concept of limiting the “foundation” purpose only to “public benefit” and follows foreign legal regulations in stating that a foundation and also a foundation fund may be established to serve socially or economically beneficial purposes. It is thus mostly left up to the settlor what purpose he lays down in the foundation charter and what rules he specifies for the use of the assets.

It may be held that the purpose of a foundation/foundation fund can be publicly or privately beneficial, one-off or long-term, with performance limited to a specific person or persons but also to secure the care of an animal or some “thing” in a legal sense.

A special category is constituted by a purpose that consists of the support of a certain group of individuals. Foundations/foundation funds can also have a mixed purpose. The distinction plays a role mainly in connection with the disposal or liquidation of assets, tax law etc.

At the same time, the use of the assets (property) of the foundation/foundation fund is always bound to the purpose for which it was set up. The foundation/foundation fund should be, above all, “a servant to the will of its founder”, which also limits its potential “expansion” beyond the original purpose.

Principally, the CzCC enables a foundation/foundation fund to carry out business, as long as the settlor does not exclude or limit this activity in the foundation charter. This is a fundamental difference from the previous legal regulation, which essentially excluded any business activities of foundations and foundation funds. However, business activities may be only a means for the attainment of the goal, i.e. not the aim itself. A foundation/foundation fund may carry out business directly, i.e. do business in its own name and on its own account, or by holding shares in other corporations doing business.

The fact that the purpose of the foundation/foundation fund cannot be a business sets them apart from business corporations and also from the new Czech trust-like instrument called “Svěřenský fond” (trust fund), which is a purposeful association of assets that lacks legal personality. Their purpose may also be the attainment (and division) of profits.

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

The formation of legal persons is regulated on the very general level in the CzCC. It preserves the traditional two-stage character of formation (establishment – registration).

Foundations, foundation funds and institutions can be established inter vivos by one or more founders (natural or legal persons) and also mortis causa (by testament), but the latter option is not used very often. In the case of foundations, the charter (testament) has to be executed in the form of a notarial deed. For the establishment of foundation funds and institutions the notarial deed is not required.

The founder shall apply for registration of a foundation/foundation fund/institution in the public register (Registry of Foundations - nadační rejstřík). Foundation/foundation funds/institutions have the right to be registered when they fulfil the substantive and procedural statutory requirements. The founding documents must be submitted to the registry court, which decides on registration with constitutive effect (incorporating the legal person) and enters information about it into the Registry (see www.or.justice.cz).

The foundation/foundation fund/institution, business companies (and also trust funds) are created (as separate legal persons) on the day of registration in the public register. The proposal to register must be accompanied by the main document (the Foundation charter) and other documents required by the Civil Code or the Act n. 304/2013 Coll., on Public Registers of Legal and Natural persons and Trust funds.

The regional court (registry court) procedure is quick and free of charge. It is also possible to ask a notary to register legal persons (foundation, foundation fund, institution, trust fund etc.) in the registries directly, so long as certain requirements are met. This option is commonly used when the foundation/foundation fund charter is executed in the form of a notarial deed (such as by

foundations). For other organisations, such as foundation funds and institutions, the notarial deed is optional.

The registration process requires moderate time and resources. The courts are quite consistent and apolitical. Because of the recodification of private law in 2014, the legal practice is still a bit unsettled.

Founders represent the entity during the period between formation and registration. They act jointly or appoint one of them to deal with all matters related to the process of establishment. After the registration, the legal person becomes independent and the founder transfers all rights and duties to the legal person.

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

- Approval by a state authority with discretion
- Approval by a state authority without discretion
- Approval by a court
- Notarisation by a notary public

No, there is pure registration principle (without discretion), no state approval required. Foundations/foundation funds/institutions are independent legal persons at the moment of their entry into the public register (Foundation Register, Register of Institutions); Register of Trust funds is semi-public.

The law does not provide for any other direct external supervision over foundations/foundation funds/institutions. Supervision is carried out indirectly mainly by relevant courts, which always act on the basis of a motion submitted to them (by the founder, the executor of a testament, the board of directors or some other person evidencing a justified interest).

The current system of legal regulation of legal persons gives the courts the power to forcibly dissolve a legal person, but only on the basis of an explicit list of reasons that is delimited by law. External supervision of foundations/foundation funds and institutions is exercised only by the courts administering the public registry of legal persons and the relevant tax administrators (internal revenue offices).

5. Are foundations required to register?

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

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

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

A foundation/foundation fund exists independently from the date of its entry in the Register of Foundations. Institutions are registered in the Register of Institutions.

The register is a public register; the founding documents of the foundation/foundation fund/institutions, annual report and other legally required documents are filed in the register (Art. 66 Act no 304/2013 Coll., on Public registers of Legal and Nature persons and Trust funds)

The following data is entered in the Foundation Register (Art 25 sec. 1 plus Art. 34 of the Act on Public registers of Legal and Nature persons and Trust funds):

- The name, location, and identification number of the legal person
- Legal form of a legal person
- Day of creation and termination of a legal person and the day of the registration

- The name or business name, location and identification number of the founder if it is a legal entity; or first and last names, or business name, personal identification number, date of birth, and permanent residence of the founder, if an individual (natural person)
- The purpose of the foundation
- The amount of foundation equity
- The amount of property deposited by founder (contribution) in the foundation/foundation fund
- The first and last names, personal identification numbers, dates of birth, and permanent residences of the members of the governing board and the manner of their acting on behalf of the foundation
- The first and last names, personal identification numbers, dates of birth, and permanent residence of the members of the supervisory board, or the comptroller if no supervisory board has been set up, and other facts as required by law
- The list of assets comprising the non-financial deposit or foundation gift to the foundation equity, stating its description and value

The proposal to register the foundation/foundation fund is accompanied by its foundation charter; a voucher confirming payment of the financial deposit or a voucher confirming receipt of a non-monetary deposit issued by the person responsible for deposits; consent of the persons whose names are entered in the register; legal grounds for the use of registered office space; and eventually other documents required by law.

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

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

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount: 500.000 CZK (approx. €18,000) in the case of a foundation.

To establish a foundation, 500,000 CZK (approx. €18,000) is required as minimal capital and this amount should not decrease throughout the period of the foundation's existence.

There is no minimum founding capital required regarding foundation funds/institutions/trust funds, but the amount should be sufficient to fulfil the purpose of the foundation fund/institution/trust fund.

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

This amount (mentioned above) should not decrease throughout the period of the foundation's existence.

Yes, spend-down foundations are allowed. In the case of foundation fund it is not problem at all, in the case of foundation is more complicated (but not forbidden).

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

a) Is it mandatory to have a:

- Supervisory board
- Governing board

Regarding foundation funds, the organisational structure is left up to the will expressed in the foundation funds charter. Regarding foundations, the structure is more complex and less flexible.

The CzCC leaves the regulation of internal relations primarily to provisions in the foundation charter and statute of both foundations and foundation funds; the law contains default rules that can be used unless the will of the founders provides otherwise. Every legal person (foundation/foundation fund) has to have a statutory organ (governing board).

The CzCC establishes that it is compulsory for foundations/foundation funds to have a governing board and also a supervisory board or a comptroller. The founders (in the foundation charter) or the governing board can also set up additional bodies, e.g. executive director, grant committees etc.

In the case of foundations, the supervisory board (a collective organ) has to be instituted whenever the foundation assets exceeds CZK 5,000,000 (approx. €178,000). In other instances, it may be instituted when the charter or the statute of the foundation/foundation fund so mandates. If no supervisory board is set up, its powers will be exercised by the comptroller (an individual body).

There is an option (not clear) that the governing board of a foundation fund can have only a single member but in practice this does not occur.

An institution has to have a compulsory director (an individual body) and board (one-tier model).

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

The member of the governing board of a foundation can be a legal entity or an individual, capable of legal acts, who is not a member of the supervisory board or in employment with the foundation (still not clear if this applies to a foundation fund). The member shall be aligned with the purpose of the foundation. If a member of the board of a foundation is a legal person, its rights and duties associated with the office may be discharged by its representative that meets the conditions set out above.

The CzCC prescribes that the minimum number of the members of the governing board (statutory organ) must be at least three. The governing board is the governing and management organ of a foundation. The governing board manages the assets of the foundation, directs its activities and makes decisions in all the matters concerning the foundation. The term of office is five years and it is allowed to repeat the term, unless otherwise stated in the foundation charter.

Unless stated otherwise by the foundation charter, the members of the governing board are appointed and recalled by the management board itself. The foundation charter may state that a certain number of the members of the management board will be elected upon their nomination by certain legal entities, or an individual, as specified by the founder.

The first members of the governing/supervisory board/comptroller are appointed by the founder, or the executor of the testament, unless they are mentioned by name in the testament. The foundation charter may state that a certain number of the members of the governing board can be elected upon their nomination by certain legal entities, or by an individual, as specified by the founder, or by the testator.

Unless otherwise provided by the foundation charter, the governing board elects and removes its members itself (Art. 365 CC), and the membership expires:

- Upon the expiration of the term of office
- Upon one's death
- By recall, if the member fails to meet the conditions for membership, or if they violate duties, or due to other reasons if so stated by the foundation charter or by law
- By resignation

The discharge of duties as a member of the governing/supervisory board/comptroller is incompatible with membership in another organ; they cannot be employees of the foundation, and must have a "clean" criminal record related to the purpose of the foundation.

Unless otherwise provided by the foundation charter, the supervisory board elects and removes its members itself.

If no supervisory board is set up, its responsibilities will be carried out by the comptroller. Unless otherwise provided by the foundation charter, the comptroller is elected (and removed) by the governing board, which is not very suitable.

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

The management board is the governing body (organ) of a foundation/foundation fund, it manages the assets of the foundation, directs its activities, makes decisions in all the matters concerning the foundation, and constitutes the statutory body. In sum, it acts on behalf of the foundation.

The rights and duties of board members (governing board) can be stated in the foundation charter, by-laws (statutes) and in law.

The governing board can e.g.:

- Issue by-laws (statutes) and decide on their amendments
- Approve the budget and any changes to it
- Approve the annual financial statements and the annual report on the foundation's activities and performance ("the annual report")
- Decide on mergers, unless mergers are excluded by the foundation charter
- Elect new members of the governing board and of all members of the supervisory board, unless stated otherwise by the foundation charter, and decide on recalls of members of the governing board, the supervisory board or of the comptroller if they fail to meet conditions for membership or office
- Determine the amount of remuneration for the discharge of duties for members of the governing board and supervisory board, or for the comptroller
- Decide on increases to the foundation's capital etc.

The governing board has all competence that is not entrusted to another body of the legal person by the foundation charter, law or decision of a public body. There is duty of care and duty of loyalty of the members of all boards (organs).

The supervisory board of a foundation in particular, unless the foundation charter or, within the scope provided therein, the by-laws (statutes) of the foundation, grant the supervisory board additional powers. The supervisory board:

- Ensures that the foundation board exercises its competence according to its statutes and in accordance with the foundation charter and the by-laws
- Checks compliance with the conditions laid down for the provision of the foundation's grants
- Notifies the foundation board of the ascertained deficiencies and submits proposals to remove them
- Checks how accounts are kept and reviews the annual, extraordinary and consolidated financial statements
- Comments on the annual report, and at least once a year submits a report in writing to the foundation board on its supervisory activities.

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

The CzCC also brought changes in the position of the founder, as a broader space has been left to the assertion of the founders' will. Founders can keep "rights to influence foundation" also during its "separate lifetime", for example the founder can change the foundation charter and also the purpose of the foundation (under conditions set by law); and change the internal organisation such as the powers of the members of the bodies etc. The founder is limited by several mandatory provisions of law (statutory provisions).

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

During the lifetime of the foundation, the founder is entitled to take fundamental decisions regarding amending the foundation charter, when he/she reserves this right for himself/herself or in cases stated explicitly in CzCC.

The founder can also create such a right for the governing board or another (outside) body. This is a very open approach and every founder has to be aware of the possible consequences (destabilisation of the foundation structure, no asset separation etc.)

If the foundation charter doesn't regulate the change of purpose of the foundation, it can be changed by the court. By changing the purpose after the founder's death, the court has to take into account the founder's known intentions and wishes.

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

Beneficiaries of contributions are delimited in the fundamental document (foundation charter, or statute).

Beneficiaries of public-benefit foundation/foundation funds are mostly discretionary (they have no legal claim to contributions). In the case of private-purpose foundations it can be stated in the foundation charter differently.

The legal relationship between the foundation and the person who receives the foundation contribution (beneficiary) is governed by the law, foundation charter, and statutes and also later on in the contract of contribution.

The law gives several rights to persons who assert a lawful interest. The most important rights of these parties (and also beneficiaries) include the right to request the winding up of the foundation or foundation fund through a court. There is also the public access to the foundation registry, which is kept by the relevant registry court.

The foundations registry is a public list containing foundations' charters, the statutes of foundations (foundation funds), and their annual reports. Any foundation/foundation fund is required to make its statutes available if so requested; everyone is also entitled to peruse the annual reports and make copies and excerpts.

A recipient that was provided with a foundation contribution by the foundation/foundation fund is required, if so asked, to demonstrate in what manner and towards what end this contribution has been used.

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

The main duties of the governing/supervisory body of foundations and foundation funds are explicitly defined in the law.

A member of an elected body shall discharge his office personally; however, this does not prevent a member from authorising, on a case-by-case basis, another member of the same body to vote for them in their absence.

Each board member has the duty of care, duty of loyalty and duty of obedience (Art. 159 CzCC). There are also rules in the III. Part of CzCC (the regulation of administration of property of others) which expressis verbis deal with the conflict of interest (Art. 1411 – 1416) and prohibit self-dealing.

There is a common rule for all legal persons (Art. 159 CzCC), which states, that:

A person who accepts to be a member of a board undertakes to discharge the office with the necessary loyalty as well as with the necessary knowledge and care. A person who is unable to act with due managerial care although he must have become aware thereof upon accepting or in the discharge of the office and fails to draw conclusions for himself is presumed to act with negligence.

It is also not possible to provide foundation contributions for the benefit of persons who are of the bodies of the foundation, its employees or persons close to these persons. For foundation funds such a rule is not defined expressis verbis.

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

Generally, the governing board and its members have the power of representation.

A foundation/foundation fund/institution can be represented by its employees to the extent typical with respect to their position or title, the decisive aspect being how they are perceived by the public.

Provisions on the representation of a legal person by an employee apply by analogy to the representation of a legal person by its member or a member of another body not registered in a public register. Limitation of the authority to represent by an internal regulation of a legal person has effect against a third person only if the person has been made aware of it. (Art 166 CzCC).

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

A foundation/foundation fund/institution is liable for an unlawful act committed in the performance of its duties by a member of an elected body, employee or another representative against a third person (Art. 167 CC).

The members of governing and supervisory boards/comptrollers of foundations and foundation funds are not personally liable for the activities of the entity, unless otherwise stipulated by the laws regulating bankruptcy, but they may be held responsible by the body itself for damage caused to the entity due to their decisions or activities. They are fiduciaries (have to exercise their functions with duty of care and duty of loyalty and also duty of obedience).

When members of the governing/supervisory boards/comptrollers do not fulfil their duties properly, they are liable for the damage caused to the legal person. The acting bodies mostly have their relationship with a foundation regulated on the basis of an agreement (a contract of mandate). Those persons have a duty of loyalty and duty of care (the general standard is stipulated in the CC; and can be specified by contract). The criminal liability of an acting body, e.g. for embezzlement, fraud, etc., is not excluded either.

The law does not differentiate between voluntary and paid board members.

The governing board must make decisions concerning the foundation's assets in line with the foundation's objectives and with due diligence. There are several court decisions of the Supreme court of the Czech Republic dealing with the duty of care and a duty of loyalty within business corporations, which conclusions also apply for foundations (see 29 Cdo 5036/2015, 27 Cdo 2695/2018, 27 Cdo 90/2019, or 27 Cdo 5003/2017).

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

The representation of foundations is generally regulated by the Civil Code.

The statutory body (e.g. the head of/member of the governing board) acts externally on behalf of the legal person in all matters, and thus its acts cannot be restrained. This power of representation is unconditional and unlimited, unless the law provides otherwise.

A member of a governing body may represent the legal person in all matters. The governing board is a collective governing body. If the foundation charter does not determine the way in which its members represent the legal person, each member shall do so individually.

The conditions and limitations of such a power grounded in the internal documents may be called upon within the foundation itself. The law stipulates that a foundation charter must specify, as one

of the obligatory essential elements, the identification of the members of the management and the delimitation of the manner in which they may act in the name of the foundation.

This information must be registered in the public register. Generally, the internal documents of a foundation/foundation fund regarding the powers of representation do not have external effect.

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

The new Czech Civil Code enables foundations and foundation funds to carry out business activities (related and also unrelated), as long as the founder does not exclude or limit this activity in the foundation charter. Profits may be used solely to support their purposes and must be in line with the purposes.

A foundation/foundation fund/institution may carry out business directly, i.e. do business in its own name and on its own account, or by holding shares in other corporations doing business. However, not every holding of shares in business corporations is classifiable as “a business activity” since the administration of one’s own property does not constitute “a business activity”.

This is a fundamental difference from the previous legal regulation, which essentially excluded any business activities of foundations, foundation funds, and institutions.

However, business activities may be only a means for the attainment of the goal, i.e. not the aim itself, and can also be ancillary (Art. 307 CC). The profits of such activities must also be used solely to support its “statutory” purpose. Under the same conditions, a foundation may take over the management of a company. A foundation may not be a partner of a company with unlimited liability.

For the institutions, the limits are set up differently: If an institution operates a business enterprise, its operation cannot limit the quality, scope and availability of the services provided as the primary activity of the institution. An institution can also use its profit to support the activities for which it was formed, and to pay the costs of its own administration (Art. 403 CC).

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

The Czech legal framework for foundations’ asset management includes the requirement of financing a foundation in such a way that ensures grants are used exclusively for the foundations’ purpose. Whenever a foundation conducts economic activity, the income arising from such economic activity must be used for fulfilling the purpose.

The risk of breaching due care arises from the fact that such economic activity conducted by a member of the board does not necessarily have to be profitable. It is not prohibited by law to use grants for economic purposes if such activity is considered as diligent and the condition of due care is provided. Therefore, we cannot deduce a result that foundations are justified in undertaking the same risks as business corporations do.

By direct economic activity we mostly mean a business (entrepreneurial) activity and also voting rights bringing about real control of a company. These indirect economic activities also include shareholding and almost any kind of investment instruments.

A founder of the foundation is entitled to prohibit economic activities within a foundation charter.

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

Foundations are allowed to be major shareholders, although the principles of trust and due care must be met., Not every holding of shares in business corporations is classifiable as “a business activity” since the administration of one’s own property does not constitute “a business activity”. Both options are possible.

The higher amount of shares a foundation owns, the higher the risk of breaching a due care could be, as the investment diversification should be taken into account. The shareholding itself can represent "indirect" economic activity.

A founder of the foundation is entitled to prohibit economic activities within the foundation charter.

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

A foundation has to use its property in accordance with the purpose specified in the foundation charter and in the by-laws (statutes) and under the conditions set forth therein for providing foundation grants, providing for its own activities that fulfil its purpose, and paying the cost of increasing the value of the endowment assets and the cost of its own administration. Legal acts whereby a foundation assumes unlimited liability for another person are disregarded. Such strict rules do not apply for foundation funds.

Items constituting the special part of foundation assets – "endowment assets (nadační jmění)" may not be pledged or otherwise used to secure a debt. This does not apply if the foundation operates a business enterprise to the extent necessary for its smooth operation. Nothing may be alienated from the endowment assets if it is contrary to the will of the person who provided the gift to the foundation or fulfilled the duty to contribute. Otherwise, nothing may be alienated from the endowment principal, unless for consideration to be included in the endowment assets, or if the need to alienate something was caused by a change in circumstances which could not have been foreseen and which may not be otherwise dealt with, even if acting with due managerial care. The quality of care of the endowment assets should be as high as prescribed by the Civil Code for the administration of the property of others (duties for trustees).

"Other assets" of a foundation (other than endowment assets) and assets of a foundation fund and also institutions may be used only in line with the purposes and conditions set forth in the charter or by-laws (statutes), always with due diligence (Art. 159 CzCC).

There are no special limits of asset management and investing instruments for foundation funds. The only limit is represented by due care and loyalty of the investing person/body.

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

Yes, they are, with respect to due care and loyalty. This is developing slowly in the Czech Republic.

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

It is forbidden by law to establish a foundation for the purposes of supporting or contributing to political parties. There is no such limit for foundation funds.

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

After the incorporation of a foundation/foundation fund, the foundation charter may be amended to the extent and in the manner expressly reserved in the foundation charter by the founder for himself or for one of the bodies of the foundation. The legal regulation is quite open to such amendments (it is not found very useful).

The by-laws (statutes) can be amended after previous consent of the supervisory board, if this is not forbidden by the founder. The amendment of a foundation charter and by-laws (statutes) is possible mostly whenever the circumstances cause the reasonable need of change of the internal relations.

It is equally possible to change the purpose of a foundation/foundation fund, if the founder reserves such a right to himself or to another body (governing board, third person).

If the foundation charter does not create the right of the founder or a body of the foundation to change its purpose, the purpose may be changed by court on the application of the foundation, subject to approval by the foundation board and supervisory board. However, if such a change is opposed by the founder or a person designated in the foundation charter, the court shall dismiss the application.

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

a) What type(s) of report must be produced?

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

The foundation has to prepare and publish an annual report. The foundation compiles its annual report by the deadline determined by its governing board, or by the foundation charter, by-laws (the statutes) of the foundation. But this must be at the latest within six months of the completion of the period under review. The period under review is the past calendar year, or the time elapsed between the establishment of the foundation and the end of the calendar year in which the foundation was established, if it is the organisation's first annual report.

The annual report outlines the activities of the foundation in their entirety during the period under review, as well as providing an assessment of these activities.

In its annual report, the foundation shall at least provide:

- An overview of its own property and obligations
- For individual endowment gifts, an overview of the persons who provided an endowment gift of more than 10,000 CZK (aprox. €350)
- An overview of how the property of the foundation has been used
- An overview of persons who have been provided with a foundation grant worth more than 10,000 CZK (aprox. €350)
- An assessment of whether, in its business management, the foundation complied with the rules for the provision of foundation grants, and an overview of the costs of its own administration
- An evaluation of the basic data of annual financial statements and the auditor's report, if the foundation is required to have their financial statements audited by an auditor

If requested by a donor, a foundation shall not disclose the information about the donor in its annual report. A recipient of a foundation grant has the same right.

Also an institution has the duty to prepare an annual report within six months from the end of the previous accounting period. An annual report should specify, in addition to other requirements laid down in another legal regulation governing accounting, other relevant information about the activities and management of the institution, including the amounts provided to members of its bodies (organs), and any amendments to the charter or changes in the membership in bodies (Art. 416 CzCC).

The foundation and institution must file the annual report with the registration court. Everyone is entitled to peruse the annual report and make copies and excerpts.

A foundation fund does not have the duty to prepare an annual report. However, the public-benefit purpose trust funds do so voluntarily, in order to be transparent.

An annual report including details of finances and activities must be submitted to the registration court and the tax reported to the tax authority.

There is no duty for foundation funds to publish an annual report.

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

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

The tax authority carries out checks in relation to tax issues. A court can check the annual report (but it is not usual). The “public” can check the annual report in the files of the registry (it is accessible online).

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

The information can be accessed via the registry. This includes not only the basic data, but also the full collection of deeds with all necessary documents important for the life of an established legal person, i.e. the fundamental document, annual reports, information about mergers or termination of subjects, etc. The documents to be placed in this collection of deeds are specified by particular special acts.

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

No. There is no such duty for foundations.

If, in the last accounting period, the foundation (endowment) assets or the turnover of the foundation reached the amount of at least 5,000,000 CZK (aprox. €200,000), the ordinary financial statements, extraordinary financial statements and consolidated financial statements are subject to an audit by an auditor. Financial statements are subject to an audit by an auditor also where they are used as a basis for a decision to increase or decrease the endowment assets or to transform the foundation (Art. 341 CzCC).

Financial statements of an institution are audited by an auditor, if this is required by the forming juridical act or by-laws, or if the amount of the institution’s net turnover exceeds CZK 10,000,000 (€360,000). In such cases, the auditor also audits the annual report of the institution (Art. 415 sec. 2 CzCC).

A foundation fund does not have a such a duty but it can be created by the founder in the foundation fund’s charter.

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

By private auditors.

19. Supervision: Which authority, what measures?

There is no special supervisory body. There is a combination of internal supervision, court supervision and tax authority supervision.

a) What type of body is the supervisory authority? (multiple answers possible)

- A public administrative body
- A public independent body
- A combination of a governmental body and a court
- A court
- A public administrative body and an independent body
- A tax authority
- Other

b) Does the supervisory body review reports?

- Yes, can but not always does.
 No

c) Are foundations subject to inspection?

- Yes
 No

Not always, only optionally.

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

- Yes, formal approval is needed
 Yes, needs just to be informed
 No

If yes, please specify which type of decisions:

e) Is it mandatory to have a state supervisory official on the governing board?

- Yes
 No
 Can a government official be appointed to the governing board by a state authority, if so please mention:

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

20. When and how does a foundation dissolve?

1a) The foundation can be dissolved:

- When the purpose the foundation has been achieved
- By merger with another foundation on the date of the merger agreement
- By a Court decision on dissolving of the foundation on the date shown in the judgment, or on the legal effective date of such a judgment
- By a declaration of bankruptcy or rejection of a bankruptcy motion due to insufficient assets

1b) The court shall dissolve a foundation with liquidation on the application of a person with a legal interest therein, or even of its own motion, if:

- The foundation pursues activities prohibited by law
- The foundation becomes a business company's member with unlimited liability
- The foundation seriously or repeatedly violates the prohibition to provide a foundation grant to a person prohibited by law
- The foundation does not provide foundation grants for more than two years without having a serious reason to do so
- The foundation improperly disposes the endowment assets
- The value of the endowment assets decreases below 500,000 CZK (aprox. €20,000), and that state lasts for more than one year from the end of the accounting period in which the decrease of the endowment principal occurred
- The endowment assets have not generated any yield for more than two years
- It is not consistently possible for the foundation to continue to fulfil its purpose
- Further reasons stated generally for all legal persons (Art. 172 CzCC).

2) The foundation fund will be dissolved if:

- The purpose the foundation fund was achieved
- The board decides that the foundation fund cannot fulfil its purpose anymore
- It merges with another foundation on the date of the merger agreement
- A court decides to dissolve the foundation fund on the date shown in the judgment, or on the legal effective date of such a judgment, if the foundation fund does not continue to fulfil its purpose and also in other cases stated generally for all legal persons (Art. 172 CzCC)
- Bankruptcy is declared, or rejection of a bankruptcy motion due to insufficient assets

3) The institution will be dissolved if:

- The purpose the institution was achieved
- A court decides to dissolve the institution if it fails to fulfil its purpose; and also in other cases stated generally for all legal persons (Art. 172 CzCC)
- Bankruptcy is declared, or rejection of a bankruptcy motion due to insufficient assets.

The foundation/foundation fund/institution ceases to exist from the date it was deleted from the register.

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

There is not any limit of finances that can be spent on office/administration costs. A founder may stipulate within the foundation charter that finances for office/administration costs can be used up to certain amount.

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

There is no such requirement. But if a grantmaking foundation does not distribute any assets (grants) for more than two years (without serious reasons), it could be a reason to dissolve it (see above).

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

Foreign foundations (based in their own countries) are recognised as legal persons in the Czech Republic. Foundations are governed (have a legal status) by the law of the state in which the organisation had its registered office at the time of its establishment (the incorporation theory).

The Czech Republic has not ratified the European Convention on the recognition of the legal personality of international non-governmental organisations (1986) yet, and it does not seem as though that it will be in force in the future.

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

There is no limit or restrictions on conducting grantmaking, operating, or carrying out fundraising activities abroad.

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

No, it does not. The law does not place restrictions on conducting grantmaking, operating, or carrying out fundraising activities abroad.

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

Czech civil law differentiates between the transfer of the seat of a Czech foundation to another country and the transfer of the seat of a foundation based in another country into the Czech Republic.

While transferring the seat from the Czech Republic to another country, the law allows it if the founders did not limit this option while establishing the foundation. Seat transfer must be confirmed in court and the intention of seat transfer must be announced in the public registry at least three months before the planned transfer. The transfer should not endanger the interests of the foundation's beneficiaries and donors; there should also be a substantial (economic) reason for the transfer.

As for the transfer of the seat into the Czech Republic, it is possible if it is allowed by law of the country in question and if the defined purpose of the foundation is not forbidden by the Czech law. The legal form of the foundation in the Czech Republic will be by default "nadace" (foundation) or "nadační fond" (foundation fund).

It is still unclear if the foundation/trust funds/institutions enjoy freedom of establishment and free movement of capital in the EU. But according the ECJ and EFTA case law, we believe so.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

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

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

Nothing. No such duties.

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

In general, there is no reporting obligation, but in the case of an inspection, the foundation must submit documents (accounting and tax documents), showing whether the subsidy was handled in accordance with the conditions.

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

This obligation is generally not stated in the law, but a contract between a donor and a grantee can contain such an obligation.

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

There is no special public-benefit status. The discussions about the meaning of the term “public benefit”, the establishment of the status of “public benefit” in the Czech legal system and other related issues have been going on at various levels for some time and will certainly continue in the future.

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

From the point of view of taxes, the Czech legal system does not really distinguish between public and non-public benefit NGOs, thereby providing public advantages also (but not always) to private activities or, to put it another way, legal persons which carry out solely private activities. Tax advantages are conditioned by non-profit character, which have to be both – formally stated (in foundation documents) and actually executed (this means there is real non-profit activity). Some legal forms are excluded such as business corporations, legal entities founded for the protection of business interests and also foundations set up for family purposes.

Act on Income Tax:

Exemption may be applied to donations given to charities located in the Czech Republic which finance one of the following qualifying purposes:

- Science and learning
- Research and development
- Culture and education
- Police
- Fire departments

- Support and protection of youth
- Protection of animals
- Social and health care
- Ecology
- Humanitarian and charitable purposes
- Religious purposes for registered churches and religious communities
- Sports

In addition, donations to natural persons living in the Czech Republic, who use the donations to run schools and healthcare establishments and care for abandoned animals or endangered species, are also tax exempt. The same pertains to donations to physically or mentally challenged persons with permanent residency in the Czech Republic, as well as donations to remedy the damage caused by natural disasters occurring in the territory of the Czech Republic.

Exemptions of gifts from income tax are available for all public-benefit NGOs when the gift is used for qualifying purposes stated above (same as in the case of tax benefits for donors).

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

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights	X			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	X			
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation		X		
Assistance to refugees or immigrants	X			
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			

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

8. Support of “the public at large”

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

Generally, yes.

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

Depends on the situation: The evaluation is based especially on altruistic principle. So the view on a foundation to support a small number of orphans with disabilities is different than on a foundation based on support of members of one family.

9. Non-distribution constraint

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

There is generally no tax restriction in tax law. The restrictions are only in Czech civil law.

A member of the governing board or controlling body of a foundation or foundation fund cannot receive foundation contributions.

The Czech civil law stipulates that an individual who is disbursed means that constitute fulfilment of the purpose of the foundation/foundation fund may not serve as a member of the governing board; nor can he be a member of a statutory or controlling body at a legal entity if this means that constitute fulfilment of the purpose of the foundation/foundation fund are disbursed to this legal entity.

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

The founder can state in the foundation charter that any liquidation balance in case of dissolution of the foundation/foundation fund has to be transferred to another foundation/foundation fund pursuing the same purpose.

If the foundation statutes do not state this, the liquidator will offer this liquidation balance to a foundation/foundation fund with an identical, or similar, purpose. If no such foundation/foundation fund is identified by the liquidator, or if this balance is refused by the liquidator-identified foundation/foundation fund, the liquidator will offer this balance to the municipality where the foundation/foundation fund is located.

If the municipality does not accept the offer within 60 days from the offer date, this balance will go to the state treasury upon the expiration of the 60-day deadline.

The state is required to use this liquidation balance for publicly beneficial goals.

10. "Altruistic" element

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

There is no special treatment in Czech tax law.

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

Receipt of some type of benefit in return for a donation (postcards, free tickets) is not exempt from income tax. But this income will be treated as a "windfall" income and so in the case of individual taxation it could be exempted from tax up to approximately €1,130 of total windfall incomes.

A donor or founder should declare any such benefit as income for income tax purposes.

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

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

There is no special treatment in Czech tax law.

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

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

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

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

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

12. Distributions and timely disbursement

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

Yes, but there is a special rule for foundations (certain limitation for endowment assets). Foundation funds can be spent down without limits.

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

No, it is up to the founder and their will expressed in the foundation deed.

- c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that must be spent within this time? Which resources would be considered as income? E.g. would

donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded)?

No.

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

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

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

x* Foundation fund

x** Foundation

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

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

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

No, but some benefits are connected with having the seat of the foundation in an EU or EEA country.

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

According to Civil law, there is no restriction. But according to Section 20(8) of the Income Tax Act, a deduction may not be used for this purpose by public-benefit payers. According to the Income Tax Act, a public-benefit foundation itself cannot claim a tax benefit for it.

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

- a) Grants and donations

Foundation income from donations or grants is exempted from income taxes.

- b) Investment income (asset administration)

Interest from fixed rate bonds

When the bonds or bank accounts are part of a foundation’s endowment, the interest is exempted.

If not, interest from bank accounts is exempted from income tax, and interest from bonds are taxed regardless of the owner.

Equities

When it is part of a foundation’s endowment, it is exempted from income tax. If not, standard corporate taxation applies.

Income from leasing of a property that belongs to the foundation

- c) Economic activities (related/unrelated)
 - Income from running a hospital/museum/opera
 - Income from producing/selling books (e.g. art books sold by a cultural foundation)
 - Income from running a bookshop inside a museum/opera run by the foundation
 - Income from running a café in the hospital/museum run by the foundation
 - Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
 - Income from intellectual property (e.g. royalties and licence fees)
- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)?

There is a special deduction for NGOs: Profits of less than 300,000 CZK (approx. €11,300) are exempt.

Foundations may deduct 30% from their tax base up to 1 million CZK (€38,000) if the tax savings are used to cover expenses from non-business activities or the promotion of these.

Subsidies, contributions, benefits or other similar performance from public budgets are not subject to tax.

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

From the point of view of private law, not every shareholding in business corporations is classifiable as “a business activity” since the administration of one’s own property (shares) does not always constitute “a business activity” of a foundation.

The tax treatment of a company is standard. If the profit is paid, the general exemption of a foundation can be applied. Otherwise it is taxed according to standard rules (15% withholding tax).

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

This is not separate from income taxes.

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

No, it does not.

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

No, it is not.

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

Standard VAT, some activities, especially non-profit could be exempted according to standard (EU) rules.

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

Generally, foundations are taxed by property tax. Nevertheless if the property is used for non-profit activity, there could be exemption.

21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If

they have to fulfil exactly the same requirements as locally-based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:

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

Tax benefits are also available (revision of the Income Tax Law 2009) for organisations based outside of the Czech Republic, but only within the EU and Norway and Iceland. Foundations based in other countries are excluded. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil in order to receive tax exemptions.

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

No, it does not.

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

According to Czech tax law, withholding tax is applied for interest income from an account and deposits at banks and savings and credit unions. The possibility of reclaim depends on the nature of the foundation, if the double taxation agreement (DTA) is applied for the foundation, and the adjustment in individual DTAs.

III. Tax treatment of donors of foundations

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

There is a system of tax deduction.

The Czech tax law foresees tax incentives for donations to public-benefit foundations (nadace). According to Section 15 (1) and Section 20 (8) of the Income Tax Act, the donor can deduct the amount of the donation in his/her tax income tax statement (tax deduction) in the following way: The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate, and also free of charge services.

2. Tax treatment of individual donors

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

The donation made by a natural person is deductible up to 15% of the tax base, provided at least 2% of the tax base is donated or not less than 1,000 CZK (approx. €35). The donation must be given to a foundation headquartered in the Czech Republic. Donations to foundations and foundation funds (registered in the Czech Republic, and from 2009 also the EU and Norway and Iceland) may, in accordance with Section 15 (1) of the Income Tax Act, be provided also by natural persons. Such natural persons may deduct from their tax base amounts exceeding, in a given tax period, 2% of the tax base or at least CZK 1,000. (approx. €35). They may, however, deduct no more than 15% of the tax base.

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

The object of a donation may be a movable asset (money, goods, services, securities etc.) as well as real estate and also free of charge services. In the case of a non-monetary gift, it is necessary to estimate the value.

3. Tax treatment of corporate donors

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

The donation made by a legal person is deductible up to 10% of the tax base. The value of each donation has to be at least equivalent to approximately €75.

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

Under Section 20 (8) of the Income Tax Act, any legal person may deduct from its tax base the amount of donations provided to foundations and associations with their registered office in the Czech Republic, if this is used for financing of science and education, research and development purposes, culture, education, police, fire protection, support and protection of young people, animal protection, social, health, ecological, humanitarian, charitable, or religious purposes of registered Churches and religious organisations, physical education and sports purposes, or for activities of political parties and movements, as long as the amount of the donation is at least CZK 2,000 (approx. €70) Starting from 2001, a total of no more than 10% of the tax base for income tax of legal persons may be deducted. A donation may be obtained on the basis of a gift agreement (or a subsidy agreement), clearly delimiting the purpose of the donation. This deduction may not be carried out by entities not founded or established for the purpose of business.

The donation must be given to a not-for-profit organisation headquartered in the Czech Republic or, according to the law expressed in cases since 2009, in the EU or Norway or Iceland, or to a legal entity organising a public collection.

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

Following the revision of inheritance and gift tax law in 2009, it is possible to donate to a foundation abroad and to receive corresponding tax relief, if this foundation is recognised by the local law as a public-benefit organisation. The foreign EU or EEA based public-benefit foundation must fulfil all legal requirements that a resident foundation has to fulfil.

Donations to foundations based in other countries are excluded.

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

No, the percentage law system has not yet been adopted in the Czech Republic.

6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?

Answer to second part of question: In general, a copy of the gift contract is enough. But this treatment is case by case (the burden of proof in this tax benefit is on the taxpayer/donor).

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

Answer to second part of question: The provider of the gift will provide a document proving who is the recipient of the gift, the value of the gift, the subject of the gift, the purpose for which the gift was provided and the date of the gift. In the event that the 10% reduction in the tax base is less than CZK 2,000 (approx. €70), only the amount representing 10% of the tax base will be deducted if the condition of the minimum value of the gift of CZK 2,000 (approx. €70) is met.

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

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

Yes.

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

There is also a Law on Public collections, which is outdated but still in effect, to be revised.

IV. Tax treatment of beneficiaries

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

- 1. Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**
- 2. Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**

No, there is not.

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

Grants provided by a foundation in accordance with its statutory purposes to any legal or natural person are tax exempt.

V. Gift and inheritance tax

Czech law has not applied separate gift or inheritance tax since 1 January 2014. Gifts and inheritance are considered as an income for purposes of income tax. There also exists a tax benefit for public-benefit foundations according to § 19b (1), b) of the income tax code. Donations and legacies to foundations registered in the Czech Republic (and also in the EU or EEA) are exempted from income taxes. The same applies to any organisation (regardless of legal form) which is performing one or more of the activities mentioned above. Also, donations and legacies to political parties and registered Churches are exempted.

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

No, gifts and inheritance are taxed through income tax. The gift is taxed as ordinary income; inheritance is exempt from income tax.

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

Gift and inheritance taxes are incorporated with income tax. Legal persons are taxed at a rate of 19%, nevertheless there are many loopholes, and therefore the taxation in these cases is just a theoretical issue.

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

See answer to question 2 – therefore no threshold is implemented.

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

Protection of heirs is very complex. It is more a topic connected with private-benefit foundations. It is not really a tax issue.

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

As a part of income taxation, the income from these sources is taxed in the country of residency of the foundation, not in the Czech Republic.

Exception is for immovable property (taxed in state where it is located). The non-resident foundation can use the same treatment as the foundation which is resident of the Czech Republic (this type of income is generally exempted, see answer to question 1).

VI. Trends and developments

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

Yes, there are, but more or less on a theoretical level.

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

- Set up a public-benefit foundation
- Obtain permission to transfer funds across borders
- If able to transfer of funds across borders, has the process become more burdensome administratively
- Open a new bank account
- Maintain a bank account
- Fund certain activities
- Fund certain regions/countries
- Fund certain organisations (please explain the reason - foreign funding restriction?)
- Report to authorities/deal with administration
- Other

It is still too early to judge. It increased the administration costs because the legal regime is not clear.

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

Yes, it does. All those entities (foundations, foundation funds, institutions, also trust funds).

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

Yes, but it is not always clear.

It is stated in the Act No 253/2008 Sb. on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism: for a foundation, institution, trust or other legal arrangement without legal personality a natural person or beneficial owner of a legal person, who is in a position of: 1. a founder, 2. a trustee, 3. a beneficiary, 4. a person in whose interests was the foundation, institution, trust or other legal arrangement without legal personality established or is functioning, if a beneficiary is not determined, and 5. persons allowed to maintain supervision on administration of the foundation, institution, trust or other legal arrangement without legal personality.

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

Yes, it exists since 1 January 2018. With effect from 1 January 2018, the amendment to Czech Act No. 304/2013 Coll., on the Czech Public Registers of Legal and Natural Persons and Trust funds (the "Czech Act on Public Registers") came into force, which introduced the obligation of legal persons entered in the public register and of the trusts to report their beneficial owners in the private section of the register (the "Register of Beneficial Owners" under the jurisdiction of the Ministry of

Interior). The definition of a beneficial owner is based on Czech Act No. 253/2008 Coll., on Certain Measures against the Legalisation of Proceeds from Crime, and the Financing of Terrorism (“AML”), whose revised version came into force on 1 July 2017.

Legal persons entered in the Czech Commercial Register must register their beneficial owners by 1 January 2019; other legal persons entered in other public registers (including trust funds entered in the register of trusts) must register their beneficial owners by 1 January 2021.

The Registry of Czech beneficial owners is semi-public, and is maintained by the Ministry of Justice, see the website: <https://issm.justice.cz/>.

There is a draft of the new Act on the BO registry in the legislative process, which reflected the 5 AML Directive.

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

a) Law revision in the pipeline

There is a discussion about the amendment of the Public Collection Act which is outdated and causes a lot problems and misinterpretations in practice.

There is a draft of the new Act on Ultimate Beneficiary Owners (according the 5 AML Directive), still in legislative process, planned for 1 January 2021.

For many years, there has been a discussion about the reform of Tax law, including the special rules for foundation and trust structures.

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

c) Tendency towards more transparency requirements?

AML Legislation

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

Yes. There is an academic project, “Drafting Czech Foundation Governance Code”.

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

Yes, impact investment, spend-down foundations etc.

f) Other?

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

There are three main laws with direct relation to public fundraising: The Civil Code that covers gifts in general and operations of foundations in general; Tax Law that covers the tax consequences of gifts; and the Act on Public Collections (“Public Collections Law”), No. 117/2001, as amended.

The granting of public subsidies is partly regulated by law and partly a matter of the policy of the central or local government authorities.

VII. Further information

Useful contacts

[Faculty of Law](#), Masaryk University, Brno, Civil Law Department

[The Ministry of Finance](#), Prague, Tax and Custom Section

[The Association of Tax Advisors](#)

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VIII.About

Philanthropy Advocacy

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

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

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

www.dafne-online.eu

European Foundation Centre (EFC)

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

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

www.efc.be

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



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