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Legal Environment for Philanthropy in Europe

Kosovo

COUNTRY PROFILE

By Arbenita Mjekiqi
Legal Expert

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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 scope of foundations in the Republic of Kosovo is regulated by the Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, which sets out the rules for establishment, registration, operation, suspension, termination, and prohibition of activities and deregistration of them in the Republic of Kosovo. Article 17, paragraph 1 of the law, recognises the legal definition that a foundation is a non-membership organisation, established for the management of property and assets, for the realisation of legitimate goals for public benefit or mutual interest. Moreover, foundations are autonomous organisations with legal personality according to the national civil law.

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

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

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

According to Article 22, paragraph 4 of the Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, for setting up a foundation, the registration application form of the foundation shall be accompanied by the founding act, the statutes, the copy of the ID of founders and of the authorised representative of the foundation, and the registration certificate for legal persons.

In compliance with Article 4, paragraph 1 of the Law in question, the freedom of association is a guaranteed right by the Constitution of the Republic of Kosovo. Also, according to Article 4, paragraph 3, every person shall have the right to establish a non-governmental organisation in accordance with the terms and conditions set forth in this Law. Moreover, Article 15 of this Law stipulates that the foundation shall be established by a founding act, which shall contain the following records:

- Full name and abbreviation of the organisation
- Its organisational form (foundation)
- Organisation's address
- Purpose and scope
- Name, personal number and address of the founder as natural person
- Name, registration number/unique number and address of the founder as legal person
- Name, personal number, address and other information of the legal or authorised representative to follow the registration procedures
- Timeframe for which the organisation is established, if any

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.

In this regard, referring to Article 15, paragraph 2 of the Law, the founding act shall be signed by each founder. For legal persons, the founding act shall be signed by the authorised representative of the legal person. Also, paragraph 3 of this article, defines that in a foundation established by means of a will, the latter shall be considered as the founding act if it contains the basic data required under paragraph 1 of this Article. If the will does not contain data requested under paragraph 1 of this Article, the authorised representative shall follow the registration procedures and prepare the data in accordance with the requirements of the will.

Based on Article 17, paragraph 2 of the Law in question, the foundation shall be established by one (1) or more persons. And according to paragraph 2 of this article, the foundation shall be established by an initial capital of not less than one thousand Euros (1,000 €) by will or inheritance.

In this regard, according to Article 22, paragraph 3, a foundation is required to apply for registration at the Department for Non-Governmental Organizations, under the relevant Ministry for registration and deregistration of the NGOs, in order to operate as a legal person in Kosovo.

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

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

5. Are foundations required to register?

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

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

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

According to Article 30, paragraph 1 of the Law, the Department for Non-Governmental Organizations, the information that is kept in the register of NGOs includes the following data: full name of the foundation, including abbreviation; the registration number; the fiscal number; the organisational form (foundation); whether it is a local, foreign or international organisation; the address of the foundation; the purpose and the scope; the names of the founders; the name of the authorised representative of the foundation; the timeframe for which the organisation is founded, if applicable; and the number and status for public benefit, if any.

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: €1,000

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

The law is silent in regard to the maintaining of the assets or the spend-down aspect of foundations, nor is this is not regulated by the secondary legislation. However, it leaves the impression that the foundation is required to maintain the minimum amount of capital of €1,000.

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

a) Is it mandatory to have a:

- Supervisory board
- Governing board

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

According to Article 31, paragraph 2 of the Law, the governing board of a foundation shall consist of at least three (3) members. The appointment of board members and their registration / resignation / removal is regulated by the statutes of the foundation.

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

Regarding the internal governance of the foundation, according to Article 31 of the Law, board members must meet with the participation of more than half of the board's members, and decisions are taken with a majority of the members present. Also, they shall have full responsibility for policy and financial issues of the foundation and shall meet at least once a year, whereby the board shall review and approve the financial and operational report of the foundation for the previous year, as well as the foundation's activity plan for the following year. Board members of the foundation may delegate competencies to the foundation's subordinate bodies, with the exception of the aforementioned duties, the amendments to the statutes of the foundation, and decisions to merge, split up, or dissolve the foundation. In addition, board members may participate in meetings remotely by electronic means, provided that the members sign the final decisions.

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?

In this regard, the rights of founders end on the occasion of the registration of the foundation and the appointment of the director and the governing board of the foundation. Thus, the rights of founders are delegated to the governing board members.

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?

Referring to Article 31 of the Law, fundamental decisions, such as change of purpose of the foundation, can be made only with the participation of more than half of the board members and upon the decision of the majority of the members present. According to Article 6 and Annex 5 of the Administrative Instruction GRK - no. 02/2014 on Registration and Functioning of Non-Governmental Organizations, the statutes of the foundation can be amended by the decision a two-thirds majority of the board. Herein is actually a difference between the law and sub-law due to the reason that the law has entered into force in 2019, and subsequently, the sub-laws are not yet amended according to the new law. However, based on the legal hierarchy, the provisions of the law in question prevail over those of the sub-law.

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

There are no special provisions laid out in the law on the rights of beneficiaries.

- 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?

Regarding conflict of interest, Article 32 paragraph 1 of the Law sets out that any member of a governing body shall not participate in the consideration or decision of any matter in which he or she has a direct or indirect personal or economic interest, which affects or may appear to affect the legitimacy, transparency, objectivity and impartiality of the board member while exercising their function. Also, referring to paragraph 2 of this article, any transaction between the foundation and its members, employees, members of the board, or affiliated organisations, shall be carried out at market value or under the most favourable conditions for the foundation.

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

In accordance with the legislation in force, there are non-obligatory provisions which lay out defined duties and responsibilities of staff of the foundation at the decision-making level. Based on practices and the rights of the board as the higher governance body, the staff of the foundation (director and/or officers) participate in decision-making activities up to the level needed for the implementation of duties and responsibilities that they are appointed for, in terms of implementation of policies and objectives of the foundation. These provisions are defined also in the statutes of the foundation.

- 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?**

In compliance with Article 32, paragraph 3 of the Law, all members and other employees of the foundation are obliged to show loyalty to the foundation, to protect the confidentiality of non-public NGO-related information and interest, and to carry out their duties and responsibilities with care and diligence.

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

The Republic of Kosovo does not differentiate between voluntary (unpaid) and paid board members.

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

According to the legislation in force, the responsibility for claiming the responsibility for breaches of such duties lies with the other members of the board, the founders and the public authorities. This procedure is followed according to the normal court procedures outlined in the national civil law.

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

Based on Article 23 of the Law, it is defined concisely that the foundation shall appoint in writing the authorised representative. The authorised representative will represent the foundation and receive all official submissions on behalf of the foundation. He/she shall be responsible for informing the competent authorities of any change to the data provided upon registration of the organisation. In addition, the director or other responsible officers can represent the foundation towards third parties for cooperation purposes on exercising the foundation's activities.

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

According to Article 35 of the Law, the foundation may engage in economic activities for the purpose of supporting its not-for-profit activities, in compliance with Article 12 of this Law (the not-for-profit principle), provided that income realised through economic activities is used exclusively to fulfil its mission.

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

No, there is not a legal/fiscal framework for grantmakers to be able to fund legal entities that are conducting economic activities in addition to their public-utility activities.

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

No, foundations are not permitted to be major shareholders in a company.

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

Based on Article 35, paragraph 3 of the Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations, the foundation may own and manage property and assets for the accomplishment of its not-for-profit purposes.

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

Foundations are allowed to allocate grant funds towards furthering their public-benefit purpose / programmes which can also generate incomes.

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

Yes, there is such a limitation. Referring to Article 34 of the Law, the foundation may not engage in fundraising or campaigning to support political parties or candidates for political office, nor may they propose, register or in any way endorse candidates for public office.

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

According to Article 31 of the Law, the highest governing body may amend the statutes by meeting with the participation of more than half of its members and deciding with the majority of the members present.

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

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

- Annual financial report/financial accounts
- Annual activity report
- Public-benefit/activity report

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

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

According to Article 38 of the Law, the annual report of a foundation with public-benefit status must be submitted to the supervisory authority, which is the Department for Non-Governmental Organizations, under the relevant Ministry for registration and deregistration of NGOs. The annual report of the foundation comprises:

- i. Management and administration section: the name, abbreviation, address and contact information of the foundation with public-benefit status; the name of the chief executive officer; the names of the members of the Managing Board.
- ii. Activities and achievements section: the summary of the purpose of the foundation with public-benefit status; the main programmes and activities; and the summary of the main achievements of the organisation. Those foundations working in the areas of education, health or economic development shall also provide information on benefits they provide to disadvantaged persons and groups, and the provision of free of charge or under market value services.
- iii. Financial statement section.
- iv. Report of the auditor: the balance sheet and the statement on revenues and expenditures.

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

The supervisory authority checks the submitted reports of foundations with public-benefit status.

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)?

According to Article 38, paragraph 8 of the Law, reports with detailed information (listed in point (b) of this question) are made available to the public by the Department of NGOs, in accordance with the legislation in force on personal data protection.

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

Based on Article 38 of the Law, the financial statements of foundations with public-benefit status should be audited by an independent legal auditor in the Republic of Kosovo, as follows:

- For a local foundation with public-benefit status, with revenues or with annual expenditures over €100,000
- For a foreign or international NGO with public-benefit status with revenues or expenditures over €100,000 for activity within Kosovo

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

Based on Article 38, paragraph 8 of the Law, it is defined explicitly that required audits of annual reports of foundations with public-benefit status should be submitted to the supervisory body only by a licensed auditor in the Republic of Kosovo. Licensed auditors or audit firms carry out the audit of foundations in the Republic of Kosovo, except in those cases that are treated as an exception. The Ministry of Finance of the Republic of Kosovo approves the requirements and guidelines for international and national auditing agencies and standards in force. For details, please refer to <https://mf.rks-gov.net/page.aspx?id=2.79>

19. Supervision: Which authority, what measures?

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

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

b) Does the supervisory body review reports?

- Yes
- No

c) Are foundations subject to inspection?

- Yes
- No

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

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

If yes, please specify which type of decisions:

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

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

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

In compliance with Article 39, paragraph 2 and 3 of the Law, the foundation with public-benefit status that fails to file a complete report as required within 30 days will lose its public-benefit status. The Department shall notify the foundation that its public-benefit status and all benefits thereof have been suspended, and, if the foundation fails to provide the report within thirty (30) days of the notice on suspension, the Department will issue a decision for the revocation of the public-benefit status. Also, the foundation whose public-benefit status has been revoked is retrospectively obliged to fulfil all obligations according to the legislation into force for the period for which it failed to report.

20. When and how does a foundation dissolve?

According to Article 41 of the Law, the foundation is dissolved:

- a) By a voluntary decision taken by the highest governing body, in accordance with the foundation's statutes.
- b) When the foundation becomes insolvent as defined by the Law in force.
- c) Upon expiry of the term for which it was established, if such a period is specified in the founding act or statutes.
- d) Based on a final court decision.

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 no specific provision that sets a maximum that can be spent on office/administration costs in civil law and / or tax law.

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 specific provision that sets such a limit for a foundation to spend a certain percentage of its overall assets within a certain period of time.

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

According to Article 3 the Law no. 06/L-043 on Freedom of Association in Non-Governmental Organizations, the foreign foundation is a non-profit legal entity established outside the Republic of Kosovo. According to Article 24 of the Law, in order for a foreign or international foundation to register its branch in the Republic of Kosovo, it must accompany its application form with the following documents:

- a) Notarised document proving that the foundation is a legal person in the country of origin or any evidence certified at the court of the state of origin.
- b) The foundation's branch postal address in Kosovo.
- c) A written statement from the authorised representative of the NGO's seat, which must contain:
 - i. Purpose and scope which will be exercised by the branch in Kosovo.
 - ii. Name, address and other contact information of the authorised representative.
 - iii. The foundation's statement committing to observe requirements of the non-for-profit principle and other principles of this Law.

There are no specific provisions regarding the concept of trusts.

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

The legislation in force in the Republic of Kosovo does not regulate a foundation's grantmaking, operating, asset administration, or fundraising activities abroad.

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

Based on legislation in force, in the Republic of Kosovo does not impose any restrictions on the ability for foundations to receive foundations from 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?

No, there is no legal provision in civil law in the Republic of Kosovo that allows the transfer of the seat of a foundation (in the EU) or cross-border mergers.

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?)

A national, foreign or international foundation may receive tax exemptions according to the status of public beneficiary registered according to the Law No. 06/L–043 on Freedom of Association in Non-Governmental Organizations. Foundations registered under this law may apply for the Public Beneficiary Status upon initial registration by the foundation or thereafter. Afterwards, the Competent Body shall grant public beneficiary status if the registration documents of the foundation demonstrate that the purposes and activities of the foundation satisfy the requirements laid down in Article 37, paragraphs 1 and 2 of the Law No.04/L –057 on Freedom of Association in Non-Governmental Organizations.

Moreover, based on Article 37, paragraph 1 of the Law, the registered foundation may apply for public-benefit status if the foundation is organised and operates to undertake one or more of the following as its principal activities: humanitarian aid and support, support for persons with disabilities, charitable activities, education, health, economic development, culture, environmental protection and promotion, protection and promotion of human rights, support to democratic practices and civil society, promotion of voluntary work, consumer protection, refugee assistance and support, protection or care for injured and vulnerable animals, social welfare, protection against discrimination, protection of cultural heritage, or any other activity that serves the public interest.

While, in accordance with Article 37, paragraph 2 of the relevant law, education, health and economic development activity shall constitute public-benefit activities only if significant benefits are provided free of charge or under market value to disadvantaged individuals or groups. Reviewing of the foundation's request for recognition of public-benefit status, which enjoy the right on exemption from tax and access to tax and fiscal facilities, shall be made within deadlines and in accordance with the procedures set forth in Articles 25 and 26 of this Law.

The foundation that has been granted public-benefit status, based on Article 38 of the Law in question, must file each year an annual report with the Competent Body covering its operations and activities within Kosovo. The report must be filed by the end of March each year for the reporting year ending 31 December of the previous year. Concerning the administrative procedure, the annual report shall be signed by the authorised representative of the foundation. The authorised representative is responsible for the truth and accuracy of all statements in the report. The annual report consists of three sections:

1. Management and Administration
2. Report on Activities and Achievements
3. Financial Statement

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

Yes, according to the Regulation MF No. 04/2017 on Criteria, Standards and Procedures of Public Funding of NGOs, all foundations which receive grants from public funds (governmental and municipal level) are obliged to report to the responsible officer of the provider of financial support. Herein, the provisions of this Regulation are applicable also by non-public distributors of public funds, in cases when they make the distribution of public funds to foundations as part of any agreement with budgetary organisations. Based on Article 23 of the Regulation in question, the beneficiary reports to the monitoring officer, or the monitoring team on a regular basis regarding the

implementation of the project / programme. This reporting includes narrative and financial reports, and the reporting periods will be determined by the provisions of the contract with beneficiary.

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

According to Article 38, paragraph 1 of the No. 06/L – 043 on Freedom of Association in Non-Governmental Organizations, the foundation with public-benefit status submits an annual report on its actions and activities in Kosovo. The annual report for the previous calendar year is submitted to the respective Department no later than 31 March of the following year. Moreover, within the annual report of the foundation, according to paragraph 6 of the article in question, it is required that the Financial Statements shall be prepared using forms provided by the competent body, and shall include, at a minimum:

- 1) A balance sheet, showing the assets and liabilities of the organisation.
- 2) A financial statement on revenues and expenditures,

This report must be sent to the competent authority – The Ministry of Public Administration (which is merged with the Ministry of Internal Affairs / Department for Non-Governmental Organizations within relevant Ministry).

Also, it is required that certain information and data on donors and beneficiaries are reported according to Administrative Instruction No.14/2010 on implementation of the Law no. 03/L-162 on Corporate Income Tax (this law has been replaced by the new one, the Law No.06/l-105 on Corporate Income Tax, while the AI is still in force until the new one is approved on implementation of the new law). In Article 8 (Allowed Deduction), paragraph 3, it is defined that the receipt referred to in the previous paragraphs, shall contain the following information:

- i. Name of the donor.
- ii. Tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number.
- iii. Address of the donor.
- iv. Donor's name and telephone number.
- v. Name of the recipient.
- vi. Tax identification number (fiscal number) of the recipient.
- vii. Address of the recipient.
- viii. Recipient contact person's name and telephone number.
- ix. Amount of charitable contribution donated.
- x. Date of donation.
- xi. A declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.

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?

Yes, there is a statutory definition in the Law No. 06/L–043 on Freedom of Association in Non-Governmental Organizations, in Article 37, paragraph 1, which defines that the foundation with public-benefit status is organised and acts to undertake one or more activities as primary activities such as humanitarian aid and support, support for persons with disabilities, charitable activities, education, health, economic development, culture, environmental protection and promotion, protection and promotion of human rights, support to democratic practices and civil society, promotion of voluntary work, consumer protection, refugee assistance and support, protection or care for injured and vulnerable animals, social welfare, protection against discrimination, protection of cultural heritage, or any other activity that serves the public interest, except those activities which are essentially charges for municipal public services.

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.

There is no statutory definition in the tax law in the context of what a public-benefit purpose is. However, in the context of tax treatment of foundations by the Law No.06/L-105 on Corporate Income Tax which regulates this field, according to Article 11 (Deductions allowed for public interest activities) contributions made by taxpayers who keep their books and records pursuant to paragraph 5 of Article 35 of this Law, in the form of a donation and sponsorship for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes under this Law, are considered as contributions paid for public interest and are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted.

In this perspective, an allowable contribution included in the areas mentioned above, must be made to a foundation registered under legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo (Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations) which has received and maintained public-benefit status. Allowable contributions can also be made to any other organisation that directly performs activities in the public interest, such as:

- Medical institutions
- Educational institutions
- Organisations to protect the environment
- Religious institutions
- Institutions that care for disabled or elderly persons
- Orphanages
- Institutions that promote science, culture, sports or arts

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				X
Advancement of religion				X
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>	Charitable activities, Support to democratic practices and civil society, Promotion of voluntary work			

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”?

According to the tax legislation in force (The Law No. 03/L-222 on Tax Administration and Procedures and the Law No.06/L-105 on Corporate Income Tax), there is no explicit provision that activities of a tax-exempt foundation generally have to benefit “the public at large”. Thus, relevant laws define only those activities of public interest, but not those activities with the public at large.

More precisely, relevant laws do not define the number on inhabitants on the basis of which the assessment can rely, and as such do not determine such activities that can be considered with “public at large” effect.

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

No, there is no settled definition.

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.?

In compliance with Article 12 (the not-for-profit principle), paragraph 3 states that the foundation’s assets, incomes and earnings shall not be used to bring profits, directly or indirectly, to any founder, director, official, member, employee or donor of the foundation, except as payment for the persons who perform work for the organisation. Moreover, in accordance with Article 11, paragraph 3 of the Law No.06/L-105 on Corporate Income Tax, it is emphasised that an allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor.

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

In case of dissolution of the foundation, based on Article 41, paragraph 2 of the Law No. 06/L–043 on Freedom of Association in Non-Governmental Organizations, for the foundation which has utilised tax or fiscal facilities or public donations, the remaining property after the settlement of the obligations of the foundation is transferred to another foundation registered in the Republic of Kosovo with same or similar purposes. Also, referring to paragraph 4 of the Article in question, in all other cases, any remaining property after the settlement of the obligations is distributed by a decision of the highest governing body, based on the statutes of the foundation and in all cases in accordance with Article 12, non-for-profit principle, of this Law.

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**?

Based on Article 12 of the Law No. 06/L –043 on Freedom of Association in Non-Governmental Organizations, the not-for-profit principle defines that the foundation’s assets, incomes and earnings shall not be used to bring profits, directly or indirectly, to any founder, director, official, member, employee or donor of the foundation, except as payment for the persons who perform work for the organisation. Also, according to Article 32, paragraph 2 of this Law, stipulates that any transaction between the foundation and its members, employees, members of the board, or affiliated organisations, shall be carried out at market value or under the most favourable conditions for the foundation.

Article 161 of the Law No. 06/L-016 on Business Organizations states that a Joint Stock Company may pay compensation to directors and reimburse directors for their reasonable expenses in serving the Joint Stock Company as its directors. A decision to provide such compensation or reimbursement and approval of the amount and main conditions thereof may only be made by the shareholders. This shall be done for each renewal or change of the directors’ terms.

In sum, from legal tax treatment perspective, foundations rely under the Law No. 06/L -105 on Corporate Income Tax, which sets out provisions regarding the remuneration of the board of directors.

- 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)

This issue is not addressed by the tax law in force.

- 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”:

Based on the civil and tax law in force, there is no defined maximum amount that can be spent on office/administration costs.

If yes, how are “administration costs” defined? Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

Obviously, despite the fact that administrative costs are not defined or limited by the legislation in force, depending on the capacities, activities and other relevant circumstances of the foundations, all of the following activities can fall under the administrative costs, such as:

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

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

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

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

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

	Yes	Probably yes	Unclear	Probably no	No
The founder restricts the use of the endowment by specifying that the foundation is required to maintain the founder, their spouse and descendants.	x				

The founder retains a beneficial <i>reversionary</i> interest in the capital of a property or other asset to retain for their own continuing use.	x				
The gift consists only of the <i>freehold reversion</i> (residuary interest) in a residence that is subject to an existing lease (for a term of years, or even for life) in favour of the founder (or another member of their family) as tenant.	x				
A foundation distributes a (small) part of its income to the founder or their family.	x				

12. Distributions and timely disbursement

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

There is no specific limitation for this issue. The Law No. 06/L–043 on Freedom of Association in Non-Governmental Organizations, specifies that the highest governing body shall have full responsibility for policy and financial issues of the foundation and shall meet at least once a year, whereby it shall review and approve the financial and operational report of the organisation for the previous year, as well as the organisation’s activity plan for the following year.

- 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?

Foundations are allowed to be set up for a timeframe for which the organisation is established, if any is stipulated in the Founding Act of the foundation (see: Art. 15 (1.8) of the Law No. 06/L –043 and Art.5 (1.8.) of Administrative Instruction GRK No. 02/2014). Thus, there is not a minimum length of time for which the foundation must exist.

- 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?)?

Referring to the legislation in force which addresses this issue, no special provisions on limiting spends of foundation’s incomes exist.

- 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”?

The legislation in force does not 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

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?

Regarding the Financial and Activity Reporting Obligations for foundations with Public Beneficiary Status, based on Art.38 (1) of the Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, it is emphasised in a concise manner that a foundation that has been granted with Public Beneficiary Status submits an annual report on its actions and activities in Kosovo must file each year an annual report to the Competent Body. As such, the result is that activities abroad are not treated by the law in question.

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)?

Based on legislation in force, this is not possible.

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

The foundations from a tax perspective are regulated with the Law No.06/L-105 on Corporate Income Tax. Article 8, paragraph 1.1 of this law stipulates that the incomes of foundations registered under the legislation on the Registration and Operation of Non-Governmental Organizations shall be exempt from corporate income tax, if they have received and maintained public-benefit status to the extent that the income is used exclusively for public-benefit purposes.

According to Art.34 (1) of the Law No.06/L-105 on Corporate Income Tax, the foundation that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such business activity, reduced by any deductions that are directly related to the carrying out of such business and which are allowed by this Law.

b) Investment income (asset administration)

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

Article 8, paragraph 1.1. of the Law No.06/L-105 on Corporate Income Tax stipulates that the incomes of foundations registered under the legislation on the Registration and Operation of Non-Governmental Organizations shall be exempt from corporate income tax, if they have received and maintained public-benefit status to the extent that the income is used exclusively for public-benefit purposes.

Referring to Article 31 (3) of the Law No.06/L-105 on Corporate Income Tax, each taxpayer who pays rent shall withhold tax at the rate of nine percent (9%) at the time of payment or credit and transfers the tax withheld to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo. The withheld tax must be paid to the bank, or financial institution by the 15th day of the month following the month in which the payment is made or credited, except when the lessor's incomes are tax exempt.

c) Economic activities (related/unrelated)

- Income from running a hospital/museum/opera

- Income from producing/selling books (e.g. art books sold by a cultural foundation)
- Income from running a bookshop inside a museum/opera run by the foundation
- Income from running a café in the hospital/museum run by the foundation
- Income from selling merchandise (activity not related to the pursuance of the public-benefit purpose)
- Income from intellectual property (e.g. royalties and licence fees)

Initially, based on Article 8 (1.1.) of the Law No.06/L-105 on Corporate Income Tax, the incomes of foundations registered under the legislation on the Registration and Operation of Non-Governmental Organizations shall be exempt from corporate income tax, if they have received and maintained public-benefit status to the extent that the income is used exclusively for public-benefit purposes. Moreover, in Art.34 (2) of the Law, it is stated that the Tax Administration shall have the authority to audit any NGO to determine its compliance with the income rules that govern foundations. In cases where foundation profits are deemed to exceed a reasonable level of profits for an organisation that is established as a non-profit organisation, the Tax Administration shall have the authority to treat such “excessive profits” in accordance with Art.34 (1) of the Law No.06/L-105 on Corporate Income Tax, which specifies that the foundation that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such business activity, reduced by any deductions that are directly related to the carrying out of such business and which are allowed by this Law.

Also, Art.37.2 of Law No. 06/L –043 on Freedom of Association in Non-Governmental Organizations provides that a foundation’s education, health and economic development activity shall constitute public-benefit activities only if significant benefits are provided free of charge or under market value to disadvantaged individuals or groups. To the extent that profits of foundations exceed those needed for this purpose, they will be considered to be “excessive profits”.

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

There are no specific provisions on definitions of income deriving from grant expenditures towards public-benefit status. Obviously, foundations are not allowed to grant loans, guarantees or equities.

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

Yes, major shareholding in a business undertaking is considered as an economic activity and is taxed accordingly.

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

Art.8 of the Law No.06/L-105 on Corporate Income Tax, and Art.8 (1.2) specifies that the income of organisations registered under legislation on the registration and operation of non-governmental organisations that have received and maintained public-benefit status to the extent that the income is used exclusively for their public-benefit purposes is tax exempt. Thus, capital gains of the foundations with public-benefit status obtained through activities for public-benefit purposes and supporting their activities are not subject to tax. Exceptionally, according to Art.34 (1) of the Law in question, in cases when a non-governmental organisation that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such unrelated business activity, reduced by any deductions that are directly related to the carrying out of such business and which are allowed by this law. Also, in this case, capital gains are subject to corporate income tax.

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

In Kosovo, there is no value added tax (VAT) refund scheme for the irrecoverable VAT costs of public-benefit foundations.

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

There is no capital tax levied on the value of assets.

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

The issue of transfer of assets is regulated by Art. 42 of the Law No. 03/L-222 on Tax Administration and Procedures and its amendments (Law No. 04/L-115, Law No. 04/L-102, Law No. 04/L-223), and Administrative Instruction No. 15/2010 on Implementation of the Law No. 03/L-222 on Tax Administration and Procedures. Taxes on the transfer of assets by foundations does not fall under the tax treatment for foundations, if those assets are used exclusively for their public- benefit purposes. In sum, foundations with public-benefit status are not levied taxes on the transfer of assets.

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

Pursuant to Art.17(4) of the Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, foundations with public beneficiary status shall be entitled to tax and fiscal benefits, except those which are essentially charges for municipal public services. On the other hand, Kosovo source income means gross income that arises in Kosovo, which includes income from the use of immovable property located in Kosovo.

According to Art.7 (1) of the Law. 03/L-162 on Corporate Income Tax, the income of organisations registered under Legislation on the Registration and Operation of Non-Governmental Organizations (foundations) shall be exempted if they have received and maintained public-benefit status to the extent that the income is used exclusively for their public-benefit purposes.

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 (see list below)
 - Proof that the organisation is a legal person in another country.
 - Written statement from a representative of the foundation's headquarters with authority to provide such statement stating; the purpose of the foundation; a general description of the activities that the foundation is planning to carry out in the Republic of Kosovo; and the name, address and other contact information of the authorised representative.
 - Notarize document providing that the foundation as a legal person in the country of origin or any evidence certified at the court of the state of origin (in original language and translated into one of official languages of Kosovo).
 - Letter addressed to the Department of Registration and Liaison with NGOs, at the Ministry of Public Administration, from the headquarters of a foreign or international foundation, which shall appoint a person to act as its official representative in Kosovo.
 - Attached evidence of identity for the official authorised representative. Then, the authorised representative in the headquarters of foundation is obliged to provide an official statement confirming:
 - The general objective for the branch of foundation in Kosovo.
 - A general description of activities planned to be implemented in Kosovo.

- Contact details of the authorised representative of this foundation in Kosovo (address in Kosovo, where the representative operates). If the representative of the NGO in Kosovo is not a citizen of Kosovo, he/she shall provide evidence of being previously registered at the competent office for foreigners.
- A statement that the foundation applying for registration shall not use the assets and incomes of the foundation to ensure benefits, directly or indirectly, to any founder, director, officer, member, employee or donor of the foundation.
- Declaration that, if the foundation used tax or fiscal incentives, public donations or grants from the Government, in case of the termination, all assets will belong to the foundation after the payment of debts of the foundation and shall be given to a foundation with the same or similar purpose in the Republic of Kosovo.

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

Yes, the Republic of Kosovo has signed agreements with a number of countries for the avoidance of double taxation with respect to taxes of income and capital, such as: Albania, Austria, Belgium, Croatia, Finland, Germany, Hungary, Luxembourg, Macedonia, Malta, Saudi Arabia, Slovenia, Switzerland, Turkey, United Arab Emirates, and the United Kingdom.

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?

In accordance with Art.33 (2) of the Law No.06/L-105 on Corporate Income Tax, the income earned from agreements or contracts, whether written or verbal, with Kosovo persons or entities by a non-resident person or entity from services performed in Kosovo shall be subject to withholding by the payer of that income, as long as the non-resident person or entity has no permanent establishment in Kosovo. The amount of withholding shall be five percent (5%) of the gross compensation.

Also, the Administrative Instruction No.15/2010 on implementation of Law No. 03/L-162 on Corporate Income Tax defines that where such income is paid or credited to a non-resident person or entity which is exempt from corporate income tax under Article 7 of the Law, under any other law of Kosovo or under an international agreement or convention, that income shall not be subject to withholding tax. In such cases, the onus is on the recipient of the income to provide written evidence to the payer that their income is exempt from Corporate Income Tax. Until such evidence is produced, the obligation remains on the payer to withhold tax.

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?

Contributions made by taxpayers, in the form of donations and sponsorships for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes under the Law No.06/L-105 on Corporate Income Tax are considered as contributions paid for public interest and are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted. Contributions paid by taxpayers in the fields of culture, youth and sports, shall be calculated according to the Law No.05/L-090 on Sponsorship in the Field of Culture, Youth and Sports. This allowable contribution must be made to foundations registered according to the Law No. 06/L –043 on Freedom of Association in Non-Governmental Organizations, or any other organisation that directly performs activities in the public interest, such as medical institutions; educational institutions; organisations to protect the environment; religious institutions; institutions that care for disabled or elderly persons; orphanages; and institutions that promote science, culture, sports or arts.

An allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor. Also, any taxpayer who claims an allowable deduction must submit a receipt in respect of such deduction to the Tax Administration of Kosovo. In addition to the allowed deduction, taxpayers who contribute to certain areas will have a special deduction allowed up to ten percent (10%) if provided for by specific laws in Kosovo.

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?

Contributions made by taxpayers, in the form of donations and sponsorships for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes under the Law No.06/L-105 on Corporate Income Tax are considered as contributions paid for public interest and are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted. As such, the expression “computed before the charitable contribution is deducted”, under Section 20, paragraph 1 of the Administrative Instruction 14/2010 on Implementation of the Law No. 03/L-162 on Corporate Income Tax, means that the 10% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income. Art.11 (3) of this law specifies that all allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor. Also, there is no minimum and/or ceiling for contributions for which tax incentives can be claimed.

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

It is not defined precisely which assets are covered or fall under the qualification for tax deductibility.

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?

Contributions made by taxpayers, in the form of donations and sponsorships for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes under the Law No.06/L-105 on Corporate Income Tax are considered as contributions paid for public interest and are allowed as expenditures up to a maximum of ten percent (10%) of taxable income computed before the charitable contributions are deducted. The expression “computed before the charitable contribution is deducted”, under Section 20, paragraph 1 of the Administrative Instruction 14/2010 on Implementation of the Law No. 03/L-162 on Corporate Income Tax, means that the 10% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income. Art.11 (3) of this law specifies that all allowable deductions shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor. Also, there is no minimum and/or ceiling on contributions for which tax incentives can be claimed.

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

It is not defined precisely which assets are covered or fall under the qualification for tax deductibility.

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

Generally, Art. 4 of the Law No.06/L-105 on Corporate Income Tax determines that foundations fall under the category of taxpayers. Exceptionally, based on Art.8 (1) of this Law, this is not the case if the income of organisations registered under Legislation on the Registration and Operation of Non-Governmental Organizations that have received and maintained public-benefit status is used exclusively for public-benefit purposes.

Moreover, Art. 5 of the law in question defines the object of taxation for a resident taxpayer as taxable income from Kosovo source income and foreign source income. While the object of taxation for non-resident taxpayers shall be taxable income from Kosovo sources.

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?

There are no other frameworks regarding percentage law systems.

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

With regard to allowed deductions for charitable contributions (donations), Article 30 (2) of the Administrative Instruction No.01/2016 Implementing the Law No.05/L-028 on Personal Income Tax specifies that a taxpayer who claims a deduction in respect of charitable contributions made during the tax period shall furnish receipts signed and stamped by the beneficiaries of the charitable contributions, confirming the purpose of those donations, the amounts, and the times when the donations were made. A charitable contribution deduction can only be claimed by a taxpayer who pays tax on a real income basis. In this regard, each recipient must file.

Furthermore, in compliance with Article 30 of the Administrative Instruction No.01/2016 Implementing the Law No.05/L-028 on Personal Income Tax, each receipt shall contain the following information: i. name of the donor; ii. tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number; iii. address of the donor; iv. Donor's name and telephone number; v. name of the recipient; vi. tax identification number (fiscal number) of the recipient; vii. address of the recipient; viii. name and telephone number of the contact person for recipient; ix. the amount of charitable contribution donated; x. date of donation; xi. a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the 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?

In general, there is no difference or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation. Additionally, Art.13 (1) of the Law No.03/L-222 on Tax Administration and Procedures emphasises that a person who is liable to pay or withhold tax shall create records of account in written or electronic form which determine their liability to pay or withhold tax. The specific books and records required to be prepared and retained shall be those set out in the relevant legislation and administrative instructions. The Tax Administration of Kosovo (TAK) may require a taxpayer to translate any records that are not in one of the official languages of Kosovo.

Naturally, even if the taxpayer is exempted from payment of taxes, their request should be documented with relevant documents according to the TAK requirements, upon request. These requirements are particularly focused on fiscal policies and tax requirements set by competent bodies, and may include the provision of an annual financial report and relevant documents providing evidence for certain tax law requirements, such as that income was actually spent for the public-benefit purposes for the relevant activities. These documents should be submitted in their original language, together with translation of documentation in official languages in the Republic of Kosovo, upon the request of the TAK.

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

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

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

No. These categories are not foreseen in the legislation in force.

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?

Individual beneficiaries are not required to pay tax. They must only submit a declaration of the origin of the grant.

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?

Regarding the income of legal entities, the only definition which is related to this issue is specified in Art.8 (1) of the Law No.06/L-105 on Corporate Income Tax, which states that the income of organisations registered under Legislation on the Registration and Operation of Non-Governmental Organizations that have received and maintained public-benefit status must be used exclusively for public-benefit purposes.

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

There are not different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad. Based on the legislation in force, it is the donor who is for the most part obligated to declare the objective and the destination of those donations, including beneficiary data. In the case of irregularities, upon request of competent bodies (Ministry of Internal Affairs and Tax Administration of Kosovo), the beneficiary may declare the incomes purpose and their sources.

V. Gift and inheritance tax

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

Revenues of foundations received from gifts and inheritance are entirely exempted from tax. Thus, based on Art. 8 (1) of the Law No.06/L-105 on Corporate Income Tax, this applies to the income of organisations registered under Legislation on the Registration and Operation of Non-Governmental Organizations (foundations) that have received and maintained public-benefit status to the extent that the income is used exclusively for their public-benefit purposes, and the incomes received from grants, subsidies and donations in accordance with the rules and conditions for benefiting.

Also, according to Article 8 (1.25) of the Law No. 05/L -028 on Personal Income Tax, the following income shall be exempted from personal income tax: Income received from grants, subsidies and donations in accordance with the terms and conditions of their benefit.

- 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?**

According to Art.34 (1) of the Law No.06/L-105 on Corporate Income Tax, the foundation that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such business activity, reduced by any deductions that are directly related to the carrying out such business and which are allowed by this Law.

With regard to which PBOs qualify, based on Art. 37 (1) of the Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, the foundation registered under this Law may apply for a public-benefit status if the foundation is organised and acts to undertake one or more activities as primary activities such as humanitarian aid and support, support for persons with disabilities, charitable activities, education, health, economic development, culture, environmental protection and promotion, protection and promotion of human rights, support to democratic practices and civil society, promotion of voluntary work, consumer protection, refugee assistance and support, protection or care for injured and vulnerable animals, social welfare, protection against discrimination, protection of cultural heritage, or any other activity that serves the public interest. Regarding the region or the legal status of the PBOs, no preferential treatment exists based on the region from which the incomes are derived.

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

No, no threshold exists for non-taxable amounts from gift and inheritance tax for donations/legacies to public-benefit organisations.

- 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?**

These issues are not defined in the legislation in force.

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

Despite the fact that this issue is not regulated in a concise manner in the legislation, once the registration process is completed, and all requirements of the Republic of Kosovo are fulfilled, non-resident public-benefit foundations get the same treatment as national public-benefit foundations.

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?**

In the Republic of Kosovo, there are no 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. Moreover, there have not been any changes or discussion on issues regarding Kosovo's legislation resulting from the Persche, Stauffer, Missionswerk or other relevant ECJ judgments.

- 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?) - if the origin of incomes is not documented properly and the receiver does not justify their origin properly.
- Report to authorities/deal with administration
- Other

The Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing stipulates measures, competent authorities and procedures for detecting and preventing money laundering and combating terrorist financing. Provisions of this Law shall be obligatory to all institutions and their respective units, and to all non-public entities subject to activities that may relate to money laundering and terrorist financing, according to the provisions of this Law. Also, this law aims to implement the EU Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on prevention of the use of the financial system for money laundering and terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and the Council, and repealing Directive 2005/60/EC of the European Parliament and the Council and the Commission Directive 2006/70 /EC.

Also, in order to combat effectively money laundering and terrorist financing in Kosovo, Art. 4 of the relevant law establishes the Financial Intelligence Unit within the Ministry of Finance, which is a central independent national institution responsible for requesting, receiving, analysing and disseminating to the competent authorities, disclosures of information which concern potential money laundering and terrorist financing. The Financial Intelligence Unit also interacts with the "Financial Action Task Force", which is an independent intergovernmental body, develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of mass destruction weapons.

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

In this regard, it is concisely specified in Art.19, para. 3 (3.2.2) of Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing, that the identity of any entity shall be verified by the presentation of an NGO registration certificate issued pursuant to the Law on Freedom of Association in Non-Governmental Organizations.

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

No, the national law does not specify who is considered as a Beneficial Owner of a foundation.

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?

No, the country does not possess such a specific register.

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

Regarding the national legislation on foundations, the new Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations, was approved in 2019. In this regard, the new sub-laws of this law have to be approved. Currently, all relevant parties are still working with sub-laws (Administrative Instruction GRK No. 02/2014 on Registration and Functioning of Non-Governmental Organizations; Regulation No. 01/2013 on Distribution of Subsidies for Non-Government Organizations, and Regulation No. 02/2012 MPA on the Establishment and Operation of the Commission for Reviewing the Appeals of NGOs) which are based on the previous law, which has now been abolished.

The same situation is also happening with the corporate tax legislation. The new Law No.06/L-105 on Corporate Income Tax, was approved in 2019, but the respective sub-laws of this law (Administrative Instruction MF No.02/2016 on the Implementation of the Law no. 05/L-029 on Corporate Income Tax, etc.) are not yet approved. Currently, all relevant parties are still working with sub-laws which are based on the previous law, which has been abolished.

A new legal source in Kosovo's legal framework is the approval of the new Law no. 06/L-022 on Social Enterprises in 2018. Regarding this law, which is still in its initial stages of implementation, its implementation and potential amendments, if needed, will have to be assessed in the coming years.

Lastly, the Financial Intelligence Unit in Kosovo has launched a public discussion with the NGO sector concerning the drafting of a Concept Paper to address legislation in the field of Prevention of Money Laundering and Combating Terrorist Financing.

Last, but not least, the Law No. 05/L-090 on Sponsorship in the Field of Culture, Youth and Sports, and the Law No. 06/L-116 on Amending and Supplementing the Law No. 05/L-090 on Sponsorships in the Field of Culture, Youth and Sports, regulates the support and financial and material support of cultural, youth and sports activities through sponsorship and advertising. The general interest is realised through the sponsorship of different activities in the field of culture, youth and sports that brings improvement to the individual and social life of citizens, business organisations, foundations, and natural and legal persons in the Republic of Kosovo. Sponsorship is given to the recipient for the implementation of the general public interest by the particular culture, youth and sport activity as defined in the sponsorship or agreement.

a) 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?

In this regard, it is important to emphasise that the Government of Kosovo has approved the Regulation (GRK) - No.09/2015 on Coordination of Foreign Donors Assistance in the Republic of

Kosovo. The scope of this regulation is the coordination, programming and harmonisation of national development priorities, with priorities for financing by foreign assistance, as well as the increase of effectiveness and transparency during the activity's coordination process of the institutions of the Republic of Kosovo with the foreign donor's community in the Republic of Kosovo.

Also, it is worthwhile to emphasise that the Ministry of Public Administration has now merged with the Ministry of Internal Affairs of the Government of Kosovo, where the Department of NGOs resides as well.

- b) Tendency towards more transparency requirements?
- c) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?
- d) Tendency to use alternative forms to classic public-benefit foundations
- e) Other?

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

There are no specific laws that regulate fundraising in particular.

VII. Further information

Useful contacts

Arbenita MJEKIQI, LL.M., author of the report, email: arbenitamjekiqi@gmail.com

Selected bibliography

- [Tax Regime in Kosovo](#)
- [List of Statutory Auditors and Audit Firms in Kosovo](#)
- [List of Kosovo Accounting Standards](#)
- [List of International Accounting Standards applicable by Kosovo Authorities](#)
- [List of International Financial Reporting Standards applicable by Kosovar Authorities](#)
- [Ministry of Public Administration](#)
- [Ministry of Finance](#)
- [Tax Administration in Kosovo](#)
- [National Audit Office of the Republic of Kosovo](#)
- [Financial Intelligence Unit in Kosovo](#)
- [Electronic System of Non-Governmental Organizations](#)

Selected law texts online

- [Constitution of the Republic of Kosovo](#)
- [Law No. 06/L-043 on Freedom of Association in Non-Governmental Organizations](#)
- [Law No. 05/L-090 on Sponsorship in the Field of Culture, Youth and Sports](#)
- [Law No. 06/L-116 on Amending and Supplementing the Law No. 05/L-090 on Sponsorships in the Field of Culture, Youth and Sports](#)
- [Law No. 06/L-022 on Social Enterprises](#)
- [Law No. 02/L-37 on the Use Languages](#)
- [Law No. 05/L-031 on General Administrative Procedure](#)
- [Law No. 06/L-082 on Protection of Personal Data](#)
- [Law No. 06/L-113 on Organization and Functioning of State Administration and Independent Agencies](#)
- [Law No.03/L-222 on Tax Administration and Procedures](#)
- [Law No. 04/L-223 on Amending and Supplementing the Law No. 03/L-222 on Tax Administration and Procedures, as amended and supplemented by law no. 04/L-102](#)
- [Law No. 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo](#)
- [Law No. 06/L-032 on Accounting, Financial Reporting and Auditing](#)
- [Law No. 06/L-105 on Corporate Income Tax](#)
- [Law No. 05/L-037 on Value Added Tax](#)
- [Law No. 05/L-028 on Personal Income Tax](#)
- [Law No. 06/L-005 on Immovable Property Tax](#)
- [Law No. 05/L-096 on the Prevention of Money Laundering and Combating Terrorist Financing](#)

BYLAWS (REGULATIONS, ADMINISTRATIVE INSTRUCTIONS) and related links:

- [Regulation No. 02/2012 on the Establishment and Operation of the Commission for Reviewing Appeals of NGOs](#)
- [Regulation No. 01/2013 on Distribution of Subsidies for Non-Government Organizations](#)
- [Regulation \(GRK\) No.09/2015 on Coordination of Foreign Donors Assistance in the Republic of Kosovo](#)
- [Regulation \(MCYS\) No. 01/2018 on Defining Criteria, Procedures and Form Concerning the Certificate of Sponsorship in the Field of Culture, Youth and Sports](#)
- [Regulation \(GRK\) No. 19/2020 of Procedures for Obtaining, Rejection and Forfeiture of Social Enterprise Status as well as the Composition of Commission](#)
- [Administrative Instruction GRK No. 02/2014 on Registration and Functioning of Non-Governmental Organizations](#)
- [Administrative Instruction No. 15/2010 on Implementation of Law No. 03/L-222 on Tax Administration and Procedures](#)
- [Administrative Instruction MF No. 07/2019 on the Structure, Content and Submission of Annual Financial Reports](#)
- [Administrative Instruction No. 01/2019 on Licensing Statutory Auditors and Local and Foreign Statutory Audit Firms](#)
- [Administrative Instruction MF no.02/2016 on the Implementation of the Law No.05/L-029 on Corporate Income Tax](#)
- [Administrative Instruction No.01/2016 on Implementing the Law No.05/L-028 On Personal Income Tax](#)
- [Administrative Instruction MF no. 01/2018 for Amendment of Administrative Instruction No. 06/2016 on the Implementation of Law No. 05 /L-037 on Value Added Tax](#)
- [Administrative Instruction MF No.09/2019 on Organization of Property Tax Offices and Principles of Property Tax Administration](#)

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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