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Legal Environment for Philanthropy in Europe

Netherlands

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?

In the Dutch Civil Code/Burgerlijk Wetboek (Article 285 Book 2), a foundation (stichting) is defined as “a legal person created by a legal act which has no members and whose purpose is to realise an objective stated in its articles using capital allocated to such purpose”. Apart from this type of foundation, Dutch law recognises that foundations with legal personality can be formed under Canon law (Church foundations), which foundations are governed by Canon law and their articles. Non-autonomous foundations are not recognised as such in legislation, however they exist de facto based on contractual arrangements and bequests.

Apart from Church foundations, there are no different legal types of foundations in the Netherlands. However, a Dutch foundation can be used for different purposes, as explained in answer 2.

A foundation does not necessarily have a public-benefit purpose. Furthermore, charitable activities can be performed by other entities as well. A specific legal entity exists for religious communities (kerkgenootschappen, article 2 Book 2). This is not a foundation, but a legal form in itself for which different rules apply. Some charities have the legal form of an association (vereniging), a public body (publiekrechtelijke rechtspersoon, for example a municipal museum), a religious entity (with or without autonomous legal personality) or even – in incidental cases – a company limited by shares (some theatres, for example). Therefore, in the Dutch context “foundation” is not equal to “charity” as not all foundations are charitable and not all charities have the legal form of a foundation.

2. What purposes can foundations legally pursue?¹

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

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

Foundations can be established *inter vivos* by one or more founders or *mortis causa*. In both cases a notarial deed is required. For the first case, the deed must record the founding act, and for the second case it must record the will of the deceased. The deed shall contain the articles of the foundation. The articles must include:

- The name of the foundation, with the word “stichting” as part of its name
- The purpose of the foundation: As explained in article 2, the foundation can be established for both public and private purposes as well as a combination of such purposes
- The procedure for appointment and dismissal of the members of the board
- The municipality in the Netherlands where it has its seat
- The application of the surplus of the foundation after liquidation on winding up, or the manner in which such application will be determined

The deed of incorporation and therewith the articles of the foundation must be in Dutch. In case of an incorporation *mortis causa*, only the articles have to be in Dutch. Alternatively if the foundation

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.

has its seat in the province of Friesland, the deed of incorporation (including therefore the articles of the foundation) may be in Frysian.

Usually in the case of a foundation established *inter vivos*, also the first members of the board of directors are appointed in the deed of incorporation.

No minimum founding capital or endowment is required for establishment or operation of a foundation.

Pursuant to art. 2:289 of the Dutch Civil Code, foundations must be registered in the Register of Commerce (Handelsregister). The Chamber of Commerce and Industry (Kamer van Koophandel) is the holder of this register. Registration is **not** required for obtaining legal personality. However, if a foundation operates prior to its registration, the members of the board of the foundation are personally and severally liable for obligations ensuing from legal acts performed in the name of the foundation, next to the foundation itself.

Registration requires that the relevant forms issued by the Chamber of Commerce are completed and signed. Information to be provided to the chamber of commerce includes personal data concerning the first members of the board and if applicable of the supervisory board, their authority to represent the foundation as well as the names and last known address(es) of the founder(s). The members of the board must procure this registration and must lodge at the register an officially certified copy or officially certified extract of the deed of establishment embodying the articles. In law the obligation to register rests on the board members: In practice registration is taken care of by the civil law notary involved in the incorporation of the foundation.

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

Based on article 289 Book 2 of the Dutch Civil Code, all foundations, irrespective of their purpose, must register in the Register of Commerce (Handelsregister). This register does not differentiate between foundations with a charitable purpose and other foundations.

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

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

- The name of the foundation, its seat, its purpose, legal form, its address and the addresses of its offices (to the extent these do not coincide), telephone and fax numbers and email address (to the extent applicable) and the name(s) and address(es) of the founder(s).
- A short description of the activities of the foundation.
- The number of its employees, if any.
- The deed of incorporation including the articles, or in case of a foundation established *inter vivos*, a certified abstract of the will by which the foundation is established.
- If the articles are amended, the complete notarised text of the articles as amended.
- Personal data concerning the members of the board or supervisory board, including their citizen service number, place and date of birth, address, and signature. And for each of them the date on which their appointment became effective and when their term ended, and information pertaining to their power to represent the foundation. The same applies to others that are authorised to represent the foundation pursuant to its articles.

The Chamber of Commerce holds a separate register containing information about the (pseudo) Ultimate Beneficial Owner (UBO).

Beneficiaries that receive more than 25% of the total amount of distributions in a specific financial year qualify as UBOs and must therefore be registered in the UBO register. The foundation must keep a register of the beneficiaries that receive less than this 25% threshold amount. This record is not publicly available but part of the foundation's administration.

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

- Yes, all information publicly accessible
- Yes, some information publicly accessible

Certain personal data concerning individuals are shielded from public access for reasons of privacy protection.

- Yes, accessible upon request
- No

6. Is a minimum founding capital/endowment required?

- No

However, if a foundation lacks sufficient resources to pursue its purpose and there is no prospect that such resources can be obtained within a foreseeable period of time, a foundation can be dissolved by the court upon request of the public prosecutor or a person with justified interest.

- Yes, amount:

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

There are no legal requirements or restrictions in this area. The articles of the foundation may of course hold provisions in this area, which, if this is the case, must be observed.

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

Only a governing board is mandatory. A supervisory board is not mandatory but may be required for obtaining public funding in certain sectors. Other bodies with specific tasks and functions can be provided for in the articles of the foundation.

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

There is no minimum number of board members. The articles of a foundation may however prescribe a certain minimum and/or maximum. Governance codes usually require more than one board member.

The law does not regulate the appointment, resignation or removal of board members. This is all left to the articles. The civil law notary involved in the drafting of the articles is responsible for ensuring that the articles are adequate. Only when the articles are not effective concerning the appointment of new board members or their dismissal in case of serious misconduct, does the law provide for procedures where the court can appoint, suspend or dismiss board members.

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

Board members by law are required to “fulfil their tasks properly”. It follows from case law that they are required to act solely in the best interest of the foundation (and its organisation). This is expected to be included in legislation shortly.

Subject to the restrictions of the articles, the board must manage the foundation and pursue its purpose. It follows from this that the board must develop a strategy for the foundation in pursuit of its purpose. All board members and therefore the board as a corporate body, bear responsibility for “the general conduct of affairs” of the foundation. The board by law is obliged to carry out proper book- and record keeping and drawing up of the annual accounts.

The board cannot enter into agreements to purchase, dispose of or encumber registered property, unless the articles of the foundation imply or stipulate that they are authorised to do so and under which restrictions, if any. The same applies to agreements by which the foundation commits itself as guarantor, or joint and several debtor, guarantees performance by a third party, or undertakes to provide security for a debt of a third party.

The board represents the foundation. The articles may also vest representative authority in one or more board members individually or acting jointly. Furthermore, the articles may also vest representative authority in persons other than board members

- 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 founders have no powers by law, but rights or powers - such as the power to amend the articles, appoint board members or dismiss board members - can be attributed to them in the articles. Founders can also be a member of the board.

- 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?

See answer d) above.

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

The beneficiaries or other third parties have no rights by law, but rights or powers can be attributed to them in the articles of the foundation or by separate legal act. Foundations with an enterprise and employees must of course comply with the laws pertaining to information, consultation and participation of decision-making by employees or a work council. The same applies m.m. to foundations that provide services that are funded from public means in areas such as healthcare, education and youth services, with respect to client councils that they are required to have.

- 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?

Currently with respect to foundations there are no provisions in the law pertaining to conflict of interest transactions. However, self-dealing is in conflict of the duty of members of the board to act exclusively in the best interest of the foundation. Therefore acting with self-interest is a breach of duty that may result in the obligation to compensate for damages. In some cases obligations of the foundation ensuing from an act in which there was a conflict of interest are not enforceable.

There is no legal definition of conflict of interest. In case law it is taken that a conflict of interest is present if it concerns a personal interest of such nature that the member of the board can no longer be assumed to fulfil her/his tasks objectively in the best interest of the foundation. A personal interest can be of an indirect nature, for example when dealing with a close relative or with another legal person with which the member of the board is personally involved.

The law is expected to change shortly in this respect. The main rule will be that in case of a conflict of interest, the conflicted member is to refrain from taking part in the deliberations and decision-making on the issue in the board.

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

The articles of the foundation assign the power of decision-making. Therefore, if the articles provide for the possibility of staff participating in decision-making this is possible to the extent laid down in the articles. However, unless they are also a member of the board, they cannot be granted the right to vote in the board.

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?

While the foundation is liable for any legal actions it undertakes, its officers are only liable in some cases. In addition, they may be liable based on tort or criminal law.

Internal liability

The internal liability with respect to the foundation is based on the general provisions of Book 2 of the Dutch Civil Code which are applicable to the foundation. This general provision (article 2:9 DCC) provides that each member of the board has an obligation towards the foundation to properly perform the duties assigned to him. With respect to matters within the competence of one or more board members, each is jointly and severally liable with respect to any shortcoming, unless s/he proves that the shortcoming is not attributable to him and that he has not breached any duty to take measures to prevent the consequences of the shortcoming. It is standard case law that personal liability requires a “serious reproach” (ernstig verwijt) on the part of the director concerned.

Liability for registration

Each board member is jointly and severally liable together with the foundation for any legal act by which he binds the foundation, until the lodging of the initial registration. It is therefore important to register the foundation as soon as possible. This is an external liability, towards third parties.

Liability for annual accounts

If the annual accounts misrepresent the condition of the foundation, board members are jointly and severally liable to third parties for any loss sustained by them as a result of this. This liability only applies in the event of an involuntary liquidation of a foundation that is subject to corporate income tax.

The Second and Third Abuse Act

The Second and Third Abuse Act were enacted in 1987 to prevent abuse of legal entities and to protect creditors. Board members are jointly and severally liable:

- For involuntary liquidation (bankruptcy) of the foundation for the amount of the liabilities to the extent that these cannot be satisfied out of the liquidation of other assets. Liability is only possible if the foundation is subject to corporate income tax. Furthermore, liability is only possible if the board has manifestly performed its duties improperly and it is plausible that this is an important cause of the involuntary liquidation. However, if the board has not complied with the obligations described above under “reporting, accountability, auditing”, it has performed its duties manifestly improperly and it is assumed that this is an important cause of the involuntary liquidation. To escape liability, the board member has to prove that the improper performance has not been attributable to her/him and that s/he has not been negligent in taking measures to prevent the consequences of this.
- For the payment of social security premiums, income taxes, VAT obligations and mandatory contributions to a pension fund, if the foundation is in default of payment of these. Liability is only possible if the foundation is subject to corporate income tax. Furthermore, liability is only possible if the board has manifestly performed its duties improperly. However, if the board has not given proper notice of the inability to pay taxes or premiums, the burden of

proof is reversed. To escape liability, a board member has to prove that the non-notification is not attributable to her/him and that there has not been a manifestly improper performance of these duties.

For the purpose of this legislation, any person who has determined or jointly determined foundation policy as if s/he were a board member shall be treated as a board member.

A board member may be removed by the Court upon the request of the Public Prosecutor's Office or on the application of any interested party if he acts (or fails to act) in breach of the provisions of the law or the articles, or is guilty of mismanagement. An interested party as a rule includes the founder(s), members of the board or other body of the foundation and other persons that are so narrowly involved with the matter at hand that they can be considered to have a justified interest in the outcome of the procedure. This can for example be a former member of the board, when the matter at hand occurred during her/his term.

What is the general standard of diligence for board members? Does your country differentiate between voluntary (unpaid) and paid board members?

Each board member has an obligation towards the foundation to properly perform the duties assigned to her/him. There are no differences between voluntary and paid board members.

With respect to matters within the competence of one or more board members, each is jointly and severally liable with respect to any shortcoming, unless she/he proves that the shortcoming is not attributable to her/him and that she/he has not breached any duty to take measures to prevent the consequences of the shortcoming.

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?

As a matter of mandatory law, the board of directors represents the foundation. The foundation's articles may grant power to represent the foundation to all or certain board members individually or acting jointly, or to persons other than board members.

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

Commercial activities both related and unrelated are allowed provided they are within the objectives of the foundation, as included in the articles of the foundation.

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

There are no restrictions in the legislation in this field. Public-benefit status may be compromised if a foundation is (too much) involved in economic activities. This is a matter of fiscal law.

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

There are no restrictions the law, so yes this is possible. In Dutch law it is not an issue whether this is considered to be an economic activity or not, since foundations are allowed to be economically active.

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?

There or no such restrictions in foundation law.

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

There are no restrictions pertaining to these activities in foundation law, except that they must be compliant with the foundation's objects.

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

There are no restrictions pertaining to these activities in foundation law, except that they must be compliant with the foundation's objects.

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

According to the Dutch Civil Code (Art. 2:293), the articles can only be changed by one of its bodies if the articles so provide. An amendment must be recorded in a notarial deed in order to be valid. The management board must lodge an officially certified copy of this amendment and the amendment articles at the Register of Commerce (Handelsregister).

If the articles do not provide for the possibility of amendment, amendment of the articles is only possible by means of a request for amendment to the District Court (Arrondissementsrechtbank (Art. 2:294)). The court will order an amendment if continuation of the present articles cannot reasonably be wished for at the incorporation of the foundation. The court in that case shall deviate as little as possible from the present articles and has the power to amend the articles as it finds appropriate.

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)

As a rule of default there are no external or public reporting requirements for foundations.

A foundation that is subject to corporate income tax (CIT), will have to file tax returns annually.

A foundation that has an enterprise that must be registered in the Register of Commerce and that has had a net turnover of €6,000,000 in 2 consecutive years, has to draw up and publish its annual accounts and directors' report pertaining thereto, just as commercial companies do. Publication involves lodging of said documents with the Register of Commerce.

Foundations may be subject to similar rules based on sectoral law, e.g. recognised hospitals and housing corporations.

For foundations with public-benefit status, specific requirements apply which will be discussed below in the part on tax law.

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)?

No. See above.

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

If a foundation has a supervisory board, the supervisory board by default has to check the annual accounts. The articles of the foundation may designate the internal control of the annual accounts to another body of the foundation.

If a foundation is subject to the rules pertaining to the annual accounts applicable to companies, the annual accounts and directors' report must be reviewed by an independent expert (*register accountant* or *accountant-administratieconsulent*). The report of the independent expert is published along with the annual accounts.

If a foundation has to return corporate income tax returns, these are reviewed by the relevant tax authorities.

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)?

A foundation that has an enterprise that must be registered in the Register of Commerce and that has had a net turnover of €6,000,000 in 2 consecutive years, has to publish its annual accounts and directors' report pertaining thereto, just as commercial companies do. Publication involves lodging of said documents with the Register of Commerce. These documents are available to the public via the website of the Register of Commerce.

For foundations with public-benefit status, specific requirements apply which will be discussed below in the part on tax law.

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

No. External audit is required only for foundations that have an enterprise that must be registered in the Register of Commerce and that has had a net turnover of €6,000,000 in 2 consecutive years. See above under c).

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

If a foundation's annual accounts are subject to external review, audits must be conducted by a certified accountant (with the qualification of *registered accountant* or *accountant-administratieconsulent*). A foundation may apply Dutch GAAP (Dutch accounting standards), or EU financial reporting standards, or IFRS (International Financial Reporting Standards).

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 (public prosecutor 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

As a matter of default, there is no obligation to file, submit or publish reports. Consequently, they are not generally available for supervisory authorities.

The tax authorities obviously review reports.

c) Are foundations subject to inspection?

- Yes
 No

No, except inspection by tax authorities in specific cases.

Foundations that have enterprise with a mandatory works council are subject to the enquiry procedure and consequently may be subject of a specific enquiry by independent rapporteurs. Most commonly this procedure is applied to companies, but occasionally it is applied to a foundation.

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?

(i) If a foundation is not registered at all: personal liability of its board members as set out above.

(ii) If a foundation is subject to the requirement to publish its annual accounts (see above), failing to comply with proper bookkeeping and failure to comply with the publication of the annual accounts qualify as an economic offence, punishable with a fine or (in theory) imprisonment.

(iii) In case of serious breach of duties, the court may suspend or dismiss directors on request of the public prosecutor or an interested party (see above). Also such directors may be held liable toward the foundation for damages incurred as a result of their breach of duties.

(iv) A foundation that no longer complies with the requirements of public-benefit status may lose that status and be removed from the ANBI-register.

20. When and how does a foundation dissolve?

General provisions exist for the dissolution of all legal entities (Art. 2:19 of the Dutch Civil Code).

Foundations can be dissolved by a resolution of the board, unless the articles of the foundation provide otherwise. It is taken that the board as a rule cannot do so unless there is no prospect that the foundation's purpose can be achieved.

Foundations must be dissolved by the Chamber of Commerce, in case (i) no directors have been registered in the register of commerce for a period of one year or more, or if directors are registered they cannot be reached at their address (and no submission for registration of new directors have been made); and (ii) the foundation cannot be reached at the registered address (and no submission for a new address has been made). These criteria apply cumulatively. For foundations with an enterprise additional criteria apply pertaining to submitting corporate income tax returns and publishing the annual accounts. If two criteria apply the chamber of commerce shall investigate if the foundation is inactive and if it finds that the foundation is inactive, the chamber of commerce shall issue a decision by which the foundation is dissolved. Such decision is subject to review by an administrative court.

A foundation can be dissolved by the court in case it has a purpose and/or activities that are in conflict with the public order, on request by the public prosecutor.

According to article 21 of book 2 of the Dutch Civil Code, the district court may dissolve the foundation at the request of the Public Prosecutor's Office or an interested party, if there are defects

in its formation, if its articles do not comply with the statutory requirements, if it does not fall within the statutory description of its legal type or if the foundation transgresses the prohibitions set out in the Dutch Civil Code for its legal type or acts to a serious degree contrary to its articles.

Furthermore, a foundation may be dissolved by the court if it has no resources to pursue its purpose and there is no prospect that it will obtain sufficient resources in a foreseeable period of time.

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?

Not in the civil law. In tax law spending on office/administration costs over 10% of overall spending may jeopardise public-benefit status. See below.

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

No. However pertaining to foundations with public-benefit status, unlimited accumulation may jeopardise public-benefit status. See below.

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 are recognised as legal persons if they are validly incorporated under the laws of their country of origin. Registration is only required if they have an office or business in the Netherlands. The trust is not a Dutch legal concept as such. The Netherlands is party to the Hague Trust Convention.

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

There are no restrictions in this area.

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

There are no restrictions in this area.

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

There is no legal procedure in this area. However, it is taken as a given that such operations are admissible and can be performed if the foundation qualifies as a company within the meaning of art. 54 TFEU.

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

Exemptions for gift tax and inheritance tax apply only to foundations with public-benefit status (*Algemeen Nut Beogende Instellingen* or “ANBIs”). ANBI's also have a 50% discount for energy tax. These tax breaks also apply to organisations of social benefit (*Sociaal Belang Beogende Instellingen* or “SBBIs”).

In order to qualify as an ANBI, the foundation has to be registered as such by the Dutch internal revenue service. This registration, therefore, is a formal requirement.

Material requirements for ANBI status include:

A) Quantitative public-benefit requirement

In order to obtain the ANBI status, an entity must pursue the public benefit for at least 90% of its activities. For a long time, it was unclear how this should be measured. According to the Supreme Court this should not be based on a purely arithmetic measure such as hours spent on public-benefit activities and other activities (*Hoge Raad*, 8 January 1997 no. 31.591, FED 1997/106). The Supreme Court ruled that different activities and the time spent on those activities might well be weighted differently in order to decide on the amount of public-benefit activities. In 2011, the Ministry of Finance stated that the 90% criterion is not an income criterion (*Tweede Kamer*, 2011–2012, 33 006, no. 6, p. 9). The proportion of the income from commercial activities in relation to the total income is not of relevance. The basis on which it can be decided whether the 90% public-benefit criterion is met, depends on the specific purpose of the entity. As of 2012, the expenditure of the entity is the most important factor. At least 90% of all expenditures must be aimed at the public benefit. According to the Ministry of Finance, the assessment whether the 90% criterion is met, has to be made on a case by case basis and depends on the facts and circumstances (*Tweede Kamer*, 2011–2012, 33 006, no. 6, p. 10).

B) Qualitative public-benefit criterion

The General Tax Act provides (in article 5b AWR) for an exhaustive list of activities which are regarded as public benefit. This list is as follows:

- Welfare
- Culture
- Education, science and research
- Protection of the environment, which includes promoting sustainability
- Health care
- Youth care and elderly care
- Development cooperation
- Animal welfare
- Religion, philosophy and spirituality
- Promoting the democratic legal order
- Social housing
- A combination of these objectives
- Financially or otherwise supporting a public-benefit entity

Please note that this list does not include a “miscellaneous” category. The Dutch legislator is convinced that this list covers all public benefits. Furthermore, sports, amateur art (such as choirs, theatre groups and brass bands), community centres and social housing are not considered to be of public benefit but of social benefit, for which reason the exemption of gift and inheritance tax applies, but the gift deduction does not apply. Political parties are considered to be of public benefit as are labour associations. ANBI status may be denied, however, if the board members are being paid for their work.

C) Cultural ANBIs

As of 2012, ANBIs that are focussed on culture for at least 90%, can request a registration as “cultural ANBIs” (article 5b AWR). Such ANBIs are entitled to more tax incentives than other ANBIs. This was seen as a sort of compensation for the harsh cuts on direct subsidies for cultural institutions and the abolishment of the reduced VAT rate for performing arts. It is not quite clear what “culture” means in this respect. According to the Ministry of Finance, this should be interpreted as high-quality culture which is accessible for as many people as possible (*Tweede Kamer*, 2011–2012, 33 006, no. 6, p. 21-22). A cultural entity is, according to the Ministry of Finance an entity whose activities, based on its regulations and actual activities, for at least 90% aim to realise publicly accessible cultural facilities, to spread culture or to maintain culture (*Tweede Kamer*, 2011-2012, 33006, no. G, p. 10). Membership of a professional association and receiving direct subsidies seem to be indications that the entity falls under the Ministry’s definition of a cultural entity.

D) Integrity requirement

An entity cannot become or remain an ANBI if a Dutch court has convicted the entity, a board member, a person who in fact manages the entity or a person who is vital to the image of the entity, for crimes mentioned in art. 67(1) of the Dutch Criminal Code, including inciting hatred, violence, or the use of violence (article 5b AWR), if:

- (i) These crimes are committed in the capacity as board member, or a person who in fact manages the entity or of a person who is vital to the image of the entity
- (ii) The conviction took place within the previous four years
- (iii) These crimes constitute a grave infraction against the legal order

E) Formal requirement: registration

An entity has to be registered by the Dutch tax authorities in order to qualify as an ANBI (article 5b AWR). Therefore, even if an entity meets all material conditions but the tax authorities did not register the entity as an ANBI, it is not an ANBI for Dutch tax purposes. Entities have to apply for registration through a simple administrative procedure. The tax authorities decide on the request by a formal decision against which an objection may be lodged. If the tax authorities decide negatively on the objection, the entity can go to court. Whether an entity is a registered ANBI can be checked on a [public website of the tax authorities](#).

Once an entity has been registered, it only has to provide information to the tax authorities on request. There is no yearly obligation to spontaneously send information, such as accounts, to the tax authorities. However, as of 1 January 2014 the ANBI is obliged to post certain information on a website (see below) and to report this website to the tax authorities. This website is stated on the public website of the tax authorities on all ANBIs.

Renewal of the registration is not necessary. As long as the tax authorities do not decide to deregister the ANBI because it no longer meets the requirements, the entity keeps its registration. There is no fixed time limit. The tax authorities decide on deregistration of an entity by a formal decision as well. The entity has the right to lodge an objection to this decision and can go to court.

F) Additional requirements in ministerial regulation

In order to become and to remain an ANBI, an entity must meet several additional requirements which are not included in the legislation, but which are laid down by ministerial regulation (article 1a-1f *Uitvoeringsregeling AWR*). These requirements are as of 1 January 2014:

- It should follow from the regulations and the actual activities of the entity that it does not pursue profit with its public-benefit activities.

- It should follow from the regulations and the actual activities of the entity that it pursues the public benefit for at least 90%.
- It should follow from the regulations and the actual activities of the entity that no natural person or legal entity can have control over the assets of the entity as if it were their own capital.
- The entity is not allowed to have more assets than reasonably necessary for the continuity of the activities of the entity. Endowments should be dealt with in accordance with the wishes of the founder.
- The members of the ultimate policymaking body are only entitled to receive an allowance for expenses and a reasonable fee for attendance.
- The entity must have a current policy plan which gives an insight into the foundation's activities, the way it raises and administers its funds and the way it spends its funds.
- Costs of fundraising and administration should be in reasonable proportion to the charitable expenditures ("reasonable" is not defined).
- It should follow from the regulations that when the entity is dissolved all proceeds from liquidation must be paid to an ANBI with a similar object.
- The books and records of the charitable institution must clearly state the allowances of each member of the policymaking board, the fundraising and administrative costs, the nature and the amount of income and the possessions of the entity.
- As of 1 January 2014, the entity publishes certain information regarding the way it functions electronically on a public website, which must contain the following information on the ANBI:
 - The name
 - The legal persons and collaborative partnerships information number (RSIN number) or tax number
 - Address or telephone number or email address
 - The objectives
 - The policy plan
 - The composition of the board and the names of the board members (unless the Revenue Service has granted an exemption because of a real safety risk)
 - The remuneration policy
 - A report of the activities performed
 - A financial report (this must be made public within 6 months after the end of the book year)

G) Commercial activities

The question whether an ANBI is allowed to undertake commercial activities, has led to many discussions in the Netherlands. The legislation does not prohibit commercial activities as such. However, the tax authorities were of the opinion that an ANBI with commercial activities was not pursuing the public benefit. In 2012 the policy regarding ANBIs with commercial activities was eased. The ANBI is allowed to have commercial activities as long as it spends the proceeds from commercial activities "within a reasonable timeframe" for the public benefit.

H) Non-resident and international ANBIs: As of 2008, the requirements for most non-resident entities are the same as for resident entities. Entities that meet all requirements can be registered as a public-benefit entity without any additional requirements if these are resident in the Kingdom of the Netherlands (i.e. the Netherlands and the Caribbean Islands, Aruba, Curaçao and the Dutch part of Saint-Martin) another EU member state or a state designated by the Ministry of Finance. Designated states are all states with which the Netherlands has concluded some kind of agreement or agreements (e.g. a bilateral tax treaty, the Convention on Mutual Administrative Assistance in Tax Matters, or a Tax Information Exchange Agreement) to exchange documents, information and data carriers concerning the personal income tax, corporate income tax and the gift and inheritance tax.

Entities which are not resident in the Kingdom of the Netherlands, another EU member state or a designated state can still obtain the ANBI-status if these meet additional requirements. Such entities

must, on a yearly basis, provide the Dutch tax authorities with information upon which the tax authorities can decide whether the ANBI-requirements are met. The entity must prove that the information provided gives a true and fair view of the actual situation, for example by an auditors' report.

I) Organisations of social benefit – SBBI (*Sociaal Belang Beogende Instellingen*)

In order to qualify as an SBBI the foundation has to meet the following requirements:

- The foundation must pursue a purpose of social benefit, pursuant to its articles or regulations.
- The actual activities of the foundation comply with its objectives.
- The foundation is not subject to corporate income tax or is exempt from corporate income tax.
- The members of the board receive no remuneration but only an expense allowance and/or vacation pay that by social norms is not too high.
- The foundation is located in the EU, the Dutch Caribbean or another designated country.
- The bequest or donation is used to further the purpose of the foundation.

Prior registration as an SBBI is not required. The tax exemption for gift or inheritance tax must be applied for upon submitting the relevant tax form.

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?)

Once a foundation has public-benefit status, that is to say, once it is registered as such in the ANBI-register, it is eligible for tax exemption and donations made to it will be tax deductible on the part of the donor. No further action is required. The Netherlands does not have a yearly approval process, but the tax authorities perform audits of ANBIs in which they check whether the ANBI still meets all requirements. Please note: hereinafter “ANBI” will only be used for entities registered by the Dutch tax authorities. It is not relevant where these entities are resident. In the same vein it is not relevant whether they have charitable status abroad: It is only relevant whether the entity is a registered ANBI in the Netherlands.

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

Such obligations may be part of the conditions under which such funds are obtained.

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

No such obligation exists. A draft law was given in consultation but encountered massive opposition.

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?

No such definition exists in the civil law.

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 of the term public-benefit purpose in tax law. The General Tax Act provides (in article 5b AWR) for an exhaustive list of activities which are regarded to be of public benefit. Please note that even if the activity pursued by the entity is listed in this article, it still has to meet the quantitative public-benefit test. Furthermore, a foundation needs to meet a number of other requirements in order to be eligible for ANBI status. Please see above.

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	X			

disadvantaged persons				
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>				

*Amateur sports is not regarded as being of public benefit, but of social benefit for which not all tax benefits apply (for example: no gift deduction, gifts received are exempt from gift and inheritance tax, but donations by these organisations are not exempt). The same applies, for example, to scouting clubs and amateur choirs and orchestras. These organisations qualify as SBBIs (*Sociaal Belang Beogende Instellingen*), which is also a fiscal qualification, next to ANBI (*Algemeen Nut Beogende Instelling*)

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”?

Already in the 1920s the Supreme Court decided that a “public benefit” does not mean that everybody agrees on it: all public benefits are in fact limited. As long as it is not a private benefit, a limited benefit can be of public benefit. The fact that a foundation de facto has a limited number of beneficiaries (e.g. the combat of a rare disease) is not prohibitive of public-benefit status.

- 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?

In these cases the foundation will not be considered to be of public benefit but of private benefit. However the law for specific purposes grants similar tax benefits such as deductibility of donations.

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.?

Yes. But this applies to any and all foundations.

- 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?

It is a requirement for public-benefit status that the assets that remain after liquidation are transferred to another public-benefit organisation.

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**?

Under civil law remuneration of board members is allowed, provided that the remuneration is reasonable and proportionate. An excessive remuneration is considered to be in violation of the non-distribution constraint.

In tax law it is a different matter. In order to be eligible for ANBI status, it is required that the members of the board receive no remuneration. If the foundation has a two-tier board structure, this criterion applies to the member of the supervisory board, in which case remuneration of the members of the board is not prohibitive of ANBI status.

Members of the “ultimate policymaking body” (the board if a one-tier structure is applied, and the supervisory board if a two-tier structure is applied) are allowed to receive an allowance for expenses and a reasonable fee for attendance. Furthermore, if the members of the ultimate policymaking body perform other activities for the ANBI, such as consultancy activities, it is allowed to provide remuneration for such activities, as long as no remuneration is paid for the activities in the capacity of member of the ultimate policymaking body.

- 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)

In order for a donation to qualify as a deductible gift in the personal income tax (PIT), there must not be a direct return. Both for the personal income tax and the value added tax (VAT) discussions can arise with the tax authorities on whether something is a return which should be taken into account when establishing the amount of the deductible gift or whether VAT is due. When a return is negligible in relation to the amount of the gift, this is usually not a problem (although it can be disputed what can be considered “negligible”). Various ANBIs have come to agreements with tax authorities about the acceptable returns.

- 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?

In civil law there is no specific rule that applies in this respect.

In tax law, in order to obtain or maintain the ANBI status, costs of fundraising and administration should be in reasonable proportion to the charitable expenditures. It is not defined what is “reasonable”, this depends on the characteristics of the specific ANBI.

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

N/A.

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 dependent on details			
The founder retains a beneficial reversionary interest in the capital of a property or other asset for their own continuing use.		x dependent on details			
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 dependent on details			

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.					no one may have control over the assets as if they were their own capital
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 (assuming <10% of the activities)				x (assuming >10% of the activities)

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

There are no civil law regulations or limitations with respect to the asset management of foundations. In order to obtain or maintain the ANBI status, the entity may not have more assets than reasonably necessary for the continuity of the activities of the entity. Endowments should be dealt with in accordance with the wishes of the founder/donor.

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?

According to Article 2:17 of the Dutch Civil Code, a foundation is set up for an indefinite period of time. If the foundation does not have enough equity to exist, it will be dissolved.

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)?

There is no requirement to spend the income within a certain period of time under Dutch civil law.

In order to obtain or maintain the ANBI status, the entity may not have more assets than reasonably necessary for the continuity of the activities of the entity. Furthermore, ANBIs have to spend proceeds from commercial activities “within a reasonable timeframe” for the public benefit. It is not defined what is timeframe is “reasonable”: this depends on the characteristics of the specific ANBI.

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

No, however in order to obtain or maintain the ANBI status, the entity may not have more assets than reasonably necessary for the continuity of the activities of the entity.

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 depends on the purpose and activities		

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

Yes, as long as the activities meet the Dutch public-benefit requirements.

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)?

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

Foundations are not subject to corporate income tax, unless they have an enterprise insofar as they run a business or are in competition with taxable businesses.

If the foundation is subject to corporate income tax, only the profits generated by means of its commercial activities are subject to CIT. All other income is not liable to corporate income tax. For example, investment income of foundations and associations will usually not be liable to tax. Gifts will usually not be regarded as business income, either. Even if an entity is liable to corporate income tax because it carries out business activities, grants and donations will usually not be regarded as business income and will therefore be attributed to the tax free part of the entity.

Cultural ANBIs have the option to be liable to tax over their whole income, including their non-business income. The idea is that if the non-business income is negative, the option for full tax liability enables the entity to reduce its business income. The full tax liability will apply for at least 10 years and can only be terminated every 10 years.

Certain business activities, such as maintaining a designated country estate, pension funds, hospitals, care for elderly people and libraries are exempt. Next to these specific exemptions a general exemption applies. This exemption applies to all associations and foundations (including similar foreign entities which are liable to tax as non-residents). The ANBI status is therefore not necessary for this exemption. The exemption applies if the profit in a year was less than €15,000 or the profit in the year and the 4 preceding years was less than €75,000. It is not relevant whether the exempt profit is used to support public-benefit activities. A foundation or association may request the tax authorities not to apply the exemption. However, this means that the exemption will not apply for at least 5 years. The entity can only terminate this every 5 years.

ANBIs and certain social-benefit entities may deduct a notional amount of costs regarding volunteers. In principle, the minimum wage which should otherwise have been paid had the persons not been volunteers, is deductible. This can be used to reduce the taxable profit of ANBIs that are liable to corporate income tax.

ANBIs which are liable to corporate income tax may deduct income from fundraising activities. Such activities are activities with volunteers such as the sale of goods or providing services at a higher price than the market price or at the market price but at a lower cost because of volunteers and collecting goods if it is made known that the proceeds will be used for the public benefit.

Fundraisers which are not ANBIs and only conduct fundraising activities as mentioned above and which are obliged to transfer all income to an ANBI, may deduct this payment to the ANBI from their profit.

b) Investment income (asset administration)

See above.

Interest from fixed rate bonds

Even if an entity is liable to corporate income tax because it carries out business activities, bonds will usually not be regarded as part of the business and will be attributed to the tax free part of the entity. Investing in property or capital (investment income) will usually not qualify as a business activity, provided that the activities do not entail more than regular asset management as performed by individuals.

Equities

Even if an entity is liable to corporate income tax because it carries out business activities, grants and donations will usually not be regarded as business income and will therefore be attributed to the tax free part of the entity.

- Income from leasing of a property that belongs to the foundation

Even if an entity is liable to corporate income tax because it carries out business activities, leasing of a property will usually not be regarded as part of the business and will be attributed to the tax free part of the entity. Investing in property or capital (investment income) will usually not qualify as a business activity, provided that the activities do not entail more than regular asset management as performed by individuals.

- c) Economic activities (related/unrelated)

Only business activities are liable to Dutch corporate income tax. However, if the profit is below the thresholds of the general exemption (see above), it will not be taxed. In the Netherlands it is not relevant whether economic activities are related or unrelated, the only relevant question is whether the activities are a business activity.

- Income from running a hospital/museum/opera

Usually running a museum or an opera does not lead to positive income, but if this could be done on a commercial basis, it would probably be taxable. An exemption applies for hospitals.

- 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)

Not if the activities do not entail more than regular asset management as performed by individuals. However, the tax authorities may take the point of view that exploiting intellectual property is a business activity and therefore taxable.

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

The tax authorities might regard the granting of loans, guarantees and equities as business activities if more risks and activities are undertaken than would fall under regular asset management as performed by individuals.

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

Even if the major shareholding could be attributed to a business activity (which seems unlikely), probably the participation exemption would apply.

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

First it must be established whether the entity is liable to corporate income tax and, if this is the case, whether the asset causing the capital gain can be attributed to the business. An example would be a machine used to make goods which the entity sells. If this is the case, the capital gain will be taxable, unless it is a gain on a shareholding qualifying for the participation exemption.

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.

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

No.

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

Dutch real estate transfer tax is levied from the acquirer of real estate at a rate of 2% or 6%. An exemption applies in case of a merger or transfer of tasks between listed public-benefit entities and/or associations with at least 25 members and which are not liable to (including being exempt from) corporate income tax. Commercial factors may not play a part in the merger or transfer. Furthermore, real estate cannot be the only asset acquired, and the acquired real estate must be used for the public-benefit activities. The tax exemption is withdrawn if the acquiring entity ceases to exist within three years after the merger or transfer or is, within that period, no longer a listed public-benefit entity or association with at least 25 members which is not liable to corporate income tax unless this is caused by a subsequent merger or transfer of tasks.

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

Owners and users of real estate have to pay real property tax. The amount of tax is determined by the fair market value for tax purposes (WOZ-waarde) of the real estate.

One of the Dutch environmental taxes is the energy tax. This tax is levied on the use of electricity and gas through the bill of the electricity company. ANBIs and SBBIs can apply for a refund of 50% of the energy tax if certain requirements are met. Clearly, the organisation must have a connection to the gas and/or electricity network. An important requirement is that the organisation must not be an organisation in the field of sports, education or health or a public law company as these entities are compensated for the energy tax through a direct subsidy. The activities of SBBIs must be performed by volunteers in order to qualify for the exemption.

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:

As of 2008, the ANBI requirements for most non-resident entities are the same as for resident entities. Entities that meet all requirements can be registered as a public-benefit entity without any additional requirements if these are resident in the Kingdom of the Netherlands (i.e. the Netherlands and the Caribbean Islands, Aruba, Curaçao and the Dutch part of Saint-Martin) another EU member state or a state designated by the Ministry of Finance. Designated states are all states with which the Netherlands has concluded some kind of agreement or agreements (e.g. a bilateral tax treaty, the Convention on Mutual Administrative Assistance in Tax Matters, or a Tax Information Exchange Agreement) to exchange documents, information and data carriers concerning the personal income tax, corporate income tax and the gift and inheritance tax.

Entities which are not resident in the Kingdom of the Netherlands, another EU member state or a designated state can still obtain the ANBI status if these meet additional requirements. Such entities must, on a yearly basis, provide the Dutch tax authorities with information upon which the tax authorities can decide whether the ANBI requirements are met. The entity must prove that the information provided gives a true and fair view of the actual situation, for example by an auditors' report.

The tax authorities require foreign entities to attach certain documents to their application for the Dutch ANBI status. In this respect the application procedure for foreign ANBIs differs from the procedure for resident ANBIs which do not have to attach documents to their application, but only have to provide these upon request. Furthermore, unlike the application form for resident entities, the application form for non-resident entities is not posted on the website of the tax authorities. These procedural differences are not made in legislation but are introduced by the tax authorities. Therefore, the documents which have to be provided might vary depending on the moment the application is filed and maybe even depending on the tax inspector handling the application as it is not clear whether there is a standard form for the application of foreign charities. Documentation that is known to have been requested includes:

- The articles: If these are not in English, German or Dutch, a translation must be provided.
- A copy of a statement of the tax authorities of the country of residence and a copy of the registration with the Chamber of Commerce in the resident country. This requirement is based on the way Dutch foundations are registered. This may – of course – differ very much

from how this is done in other countries. For example, not all countries require a tax registration of charities. In practice, the tax authorities accept other proof of registration if the procedure in the other country is explained.

- A copy of the most recent accounts.
- A list with names and addresses of the board members.
- A copy of the passport of the person filing the request.
- A copy of the civil law regulations on which the incorporation of the entity was based (this was only required on one occasion, in which a link to the website on which the legislation was placed, sufficed).

The form only requires a translation of the articles if these are not in English, German or Dutch.

- 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

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

22. 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?

The Netherlands only has a dividend withholding tax. If the dividend would be exempt under the participation exemption in the corporate income tax or if the entity is resident in an EU or EEA member state and the participation exemption would apply had it been resident in the Netherlands, no dividend withholding tax has to be withheld. If the entity is resident in the Netherlands and is exempt from corporate income tax, or if it is an EU or EEA resident but had been exempt had it been resident in the Netherlands, the entity can request a refund of dividend withholding tax. Furthermore, under some double tax treaties charities might be specifically addressed (for example, the Netherlands-US tax treaty).

III. Tax treatment of donors of foundations

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

Tax deduction.

2. Tax treatment of individual donors

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

The personal income tax distinguishes between periodic gifts and other gifts. Periodic gifts are gifts which the donor is, by notarial or private gift deed, obliged to pay annually during at least five years while he is alive. These gifts are fully deductible without a threshold and up to 100% of the income of a certain year. If the periodic gift exceeds the income of a certain year, the remainder can be deducted in a following year. All other gifts taken together in a year are deductible up to 10% of the gross income. No deduction is possible for the total of other gifts below the highest of either 1% of the gross income or € 60.

Gifts to cultural entities can be taken into account for 125%. For example, if a person gives €1,000 to a cultural entity, s/he can deduct €1,250. If s/he is in the top tax bracket of 52% (which is already reached at an income of over €56,000), the tax benefit is €650. The person only pays 35% of the gift. The maximum additional deduction is €1,250. This means that the maximum effect of the multiplier is reached if the total amount of gifts to cultural ANBIs is €5,000 per year, resulting in a deduction of €6,250. This temporal multiplier is introduced to help cultural ANBIs.

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

In principle all assets can qualify. Also volunteer labour can under certain conditions qualify as a deductible gift.

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?

Expenditures with a business reason are, as a basic principle, fully deductible in the Netherlands. In general, sponsoring and corporate patronage should be deductible as regular business costs. Companies will almost always have a business reason for supporting ANBIs: This can just be improving the corporate image both internally and externally.

However, the Dutch corporate income tax does provide for a possibility to deduct gifts. Gifts are deductible up to a maximum of 50% of the profit with a maximum of €100,000.

Gifts to cultural entities can be taken into account for 150%. However, the maximum additional deduction is €2,500.

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

In principle all assets can qualify.

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

Yes, provided that these foundations are registered as an ANBI with the Dutch tax authorities.

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?

N/A

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

The donation must be given to an ANBI registered in the Netherlands. For periodic gifts a notarial or private deed evidencing the gift must be available and for other gifts written proof of the gifts (such as bank statements) should be available. Only upon request of the tax authorities must such information be provided.

- 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?**

No.

- 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 specific rules apply. Please see the answers to former question.

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?

Gifts received from an ANBI registered in the Netherlands are exempt from gift and inheritance tax. Gifts received from SBBIs are not 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?

Gifts received from an ANBI registered in the Netherlands are exempt from gift and inheritance tax. Gifts received from SBBIs are not exempt.

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

Dutch gift and inheritance tax is levied only if the donor or deceased is resident of the Netherlands. The nationality or residence of the beneficiary is irrelevant for Dutch gift and inheritance tax purposes.

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)?**

Dutch gift and inheritance tax is levied from the beneficiary. If the beneficiary is an ANBI or SBBI registered in the Netherlands no gift and inheritance tax is due.

- 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?**

If the beneficiary is an ANBI registered in the Netherlands no gift and inheritance tax is due. If the ANBI is not registered in the Netherlands the regular rates for third parties apply: in 2020, 30% for gifts up to €126,723 and 40% for the remainder.

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

If the beneficiary is an ANBI registered in the Netherlands no gift and inheritance tax is due. If the PBO is not registered in the Netherlands the regular rates for third parties apply: in 2020, 30% for gifts up to €126,723 and 40% for the remainder. A general exemption of €2,208 (2020) applies.

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

Yes, the deceased's descendants (children or – if the children are already deceased – their children) are entitled to inherit a so called “legitimate” or “reserved” portion. This amounts to half of the value of the default share of the heir in the estate.

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

If the non-resident public-benefit foundation is an ANBI registered in the Netherlands, the legacy is exempt. Otherwise the regular rates for third parties apply: In 2020, 30% for legacies up to €126,723 and 40% for the remainder. A general exemption of €2,208 (2020) applies.

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?

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

No data available.

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

Foundations are subject to the obligation to identify their UBOs and have those registered in the UBO register held by the Chamber of Commerce.

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

Yes, the same definition as applies to other legal entities.

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?

The UBO register is a separate register, held by the Chamber of Commerce.

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

Certain amendments are pending that will introduce i) legal provisions concerning a one-tier board structure in a foundation and ii) conflict of interest provisions applicable to foundations.

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?

No specific discussions at the moment.

c) Tendency towards more transparency requirements?

The discussion on whether or not foundations should be obliged to lodge their annual accounts is still alive, also in parliament.

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

In the Netherlands in many sectors including fundraising, self-regulation is well developed and stimulated by government. There are no changes in this area.

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

Perhaps a tendency is that crowdfunding for specific individual cases seems to be increasing.

f) Other?

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

There are no specific laws, except that selling goods or services by telephone while suggesting that (part of) the proceeds shall be designated for a charitable or ideal purpose, is a criminal offence (art. 435e Dutch Criminal Code). Also door-to-door solicitations and solicitations in public places are subject to prior licencing.

VII. Further information

Useful contacts

Vereniging Fondsen in Nederland (FIN), Koninginnegracht 15, 2514 AB Den Haag
info@fondseninederland.nl

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Selected law texts online

- All national legislation can be found on www.wetten.nl (in Dutch only).

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
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