

2020

Legal Environment for Philanthropy in Europe

Poland

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?

There is no explicit legal definition of a foundation in Polish law. Foundations are understood as assets dedicated to some social cause and registered as a foundation. Foundations in Poland can be established only with the aim of serving a public-benefit purpose: Foundations can be set up “to pursue socially or economically useful objectives that are consonant with the basic interests of the Republic of Poland; in particular, such objectives as health protection, advancement of the economy and of science, education, literacy, culture, art, social services, and environmental protection, and the protection of historical landmarks.”

The basic act that regulates the principles for the establishment and operation of foundations is the Law on Foundations, which is part of the administrative law. Almost all foundations, those formed by individuals, companies, and families, are ruled by this law. In the case of foundations set up by the church there are some exceptions from general regulations e.g. there is a different mechanism for supervision.

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?

A foundation may be formed by Polish citizens or foreigners. Foundations may also be formed by legal persons, foreign or domestic. A foundation formed under Polish law, must be based in Poland. Foundations may be established through a notarised document expressing the wish of a founder to form a foundation, or via a will. The statutes should indicate the purpose of the foundation and the nature of the assets earmarked for accomplishing that purpose (money, securities, and the movable property and real estate donated to the foundation).

In order to register a foundation, the founder should submit to the appropriate regional Registration Court the notarial act and the statutes of the foundation and provide the following information:

- The name, address, assets, purposes, principles, forms and scope of activity of the foundation
- The composition and organisational structure of governing board (and other organs), and the procedure for appointing members of that body, as well as the scope of their authority
- The appropriate minister relevant to the purposes of the foundation, who will supervise the foundation and the appropriate regional public official (*starosta*) (in the statutes or in a separate declaration)
- The statutes may also contain other provisions, in particular those concerning the foundation's conduct of economic activity, the admissibility and terms of its linkage with another foundation, any changes to its objectives, and any amendments to the statutes, and it may also provide for the establishment of other foundation bodies in addition to the governing board.

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.

The registration fee is approximately €100. The court makes the decision on the foundation's registration no later than 14 days following submission of the application. It may refuse registration if the purpose and the statutes do not include all the obligatory elements demanded by the law or on formal grounds (e.g. lack of some documents). According to the law, foundations can be set up with a purpose that is socially or economically useful and consistent with the basic interest of the state. There was one case in which the Court did not find that supporting transgender people was in line with this provision and did not register the foundation. However, it is rather a single case that does not influence the case law. The founder may appeal the court's decision. Once the decision to register the foundation is made, the foundation receives a registration number and may officially operate.

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

Generally not. A foundation is registered by the Registry Court which checks if its statutes conform to the law. The permit of the minister relevant to the purposes of the foundation is necessary only in cases where a foreign foundation establishes its representative office in Poland.

5. Are foundations required to register?

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

- Company register - yes, if the foundations runs an economic activity
- 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?

Composition of the governing board and the supervisory board, dates of all amendments in the statutes, numbers of the paragraphs that have been changed, information on when the financial reports have been submitted, information whether the organisation runs economic activity and the scope, and information on whether the foundation has public-benefit status.

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:

There is a very low amount of assets required for setting up a foundation (~ €200). For this reason, a vast majority of Polish foundations do not have an endowment and are used as a vehicle for collecting external funding for their activities.

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

No requirement to maintain the assets, spend-down foundations are allowed.

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 - only obligatory for foundations that are public benefit organizations.
- 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?

No number specified.

Does the law regulate the appointment of board members and their resignation/removal or can this be designed in the statutes/bylaws?

No, this can be designed in the statutes.

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

There is no general standard of scope of duties for 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 law does not regulate this issue. This can be designed in the statutes.

Can fundamental decisions, such as change of purpose, be made at the discretion of the founder?

Yes but this should be regulated in the statutes. The law does not regulate this issue.

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?

The law does not explicitly regulate these issues. This can be designed in the statutes.

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

The rights of beneficiaries are not regulated by the law. However, their right to information is secured by the general obligation of the foundation to produce and make public an annual narrative and financial reports on their activity.

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?

There is no legal definition of a conflict of interest in Polish legislation except for the conflict of interest policy described in the Act on Public Benefit Activity and Voluntarism which applies only to public-benefit organisations. This act requires an independent supervisory body, separate from the management body. The members of such an audit or supervisory body shall not be members of the management body. Furthermore, they shall not be spouses, relations, next of kin, or employment subordinates of members of the management body.

Also, Article 20, paragraph 6 a-d, of the Act on Public Benefit Activity and Voluntarism bans a public benefit foundation from:

- Issuing loans or pledging an organisation's property to cover any financial liabilities of its members, members of its governing bodies, employees, or their spouses, or relatives with whom they have lineal consanguinity or affinity or collateral consanguinity or affinity, or individuals linked to them through adoption, guardianship, or ad hoc guardianship, all of whom are jointly referred to as "close relatives".

- The transfer of the organisation's property to its members, members of its governing bodies, employees, or their close relatives under terms and conditions other than those applying to unrelated third parties, in particular if such transfer is free of charge or under preferential terms.
- The use of the organisation's property for the benefit of its members, members of its governing bodies, employees, or their next of kin under terms and conditions other than those applying to unrelated third parties, unless such use stems directly from the statutory objectives of the organisation.
- The purchase under special terms of goods or services from entities in whose operations the organisation's members, members of its governing bodies, employees, or their close relatives take part.

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

Participation of the staff in decision-making is not regulated by the law but is left to the discretion of the statutes and organisational culture of a given 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?

Generally, there is no general standard of scope of diligence of board members except for public-benefit organisations. In the case of foundations that are public-benefit organisations, board members should perform their duties in line with business standards of such work if they are paid and duty of care if they work for free.

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

Yes, as specified above.

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

The other members of the board, the founder/s, the public authorities.

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

The Law on Foundations specifies only that the governing board of the foundation directs its activities and represents it towards third parties. The rights and duties of its members must be specified in the foundation's statutes. The statutes decide who has the legal power to represent the foundation (e.g. joint action of two members or one member of the governing board or a proxy appointed by the governing board shall be required to represent the foundation both in court and out of court). The board may delegate certain powers, including direct management, to the CEO of the foundation.

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

Yes, both related and unrelated economic activities are allowed, but a minimum capital of 1,000 PLN (€240) is required.

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

There is no such legal or fiscal framework.

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?

Yes.

Are there any limitations to voting rights?

No.

Is this considered as an economic activity?

No.

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?

Foundations may invest the assets designated for their statutory activity in certain financial instruments without losing tax benefits. Specifically, the foundation may invest its assets in bank deposits, state and local government bonds and obligations, investment fund units and, with the help of professional asset managers, in other financial instruments such as shares and private equity. Shareholding and major shareholding, as well as alternative investments, hedge funds and private equity are allowed.

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 may invest funds in certain categories of assets (as described in the answer to previous question). Therefore, impact investing is possible.

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

The field of advocacy is not regulated. There is a law on lobbying, but it does not specify advocacy and therefore it does not seem appropriate for advocacy work.

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

A foundation's statutes must specify how the statutes can be amended. The foundation must inform the court about any changes in its governing statutes as well as in its registration information. These changes are also entered in the register.

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)?

A foundation is required to submit a detailed annual report to the minister relevant to the purpose of the foundation. It contains information on activities and financial data.

An annual financial report should also be submitted together with the annual tax report, to the fiscal authorities.

In the case of a foundation that runs economic activity, the financial information must be sent to a registry of enterprises.

Furthermore, foundations that are public-benefit organisations are required to submit a narrative and financial report to the Minister of Social Policy and to report on the public-benefit work performed during the reporting period and on the disbursement of funds received as 1% of personal income tax.

A foundation that runs street collections must provide a detailed report on expenditure of the money raised to the Ministry of Interior.

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

Once a foundation is registered, it is a minister who supervises the operations of the foundation. This is generally the same minister indicated by the foundation in its statutes or declaration submitted with the application. Typically, it is the minister whose competencies come closest to the purposes of the foundation. If the foundation has a limited geographical scope of operation, the court notifies the appropriate regional public official (*starosta*) to substitute for the minister with respect to supervisory authority.

The operation of a public-benefit foundation is also supervised by the minister responsible for social policy. The minister may delegate their powers of supervision to the relevant governor (*wojewoda*) for the geographical scope of the foundation's operation.

The foundation is subject to fiscal control by tax authorities.

A foundation that receives public funding might be controlled by the National Chamber of Control or the regional audit chambers.

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

The foundation must make public its annual report either on its website or in its headquarters and it should make it available upon request of an individual or institution.

In the case of public-benefit foundations, the Ministry of Social Policy posts the annual report submitted in line with the ministry's requirements on its website.

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

External audit is required by law in two cases:

- When a foundation employs at least 50 employees, has a total income of over €5 million and/or total assets of at least €2.5 million (two out of the three conditions must apply).
- When a foundation of public-benefit status that has a total annual income of at least 3,000,000 PLN (€714,000), receives public funding at the level of a minimum of 50,000 PLN (€12,000) to conduct public tasks commissioned by the state administration.

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

Audits should be undertaken by the external auditor operating in conformance with international and national auditing 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
- 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 the case of foundations, the minister may apply to the court to decide, in non-litigious proceedings, whether the activities of a foundation are consonant with the provisions of the law as well as the organisation's own statutes and the purposes for which it was established.

He may appeal to the court to suspend the implementation of a resolution of a foundation's governing board if it is in glaring contrast with the foundation's purposes, with the provisions of the foundation's statutes, or with the law, and to order that the suspension remain in force until the matter is resolved.

If the actions of a foundation's governing board substantially violate the provisions of the law or of the organisation's statutes, or if they are inconsistent with its purposes, the appropriate minister or *starosta* may designate a suitable time limit for eliminating these shortcomings, or he may demand the replacement of the board within a specified time limit.

If the time limit expires without effect, or if the foundation's governing board persists in acting in a manner that is inconsistent with the laws or with the foundation's statutes or its purposes, the proper minister or *starosta* may request the court to suspend the foundation's governing board and appoint a government administrator. This administrator will represent the foundation in matters concerning its board of governors, including judicial proceedings, and is obligated to perform the duties needed for the proper operation of the foundation.

The proper minister or *starosta* may request the court to dissolve the foundation if the purposes for which the foundation was established are accomplished, or its funds and assets are exhausted and

the foundation's statutes do not provide for its dissolution, or if its related provisions are not executed.

In the case of public-benefit foundations, the minister may exclude a foundation that has failed to submit the required performance reports and financial statements for the year to which the tax return refers from the registry of organisations entitled to appeal for 1% designated income tax donations. The minister may also apply to the Registry Court to delete a public-benefit status from the National Court Register if the foundation refuses to be subject to the inspection by the supervisory authority, fails to remove irregularities identified during an inspection, or if the inspection reveals that the organisation has indulged in a serious breach of the law.

20. When and how does a foundation dissolve?

A foundation is dissolved if its purposes have been achieved or if its financial assets have been exhausted. The foundation's statutes should prescribe the procedure for dissolution. If there is no such prescription in the statutes, or if the statutes are not being followed, the appropriate minister or regional public official can appeal to the court for dissolution. If the statutes do not specify how assets are to be distributed upon dissolution, the court decides on the distribution of these assets to serve purposes similar to those served by the foundation.

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?

No.

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.

In particular, can you accumulate these expenses over a period of time (and if so, what kind of authorisation do you require to do so)?

Yes. No authorisation is required.

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?

Article 19 of the Foundation Law states that foreign foundations may open branches in Poland. This requires the permission of the proper minister with regard to the scope of the foundation's activities.

Foreign foundations can also operate in Poland by establishing foundations under Polish law. Foreign foundations may also give grants without being registered in Poland. They might operate directly from their respective countries if the law in their home countries allows them to make grants abroad. On the recipient side, donations by a foreign foundation are treated in the same way as donations made by a domestic donor.

Article 19 goes on to state:

- Foreign foundations sited abroad may open branch offices on the territory of the Republic of Poland.
- The opening of the branch office referred to in Paragraph I requires a permit, which is tantamount to approval of the commencement of the activities specified in the permit. The permit is granted by the minister proper with regard to the scope of his activities and the purposes for which said branch office is opened.
- The permit may be granted if the opening of the branch office is intended to promote the accomplishment of the objectives referred to in Article 1. If the branch office is also to engage in economic activity, the provisions of Article 5, Paragraph 5, first sentence, apply accordingly.

- The branch office is obligated to adhere to the laws binding on the territory of the Republic of Poland.
- The minister proper with regard to the scope of his activities and the purposes for which the branch office is opened may revoke the permit if the branch office does not adhere to the terms specified in the permit or markedly violates the laws binding on the territory of the Republic of Poland or the interests of the state.
- If the branch office or the foundation it represents impairs the security or other important interests of the state, the proper minister may suspend its permit. Such suspension entails, until a ruling on the revocation of the permit is issued, an immediate cessation of the activities specified in the permit without payment of any compensation therefore.
- Matters concerning the economic activity of the branch office of a foundation are moreover governed by separate regulations governing the conduct of economic activity on the territory of the Republic of Poland by representations of foreign entities.

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 is no limitation. In practice, many foundations conduct activities abroad and enjoy tax privileges.

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

No.

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?

Probably yes but there is no such case yet in Poland.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

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

According to the tax law (Article 17), tax exemptions are available for taxpayers whose activities (as shown in their statutes or articles of incorporation) and include:

- Science and research
- Education, including academic education
- Culture
- Sport and physical exercise
- Environmental protection
- Support of social initiatives for infrastructure development in rural areas (roads, telecommunications and water supply networks)
- Charity
- Health care and social welfare
- Occupational and social rehabilitation of the disabled
- Religion

In the case of foundations that are public-benefit organisations (as defined in the Act on Public Benefit Activity and Voluntarism) their income is tax free as far as it is designated for public-benefit activity within a scope of their statutory activity, excluding economic activity.

In practice, the field of tax exemptions is much safer and broader in the case of foundations that are public-benefit organisations than in the case of foundations that do not have such status.

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 foundation is obliged to submit a financial report and income tax declaration to the revenue office.

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

There are different reporting requirements in specific grant programmes conducted by the public administration.

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

Together with the annual tax return a foundation must submit a list of all corporate and institutional donors (companies, institutions of a legal identity) who in the fiscal year donated a single gift of PLN 15,000 (~ €3,570) or more, or donations and gifts of a total value of PLN 35,000 (€8,330) or more annually. This list including donors' addresses should also be made public by the foundation.

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?

Article 4 of the Act on Public Benefit Activity and Voluntarism gives a catalogue of public-benefit activity areas which include:

- Social assistance, including aid offered to disadvantaged families and individuals, and ensuring equal opportunities to such families and individuals
- Supporting families and foster care
- Free of charge legal aid and civic education
- Support of the integration of foreigners
- Revitalisation
- Professional and social integration and reintegration of persons threatened with social exclusion
- Charity work
- Preserving national traditions, sustaining Polish identity and developing national, civic, and cultural awareness
- Work to support national and ethnic minorities and regional languages
- Protection and promotion of health
- Work to support the disabled
- Promoting employment and professional activation of the unemployed and individuals threatened with job loss
- Promoting equal rights of women and men
- Work to support the elderly
- Promotion of economic growth and entrepreneurship
- Promotion of the development of new technologies, inventions and innovation transfer and implementation of new technologies for companies
- Work to support the development of local communities
- Science, education, coaching, and upbringing
- Recreation of children and youth
- Culture, art, and the protection of culture and national heritage; promoting physical culture and sports
- Ecology, animal protection, protection of natural heritage
- Tourism and knowledge touring
- Public order and security
- National defence and the activity of the Armed Forces of the Republic of Poland
- Promoting and protection of human and civil rights and freedoms, work to support the development of democracy
- Rescue systems and protection of residents
- Aid to victims of calamities, natural disasters, armed conflicts and warfare in Poland and abroad
- Promoting and protecting consumer rights
- Work to support European integration, and the development of contacts and cooperation between societies

- Promoting and organising volunteerism
- Aid extended to Poles and the Polish community abroad
- Work to support the veterans and persons who have undergone state repression
- Promotion of the Republic of Poland abroad
- Work to support families, promote motherhood and parenthood and to promote and protect the rights of children
- Prevention of addiction and social pathology
- Work to support non-governmental organisations

Article 20 of the Act on Public Benefit Activity and Voluntarism defines a public-benefit organisation as an organisation whose statutory activity includes public-benefit activity for the benefit of the entire society or of a disadvantaged group (provided that such a group can be distinguished from society due to its difficult living conditions or financial situation) and its status of public-benefit organisation is confirmed by the court. Only public-benefit organisations can benefit from the 1% scheme.

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 not public-benefit purpose definition but there is a list of public-benefit activity areas (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 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> | | | | |

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”?

Yes.

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

No.

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, it does. Since the tax exemption concerns only income spent on purposes defined in corporate tax law, the fiscal office would certainly question such a distribution. Any use of foundation property to support foundation board members, staff, or their kin is explicitly forbidden in the case of foundations that are public-benefit organisations.

- 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?

They are distributed in accordance with the dissolution clause in the foundation's statute. In any case they cannot revert to private ownership. If the statutes do not contain a dissolution clause, the court decides on the distribution of the assets taking into account the purposes of the foundation (the assets must be allocated to an organisation or institution having similar statutory purposes).

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**?

Yes.

If remuneration is allowed, are there any limits in civil law and/or in tax law?

No.

Remuneration of board members is allowed, but if the foundation has public-benefit status there is a limit on the reimbursement for the members of its supervisory organ as follows (Article 20 item 6 c of the Act on Public Benefit Activity and Voluntarism): The members of a foundation's supervision body may, for the performance of duties in such a body, be reimbursed for any reasonably incurred costs, or be remunerated at a rate not exceeding the average remuneration in the business sector.

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

The tax law does not specify this explicitly, but there is a differentiation between donation and sponsorship (the latter being an exchange of services or products).

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

No.

- 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?

Yes.

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

Yes.

If so, is there a minimum length of time for which the foundation must exist?

No.

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

No.

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

No, because there are very few endowed foundations, most are fundraising and grant-seeking.

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?

Yes.

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

Yes.

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

Grants, gifts, and donations are not taxed if spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above, II 1, p. 12), provided these purposes are specified in the foundation's statutes.

- b) Investment income (asset administration)

- Interest from fixed rate bonds
- Equities
- Income from leasing of a property that belongs to the foundation
- Investment income is not taxable, if it is spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above, II 1, p. 12), provided these purposes are specified in the foundation's statutes.

- 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)

Economic activities (related or unrelated) can be undertaken if allowed in the foundation's statutes. Income deriving from economic activities is not taxed, if it is spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above, II 1, p. 12), provided these purposes are specified in the foundation's statutes.

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

Income deriving from economic activities is not taxed, if it is spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above, II 1, p. 12), provided these purposes are specified in the foundation's statutes.

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

No.

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

Generally yes, but foundations are not taxed for this if the this is spent on the purposes defined in the Corporate Income Tax Act, Article 17 (see above, II 1, p. 12), provided these purposes are specified in the foundation's statutes.

Capital gains are liable to 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?

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?

No.

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

There is real property tax for real estate worth more than €2,5 million that is used commercially.

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?) - Yes

- 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? – Probably yes
- Other

The operation of a representative office of a foreign foundation is treated similarly to a domestic foundation with regard to taxes. However, if it carries out an economic activity, it is subject to separate regulations governing the conduct of economic activity on Polish territory by the representatives of foreign entities (Art 19.7, Law on Foundations).

A foreign organisation which derives income from sources located in Poland is in principle considered as a taxpayer of Polish corporate income tax – the same as a domestic organisation. Its tax liability in Poland is, however, limited to income derived from sources located in Poland.

Article 17(1)(4) of Polish CIT Act states that income of taxpayers whose statutory objectives consist of activities in the following fields are fully exempt from corporate income tax::

- Science, technology and education, including tuition of students
- Culture
- Physical education and sports
- Environmental protection
- Supporting public projects in building roads and telecommunication networks and water supply systems in rural areas
- Charity
- Health care and social welfare
- Occupational and social rehabilitation of the disabled
- Religious worship

This exemption also applies to foreign public-benefit organisations/foundations.

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?

Poland has signed a number of bi-lateral tax treaties, however PBOs are not included explicitly.

Treaties can be found on a [the Polish government's website](#).

If foreign public-benefit organisations/foundations benefit from the exemption under Article 17(1)(4) of Polish CIT Act there is no need to resort to a double tax treaty to achieve treaty benefits since any income is exempt from income tax anyway. However if the income is not captured by the exemption on the basis of Article 17(1)(4) of the Polish CIT Act, the income of foreign foundations can be subject to income tax in Poland and in such a case the foundations may need to rely on double tax treaty benefits in order to avoid taxation in Poland.

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?

No.

III. Tax treatment of donors of foundations

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

Tax deduction.

2. Tax treatment of individual donors

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

Donations up to 6% of income before tax are tax-deductible.

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

Donations of cash, shares, securities, real estate and in-kind donations are deductible up to 6% of the taxable base.

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?

Donations up to 10% of the taxable base are deductible.

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

Donations of cash, shares, securities, real estate, and in-kind contributions for public-benefit purposes are deductible from the taxable base for corporate tax up to 10% of the taxable base.

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

Yes, but it is complicated in practice. There is no clear guidance to claim a tax incentive in such a case (see point 7 below).

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 is a 1% system whereby taxpayers can designate 1% of their personal income tax to a public-benefit organisation of their choice, but this is only available for individual taxpayers, not for legal entities.

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)?

In the case of corporate donors the list of donations made in a given year (name of beneficiary institutions, amount of gift, address) must be filed with the annual Corporate Income Tax (CIT) return. The proof of donating funds (copy of bank transfer) must be kept by the donor for up to 5 years in case it is required for tax control.

Individuals must file with their Personal Income Tax filing information on the amount of the donation. The donation can be deducted only if it was made via bank transfer. The statement of a donation's acceptance by the beneficiary is not required. In the case of non-pecuniary donations its transfer must be certified by a document which specifies the value of the gift and acceptance of the gift by the beneficiary.

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

The donor should submit a written statement by the foreign-based organisation that received the donation that, as of the day when the gift was made, it had a status equivalent to a domestic non-profit organisation described in Art 3.2 and 3 of the public-benefit act realising purposes set out in Article 4 of the public-benefit act and conducting public-benefit activity. The foreign-based PBO should therefore provide the donor with such a statement.

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

- Requesting money in public (street, door-to-door) - no
- Via TV and radio campaigns - , if the donation goes to non-profit organisation and it made via bank transfer.
- Via sms - no
- Crowdfunding - if the donation goes to non-profit organisation and it made via bank transfer.

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

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?

If the value (or sum) of grants or in-kind donations from the public-benefit organisation does not exceed 4,902 PLN (€1,200) over the course of 5 years, the recipient is not required to pay tax on the gifts received.

Scholarship grants made by foundations are tax free up to 3,800 PLN (€900) yearly.

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?

There is no such framework.

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

No.

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)?**

There is inheritance tax in Poland but it does not apply to foundations. Transfer of assets from a donor to a foundation in the form of inheritance is not taxed.

- 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?**

N/A

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

N/A

- 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.

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

There is no clear guidance or practice on this issue.

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?

No.

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 - Yes
- Other

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

Foundations are obliged entities if they accept or make cash transfers that are higher than €10,000.

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

No.

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

Yes, there is a BO registry but foundations are not included.

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
- b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?
- c) Tendency towards more transparency requirements?
- d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?

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

Currently there are discussions around whether the concept of a private-benefit foundation should be introduced into Polish law. This has been initiated by a group of entrepreneurs who need a legal succession vehicle for enterprises.

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

Public collections legislation affects all non-profit organisations, including foundations.

VII. Further information

Useful contacts

Julia Kluczyńska, [Polish Donors Forum](#), juliak@forumdarczyncow.pl

Magdalena Pękacka, [Polish Donors Forum](#), magdap@forumdarczyncow.pl

Selected bibliography

[Law Regarding Civil Society Organisations in Poland](#), G Makowski, A. Krajewska

Selected law texts online

[Non-profit law in Poland](#)

[The Capacity of the Nongovernmental Sector in Poland](#)

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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