

2020

Legal Environment for Philanthropy in Europe

Slovakia

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?

According to the law 34/2002 Coll. a foundation is a legal personality (entity) which is defined as a purposeful collection of assets that serves a public-benefit purpose. Slovak jurisdiction recognises only one legal type of foundation – the one described above. All other classifications such as “corporate foundation”, “family foundation”, “community foundation”, “independent foundation” and others that are used in the public domain describe some salient characteristic of the given foundation, but bear no relevance to the law. Every entity that is called a “foundation” is incorporated under the above law and is part of civil law.

2. What purposes can foundations legally pursue?¹

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

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

Procedure: The foundation can be founded by a legal entity or by an individual, single or multiple, by drawing up the foundation’s statutes (foundation charter) signed by all founders. Founding a foundation assumes a provision of initial capital (endowment) with a minimum value of €663 by each and every founder with a total minimum of €6638.

Registration: The foundation is legally constituted on the day of its entry in the register of foundations. The submission for entry in the register of foundations is presented by the Administrator of the foundation in writing and duly notarised. The submission includes the foundation charter (2x), and declaration of honour of the Administrator that the provision of financial capital to the endowment was duly paid. Attached is also a written declaration by the founder(s) about the beneficial owner(s) with the data required by para 3 sec. 4 law 346/2018 Coll. If real estate is provided to the foundation at the founding, an additional declaration by the founder must be attached attesting that an asset in the form of real estate was provided to the foundation. Further, the Administrator’s statement of convictions not older than three months must be attached. If the founder is a foreign legal entity, the submission must also include the registration document from the business/company registry. If the Administrator is a foreign individual, then the long-term residence permit allowing for a long-term residence in the territory of the Slovak Republic must also be attached. The registry of foundations is administered at the Ministry of Interior.

Approval: The procedure for the entry in the Registry commences on the date of the submission. The Administrator shall be notified within 15 days if the documentation is not full or complete and will be asked to complete the documentation. If within 30 days the Ministry does not find a reason for rejecting the entry – such as a) the endowment is not a purposeful collection of assets, b) the purpose of the foundation is not of public benefit, c) the foundation charter does not comply with the law – it will execute the entry of the foundation in the registry and notify the Administrator by sending him/her an original of the foundation charter with the indication of the date of entry in the registry.

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

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

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

5. Are foundations required to register?

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

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

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

- Foundation charter 2x, originals, duly signed and notarised
- Written and duly signed and notarised declaration of payment of mandatory minimal endowment by the founder(s) or written and duly signed and notarised declaration by the founder(s) that real estate is provided as part of the foundation's endowment.
- Written declaration of the founder(s) about the beneficial owner(s) indicating the name, surname, birth identification number, or the date of birth, permanent or other type of residence address, citizenship, type and number of identity document or a group of people who are considered as beneficial owners (Anti-money laundering legislation, law 297/2018 Coll.)
- Official and current appraisal of the real estate value
- Record of the company register if founder is a foreign legal entity
- Long-term residence permit if Administrator is a foreign individual
- Proof of payment of administrative fee of €66
- Name and address of the foundation
- Identification number of organisation
- Legal form of the entity
- The list of information inserted in the registry as defined in the para 3, law 346/2018 Coll.
- Identification data about the individual who is the founder of the foundation that includes the name, surname, date of birth, birth number of other personal identification number, permanent or temporary residence address.
- If the founder is a legal entity then the identification data includes the name or business name, seat address, identification number, identification data about the individual who is the statutory representative or the member of the statutory body of the registered entity that includes: name, surname, date of birth, birth number, permanent residence address, date of becoming the statutory representative or member of the statutory body, and ways of acting on behalf of the registered entity.
- Date of the constituting of the registered entity
- Date of the abolishment of the registered entity and the legal reason for its abolishment
- Date of beginning of liquidation and additional liquidation and the date of ending the liquidation and additional liquidation of the registered entity.

- Name, surname, permanent residence address and the birth number of individual or the business name, seat address, identification number and the statutory body of legal entity that is registered to the registry as the liquidator, with the indication of the ways of acting on behalf of the registered entity. Date of establishment and date of ending of the role. If the liquidator is a legal entity, then the following must also be registered: name, surname, permanent residence address, date of birth and birth number of the individual who acts as the liquidator on behalf of the legal entity.
- Announcement of the bankruptcy procedure and ending of the bankruptcy procedure
- Name and surname, code of the bankruptcy administrator, address of the office of the individual who is the appointed administrator in the bankruptcy procedure. If the appointed administrator is a legal person, then the registry entry includes its business name, seat address, identification number and the code of the administrator.
- Date of the restructuring permit or the date of the settlement, date of ending of these procedures and legal reason for the erasure of the registered entity.
- Data about un-rehabilitated sentences ordered in criminal law procedure against the person that is entered in the registry as well as data about unexecuted sentences applying to its legal successors.

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: €6638

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

Yes, the foundation is required to maintain the minimum assets in its endowment throughout its lifetime.

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

However, the Supervisory Board can be substituted by the Inspector of the foundation in case the total assets of the foundation are less than €165,959.

- 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?

The foundation Governing Board shall consist of at least three members who are individuals who have a full legal capacity. A member of the board cannot be at the same time the Administrator or member of another body of the foundation. A member of the board cannot be a person who is a beneficiary of the financial assets of the foundation. Membership in the Governing Board is not remunerated. Members are entitled to reimbursement of costs incurred in performance of their tasks. The maximum number of members of the Governing Board is not set.

The term of the office is defined in the foundation charter. The first members of the Governing Board are determined by the founder(s) in the Foundation Charter. The Charter may define conditions necessary for membership in the Governing Board.

A vacancy on the Governing Board shall be filled by the board within 60 days after occurrence of the vacancy. A new member shall be elected for the rest of the term of office, or for the next term. If upon occurrence of the vacancy there are fewer than three members of the Governing Board, the Governing Board cannot (except for the election of new members) pass any resolutions until new members are elected.

A proposal to elect and remove members of the Governing Board may be put forward by any member of the board unless otherwise stipulated in the foundation's charter.

An individual shall cease to hold office as a member of the Governing Board upon:

- Expiration of his/her term of office
- The member's written notice of resignation delivered to the Administrator or to the Governing Board
- The member's removal from his/her office by the Governing Board
- The member's death

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

The Governing Board:

- Decides about the abolishment of the foundation, unless the statutes provide otherwise.
- Elects the chairperson, the members of the Governing Board and the inspector and removes them from office, unless the statutes provide otherwise.
- Decides about the Administrator's removal from office if he/she was convicted for criminal charges.
- Decides about changes in the foundation charter, unless prohibited by the foundation charter.
- Appoints the liquidator.
- Approves the foundation's annual budget submitted by the administrator.
- Decides about disposing of the foundation's assets in conformity with the foundation's public-benefit purpose and under the terms and conditions set in the Act and the foundation's charter.
- Decides on any increase in the foundation's endowment and on any changes of its composition. The board is obliged to justify its decisions and shall do so in writing.
- Decides about establishment of the foundation fund and approves the final report or the annual report on the use of the monies deposited in the foundation fund, provided that the foundation fund was established for more than one year or for an indefinite period.
- Determines the Administrator's remuneration.
- Decides about other matters within the meaning and under the terms and conditions laid down in the charter.

The foundation charter defines the procedure of the election of members of the Governing Board election and their terms. The first members are determined by the founder in the foundation charter at the registration.

A vacancy in membership in the Governing Board shall be filled within 60 days by a vote of the members of the Governing Board.

Any member of the board has a right to propose a candidate for election or move to vote for removal from office, unless otherwise stipulated in the charter. Any resolution on the election and removal of the chairperson of the Governing Board shall be valid only if voted for by a majority of all members

of the Governing Board. Should the number of trustees drop below three, the remaining members may take decisions and vote only on filling vacancies in membership in the Board, and not on any other business.

Members of the Governing Board may pass resolutions outside of meetings. In such a case, a draft resolution shall be submitted to individual members for their comments with the deadline by which they are to submit their written positions. Should a member fail to submit her written position within said time limit, it shall be deemed and understood she does not agree with the draft resolution. The Governing Board chairperson shall inform the members of the Governing Board about the results of the voting.

The Governing Board elects the chairperson from among its members. The chairperson shall call and preside over the Governing Board's meetings. The chairperson may appoint any other member of the Governing Board to call and preside over meetings.

- 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?

Founders shall be severally and jointly liable for the fulfilment of duties and obligations contracted by the founders on behalf of the foundation prior to its registration. Any duties and obligations shall pass to the foundation upon its registration unless refused by the foundation within three months on the grounds that assumption of such duties and obligations would be contrary to the public-benefit and benevolent purpose promoted and pursued by the foundation.

The first Administrator shall be appointed by the founders in the statutes upon the foundation's establishment.

The composition of the first Governing Board shall be specified by the founder in the statutes upon the foundation's establishment.

The foundation can be dissolved upon the founders' resolution, or upon their mutual agreement if the Governing Board has not been operational for at least one year.

- 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?

Yes, the Board can amend the foundation charter (statutes) including the purpose of the foundation, unless the charter does not stipulate otherwise.

A default situation based on the stipulations in the Law on Foundations is that the board members have the greatest powers once put in place by the founder(s). The powers of the founders can be strengthened and expanded by the foundation charter only.

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

The foundation can be considered a liable person for the right of information on how it uses its assets in case it meets the criteria for liability according to par.3, Law 211/2000 i.e. if it is established by state government, regional government or local government or if it is established by a liable legal person according to the same law. The right for information does not apply to information that is a subject of privacy protection, banking secrecy, tax secrecy, classified information, copyright and related rights, or information subject to an ongoing inspection by a public authority.

Besides the right of information, there is an obligation of the foundation by the Law on Foundations to prepare and submit its annual report in a structure stipulated by the Law, and to submit its Financial Statement to the Central Registry of Financial Statements, which is publicly accessible.

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

The Law on Foundations prohibits board members, founders, the Administrator or members of other bodies of the foundation and persons that are close to them (spouse, child, sibling or parent) to benefit from financial contributions from the foundation except in situations when the protection of life or aversion of humanitarian crisis is the case.

Beyond this the Act on Foundations does not define a Conflict of Interest policy. The foundation's Governing Board has the right to decide if the Conflict of Interest policy is defined and incorporated into the foundation's internal procedures.

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

The Administrator manages the foundation's activities and operations and acts on its behalf. He/she shall decide about all the foundation's affairs provided that such matters are not reserved for other governing bodies. The position of the foundation's Administrator shall be incompatible with sitting on the foundation's Governing Board or being a member of any other governing body of the foundation. The Administrator may attend the Governing Board's meetings and is entitled to an advisory vote.

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?

Liability of the foundation bodies is not defined in the Law on Foundations. Therefore considerations about liability of the foundation's bodies ensue from the analogies with other similar situations.

The rule on liability differentiates between the liability of the Governing Board and the liability of the Administrator, who is the statutory body of the foundation.

The liability of the Governing Board is internal – towards the founder if the Charter stipulates that – for the due diligence and care regarding the governance of the foundation. However, members of the Governing Board are not liable as individuals because they are not the statutory body. The statutory body of the Foundation is the Administrator, therefore his/her liability is higher. The Governing Board is the highest body of the foundation in the framework of the Law on the Criminal Responsibility of Legal Entities 91/2016 Coll. The law defines situations such as money laundering, organising corruption, receiving bribes, insurance fraud, tax evasion, environmental crimes, etc. that make legal persons liable in the criminal law. In the case of such situations, there is a criminal punishment of the legal entity in the form of its abolishment, confiscation and seizure of its assets and others.

The Administrator is expected to conduct her/his work with duly care.

The Administrator can be held liable for the damages inflicted on the foundation by her/his activity, under the conditions that she/he is the person who caused the damage. The Administrator acts always on behalf of the foundation, so any damages that the foundation inflicts are born by the foundation and not by the Administrator. However, the foundation may hold the Administrator liable for these damages.

The Administrator's liability towards the foundation also depends on the type of contract he/she has with the foundation. Based on this relationship, the Civil Code is applied accordingly.

The Administrator has a duty not to follow the resolutions of the Board or of the Inspector if these resolutions and instructions violate the law.

The foundation shall be liable for its obligations with all its assets (except for the monies deposited in the foundation fund that was established with a purpose to provide humanitarian support to individuals and groups, tailored to individual crises, whose lives are under threat or who are in need of urgent help because of natural disasters).

If the Administrator fails to send to the Ministry the written agreement or decision of the Governing Board on establishment of a foundation fund (within 15 days of the date of its establishment), for the purpose of providing humanitarian support to individuals and groups (tailored to individual crises) whose lives are under threat, or who are in need of urgent help because of natural disasters, the foundation shall be liable for its obligations also with the monies deposited in this foundation fund.

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

No, because board members can only serve in a voluntary capacity. Paid board members are in violation of the Law on Foundations.

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 responsibility for breaches of duties on the side of the foundation if it caused harm or damage to third parties is born by the foundation and if proven that it was caused by the Administrator, the foundation may make claims against the Administrator for the indemnification. However, it must be proven that she/he acted with negligence or with intention. Poor results of the management are not sufficient grounds for indemnification claims. Thus a determination of the person who caused the damage is a necessary condition for further claims for indemnification.

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 Act on Foundations specifies that the Administrator is the foundation's statutory body that can represent the foundation; he/she may manage the foundation's activities and operations and act on its behalf.

Unless otherwise provided by the statutes, the Governing Board may impose limits on the Administrator's power to act on behalf of the foundation. However, such a limitation shall not be applicable to third parties.

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

The foundation cannot engage in commercial activities except for leasing out real estate and organising cultural, educational, and social or sports events, if its assets will be used more efficiently in such a way and if such activities are in accordance with the public-benefit purpose promoted and pursued by 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?

Yes, such allocations can be authorised by the foundation's Governing Board, which has to approve any investments of the foundation. The limitation for funding is that it has to prove its public-benefit purpose, as that is the only purpose in which the foundation may invest its resources. That means that the foundation may provide a grant to a legal entity that conducts economic activities AND public-utility activities, but the contribution/grant/donation may fund only the public-benefit activity.

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, such allocations can be authorised by the foundation's Governing Board, which has to approve any investments of the foundation. However, the law prohibits the foundation to do business activity except for renting its real estate, operating a charitable lottery or organising cultural, educational and sports events under the condition the assets of the foundation will be used more effectively for the public-benefit purposes. Furthermore, the endowment assets cannot be invested as equity stake in a business or used as a guarantee for the liabilities of the foundation or any other third-party liabilities. Endowment assets (cash) can be invested only in classes of investments such as government bonds or T-bills, publicly traded shares, investments in mutual funds, bonds, deposit certificates and real estate.

It is possible to use the assets of the foundation that are not registered as an endowment as equity investments in a business company, but it cannot be a silent partnership arrangement.

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?

The endowment assets cannot be invested as equity stake in a business or used as a guarantee for the liabilities of the foundation or any other third-party liabilities. Endowment assets (cash) can be invested only in classes of investments such as government bonds or T-bills, publicly traded shares, investments in mutual funds, bonds, deposit certificates and real estate. The assets of the foundation that are not registered as an endowment can be invested without any restrictions.

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

Yes, but there are not many impact investment cases yet that would allow this to be defined as a specific field of foundation activity. However, foundations do provide grants to social enterprises and social economy initiatives. It is not clear or known whether foundations provide their resources to equity financing of social enterprises. Technically, as long as it is not endowment funds, it should be possible.

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

Yes the Law on Foundations explicitly prohibits the use of the foundation's assets to finance political parties or political movements' activities or to the benefit of a candidate running for an elected office.

In terms of general lobby/advocacy activities there are no limitations.

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

A resolution of the board is required if the charter does not stipulate otherwise. The change must be submitted to the Registry of Foundations within 15 days since the day when the modification of statutes took place. An amendment to the Foundation Charter needs to be prepared with the notarised signature of the Chairperson of the Board and the Resolution of the Governing Board enacting the change, and then submitted to the Registry of Foundations.

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

After the end of the calendar year the foundation is obliged to prepare an annual report within the time limit specified by the Governing Board or in the statutes, however, not later than by 15 May of the following calendar year. If, after disclosure of the annual report, any facts or circumstances come to light that must be corrected, the foundation is obliged to correct them immediately.

The foundation shall prepare and approve its annual report by 30 June and publish its annual report in the Central Registry of Financial Statements no later than on 15 July of the following year. The foundation shall send the auditor's report for publication in the official Commercial Journal no later than 31 May.

The annual report shall include:

- A summary of activities the foundation was engaged in during the calendar year, and their connection with the public-benefit and benevolent purpose promoted and pursued by the foundation

- Annual accounts, analysis of basic data presented there, and the auditor's report on the annual accounts
- A summary of revenues (income) with specification of their sources and origin
- A list of donors if the value of the gift or contribution from one donor exceeds €338
- A list of individuals and legal entities to whom grants have been awarded by the foundation for furtherance and promotion of a public-benefit purpose for which the foundation was established, as well as information on how the donations have been used
- Total expenses (costs) as itemised according to individual types of activities engaged in during the calendar year and, separately, the administration expenses (costs)
- Any amendments to the statutes and any changes in the composition of its governing bodies during the calendar year
- The Administrator's remuneration for performance of his/her tasks, and remuneration due and payable to members of any other governing body if it was formed under the statutes as appropriate compensation for their work
- A summary of investment activity and of monies deposited in the funds
- Any other information specified by the Governing Board

Public-benefit/activity report

Tax report/tax return

ONLY if the foundation had income that is subject to income tax

Other reports e.g. on 1% schemes

Yes, if the amount received from the percentage designation was higher than €3,230.

Reports on governance changes (e.g. new board members)

In the annual report.

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)?

- Annual financial report/financial accounts shall be electronically submitted to the Central registry of financial statements
- Annual activity report shall be electronically submitted to the Central registry of financial statements – in its public domain
- Tax report/tax return – shall be electronically submitted to the Tax Office
- Reports on governance changes (e.g. new board members) are to be reported In the annual report
- Report on percentage tax designation is submitted to the Official Journal (Gazette)

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

The Law on Foundations stipulates that checking of annual reports by foundations is the responsibility of the Ministry of Interior with the purpose to assess whether the public-benefit purpose is met. If deficiencies are identified, the Ministry shall notify the foundation and ask for their removal. Should the foundation fail to take remedial action, the Ministry will file a petition.

Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court shall in certain circumstances decide to dissolve the foundation and order its liquidation - see below.

The tax report/tax returns are checked by the financial administration.

- 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 annual activity report and the financial statement submitted to the Central registry of financial statements is available in the public domain.

The tax report is not available to the public.

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

An audit report verifying the financial statement and the annual report must be provided when: 1) the foundation's income from public funds including the tax percentage exceeds €200,000 or 2) when all revenues of the foundation for the duration of the reported period exceed €500,000.

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

The Law on Statutory Audit 423/2015 Coll and the Law on Accounting 432/2002 Coll. define the requirements for the audit and the qualifications of a certified auditor – the statutory auditor. It can be either an individual or a company that is listed in the List of Statutory Auditors maintained by the Office of Audit Supervision. The statutory auditor cannot be related to the audited entity by working for it in some other capacity and has to maintain its independent position. The foundation has to compensate the auditor for his/her services.

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

The Tax Authority may inspect the foundation or other authorities related to the Law on the Inspection in Public Administration 431/2002 Coll, Law on Financial Control 150/2001 Coll.

- 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?

There is a range of measures that can be used to enforce compliance. The most severe is the proposal for the abolishing or liquidation of the foundation submitted by the Ministry or other entity that may prove a legitimate interest, in cases where the foundation is in serious or repeated breach of the law. The court decides on the motion.

The less severe measures are fines. Fines are levied in following situations:

- If the foundation does not register its annual report, it can be fined by the ministry up to €1,000
- The fine can be levied up to two years since the information about the violation of the law was obtained but no less than three years after the violation of the duty.
- The fine is payable within 30 days of its terms coming into legal effect.
- The ministry defines an adequate deadline for the annual report to be provided to the registry.

20. When and how does a foundation dissolve?

According to Para 14 of the Law on Foundations, the foundation shall be officially dissolved upon:

- Expiration of the term for which the foundation was set up
- Fulfilment of the public-benefit or benevolent purpose for which it was established
- A decision of the Governing Board to dissolve the foundation
- A court order to dissolve the foundation
- The foundation having been declared bankrupt, or upon dismissal of the bankruptcy petition due to its lack of assets
- A decision of the founders, or upon their mutual agreement, if the Governing Board has not been operational for at least one year

According to Para 15: Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court shall decide to dissolve the foundation and order its liquidation if:

- The foundation's endowment has decreased below the statutory limit
- The foundation has failed to submit its annual report to the public domain of the Register of Foundations within the time limit laid down in the decision to impose a fine (as per Article 36 of the Act on Foundations)
- The foundation's assets were used to finance activities of political parties and political movements, or to support candidates running for election to public office
- Those foundation governing bodies, whose term of office expired more than six months previously, have not been properly elected, or the vacancies have not been filled to give the required number of members
- The foundation has been inactive in furtherance of its purposes for more than one year
- The foundation has been using assets contrary to the Act on Foundations or to its memorandum of association

Upon filing of a petition by the founder, the Ministry, or a person who has duly proved his legitimate interest, the court may order the foundation's dissolution or liquidation if the foundation is otherwise in material or repeated breach of the statutory provisions laid down in the Act on Foundations.

According to Para 16: The foundation ceases to exist by striking the foundation off the Register according to the following:

- Before ceasing the existence, the foundation may be dissolved with or without prior liquidation

Dissolution does not necessarily have to be preceded by liquidation provided that:

- After the foundation is struck off the Register, its assets and liabilities are transferred to another foundation
- The court has dismissed the bankruptcy petition due to the foundation's lack of assets
- At the end of the bankruptcy proceedings, all the foundation's assets have been distributed among its creditors and there is no surplus left

According to Para 17: Dissolution without Liquidation:

- The foundation may merge only with another foundation under a written merger agreement if so permitted by the statutes of both merging foundations.
- The merger agreement must include the names of the parties to the merger and information about assets, liabilities, rights and obligations of the acquired foundation. The merger agreement must be signed by the statutory bodies of both the acquired foundation and the acquiring foundation. The endowment of the foundation that is to acquire the other foundation's assets and assume its liabilities must be increased by the amount of the acquired foundation's endowment.
- An application to strike the acquired foundation off the Register shall be filed by its statutory body, whose signature must be officially verified. The merger agreement, the decision of the Governing Board to dissolve the foundation without liquidation, and the founder's decision to dissolve the foundation (if he/she has so decided) shall be enclosed with the application.
- On the day the acquired foundation is struck off the Register, its assets, as well as its rights, obligations and liabilities shall be transferred to the acquiring foundation.
- In the event of a merger of foundations, their assets shall be transferred to the new foundation that was formed as a result thereof.
- The foundation may be transformed into a non-investment fund, in which case the existing foundation shall be dissolved without prior liquidation if, as of the date of filing the application for striking the foundation off the Register, all statutory requirements prescribed for the establishment of the non-investment fund have been met.
- In the event of transformation, the foundation's endowment shall be transferred to a different foundation or to the municipality in which the former foundation had its principal headquarters.
- The Ministry shall strike the dissolving foundation off the Register and on the same day shall amend the registration details of the foundation that acquired its assets and assumed its obligations.

According to Para 18: Dissolution with prior liquidation:

- The start of the liquidation proceedings shall be entered in the Register. During the liquidation, the foundation will use its name with the reference "in liquidation".
- Upon registration of liquidation in the Register, the powers to act on the foundation's behalf originally vested with the Administrator shall pass to the appointed liquidator entered in the Register.
- Unless provided otherwise, the liquidator shall be appointed by the Governing Board. Should the Governing Board fail to appoint the liquidator without undue delay, he/she shall be appointed by a court of law. Only a natural person can be a liquidator. In the event of a court-ordered liquidation, the liquidator shall be appointed by the court that ordered the liquidation.
- Provisions applicable to liability of the Administrator for the exercise of his/her powers shall apply also mutatis mutandis to the liquidator.
- The liquidator may only carry out activities related to the foundation's liquidation.

- Should the liquidator find out that the foundation is in debt, he/she shall file a petition for bankruptcy without undue delay.
- By the date that liquidation proceedings start, the liquidator shall prepare the liquidation balance sheet and send information about the foundation's assets and liabilities to all members of the Governing Board.
- By the date that liquidation proceedings are completed, the liquidator shall prepare the closing accounts and submit them to the Governing Board for its approval. He/she shall at the same time submit a final report on the liquidation proceedings and a proposal to distribute the liquidation surplus (if any).
- The liquidator is obliged to offer the liquidation surplus to another foundation or to the municipality in which the dissolved foundation had its principal headquarters. The liquidation surplus, if accepted by the municipality, may only be used for public-benefit and benevolent purposes. The property comprised in the foundation's endowment may be offered to another foundation duly registered in accordance with the Act on Foundations.
- Within 30 days after completion of liquidation the liquidator shall file an application to strike the foundation off the Register.
- The liquidator's remuneration shall be determined by the body which appointed him/her.
- The above procedure is followed if the foundation was dissolved through a criminal procedure.

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. Only the Governing Board determines the amount that can be spent on administration on an annual basis.

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, the founder, Ministry or a legal or physical entity with legitimate legal interest may file a petition for dissolution of the foundation if the foundation is not conducting its statutory activity i.e. it does not provide contributions from its assets (financial or non-financial) or it does not administer its assets and assets of its foundation funds for more than a year.

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?

The Slovak law on foundations defines "foreign foundation" as follows:

- A foreign foundation shall be a legal entity with its principal headquarters located in a country other than the Slovak Republic that has a status of a foundation under the laws of the country where its principal headquarters are located.
- The foreign foundation may operate in the Slovak Republic only through its branch under the same terms and conditions and to the same extent as the foundation established thereunder.

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?

Yes, it is allowed. There are no limitations.

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?

No.

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

There exist no general requirements, such as pursuing public-benefit purposes or non-distribution constraints, in order to receive tax exemptions. Tax exemptions are related to the specific taxes and activities, not legal form or public-benefit status.

According to the tax law, a foundation is defined as a not-for-profit organisation pursuing public-benefit activities that is eligible to register as a recipient of a portion of paid income tax (tax designation of 2% of paid income tax of private and legal entities).

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?)

N/A due to the answer above.

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

Some foundations that are liable persons according to the Freedom of Information Act (211/2000) have an obligation to publicise the contracts in the Central Registry of Contracts according to the Decree of government No. 498/2011 about the mandatory publicising of contracts.

Those foundations that are recipients of the percentage tax income higher than €3,319 in a year are obliged to provide a report electronically on the use of these funds to the Official Gazette and ensure its publication before 31 May of the year subsequent to the year when the funds were received.

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

Those foundations that are recipients of the percentage tax income higher than €3,319 in a year are obliged to provide a report electronically on the use of these funds to the Official Gazette and ensure its publication before 31 May of the year subsequent to the year when the funds were received.

Foundations are obliged to specify the following in their annual report that is entered in the public domain of the Central registry of financial statements:

- Identification of each donor who provided to the foundation a gift exceeding €331.
- Overview of beneficiaries (identification of legal entities, individuals) who were given a contribution by the foundation and information on the use of these funds.

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

There is no definition in the civil law. Only enumerative lists in different types of civil law legislation – such as Law on foundations, Law on Non-profit organisations providing general benefit services, Law on the Register of Non-profit Non-governmental organisations, Law on Public Collections and some others. For example, for the purposes of the Act on Foundations, a public-benefit and benevolent purpose shall primarily mean:

- Promotion and protection of spiritual and cultural values
- Exercise and protection of human rights or pursuit and attainment of other humanitarian goals

- Protection and creation of a healthy environment
- Protection of natural values and resources
- Public health protection
- Protection of children's and youth rights
- Development of science
- Education and sports
- Humanitarian aid to individuals and groups (tailored to individual crises) whose lives are under threat, or who are in need of urgent help because of natural disasters

A foundation may also engage in other activities and operations in conformity with its public-benefit and benevolent purposes and in connection with carrying on the activities and operations mentioned above. A foundation's "activities and operations" means:

- Provision of funds and non-monetary means and awarding of grants from the foundation's assets to third parties
- Administration of the foundation's assets, including foundation funds

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.

No. See above. In the Tax Law there is also an enumerative definition of public-benefit purposes in the Income Tax Law specifying the purposes of the percentage tax designation, but these relate only to the purposes of the percentage tax provision and usage.

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 | ? | | | |
| 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 | ? | | | |
| Party political activity | ? | | | |
| 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”?

No.

- 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?

N/A

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. See Answer to questions 8b and 8h.

Foundation law defines reimbursement of board members’ costs and support of board members (see previous section of the profile). There is no constraint as to the staff (stated in the law).

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

The liquidator is obliged to offer the liquidation surplus to another foundation or to the municipality in which the dissolved foundation had its principal headquarters. The liquidation surplus, if accepted by the municipality, may only be used for public-benefit and benevolent purposes. The property comprised in the foundation’s endowment may be offered to another foundation duly registered in accordance with the Act on Foundations.

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**?

No.

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

This is not clear in the law at the moment. The Civil Code specifies that a key characteristic of a gift is that it is gratuitous (non-compensatory) in terms of material value. Whether postcards meet this criterion it is not clear.

- 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?

No. Only the Governing Board determines the amount that can be spent by the foundation on administration on an annual basis.

Please indicate which of the following types of expenditures would/would not be considered as “administration costs”:

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

There is no maximum amount. Slovak law on foundations recognises administration costs which must be recorded separately in the books. These costs may include expenses in connection with:

- Protection and increase of the value of the foundation’s assets
- Promotion of the public-benefit purpose pursued by foundation, or the purpose of the foundation funds

- Operations of the foundation
- Remuneration paid to the Administrator
- Reimbursement of the costs under a separate legal rule
- Wages
- Other costs incurred in connection with other activities carried on by the foundation, and in connection with its operation

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?

According to the Act on Foundations, the amount of registered nominal capital may not be reduced. The rest of the capital may be spent down.

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

No.

- 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?)?

In general no. In specific cases of types of income, yes.

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 as being 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?)?

Concerning the income from tax designation there is a time period of 18-20 months within which foundations shall use this money.

- 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.

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

| | Yes | Probably yes | Unclear | Probably no | No |
|---|-----|--|---------|-------------|----|
| A foundation accumulates its income for 5 years, only in the 6 th year are there distributions for the public-benefit purpose of the foundation. | | X X under the condition that the foundation proves that it properly administers its assets i.e. it excludes the possibility of being inactive for more than 1 year. | | | |

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?

Not relevant given that there is nothing like a public-benefit status in Slovak civil or tax law.

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. What matters is the purpose of the gift.

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

They are not a subject of income tax per se. This means that they cannot be exempt from the income tax (only income that is considered by the tax law as subject of tax, can be exempt from tax). However, if they are provided in connection to business activity, they may become taxable.

That means that if a foundation receives a grant it is not taxed. If a business corporation receives a grant or a donation, it depends whether the purpose of the donation is related to business activity or not. If yes, then it is a taxable income.

b) Investment income (asset administration)

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

Income from investments is tax-exempt, whereas income from the sale of investments is taxed.

Income from equities (dividends) is tax exempt

Income from leasing of a property that belongs to the foundation is also tax exempt.

c) Economic activities (related/unrelated)

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

The foundation cannot engage in commercial economic activities except for leasing out real estate and organising cultural, educational, social or sports events, if its assets will in such a way be used more efficiently and if such activities are in accordance with the public-benefit purpose promoted and pursued by the foundation. These activities are fully tax exempt. If these activities are considered to be entrepreneurial, they are fully taxed.

All unrelated activities are fully taxed. Unrelated economic activities can be carried out only as incidental and as such must meet the defined characteristics of incidental activities. If a foundation carries out economic activities (which are not allowed by the Act of Foundations), it faces a danger of liquidation enforced by the Slovak Ministry of Interior.

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

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

Major shareholding is considered to be an investment and taxed accordingly. If a foundation is a shareholder of a business corporation, the profit share paid out is not subject to tax.

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

Capital gains are taxed at 21%.

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

Significant amendments to the VAT Act came into effect on 1 January 2010.

The VAT registration threshold for taxable entities with their seat, place of business, or permanent establishment in Slovakia, is a turnover of €49,790 for the previous 12 calendar months.

Requirements applicable to private businesses are applied to non-profit organisations as well; there are no advantages or exemptions conferred by their public-benefit purpose or not-for-profit status. However, not-for-profit organisations do not become VAT payers very often because a major part of their income comes from VAT-exempt services or is not subject to VAT at all (such as gifts, grants, subsidies, etc.).

VAT-exempt services include postal services, financial and insurance services, education, radio and TV broadcasting services, and health and social services, as well as lottery services and the transfer and leasing out of real estate. VAT-exempt transactions also include, among other things, services related to sports and physical education provided by not-for-profit entities.

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

Yes.

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)?

Real estate tax: The tax administrator in a given case is the municipality where the real estate is located. Some municipalities exempt foundations from real estate tax, others not.

21. Can a foreign foundation (EU and other) get the same tax benefits as a national foundation according to the wording of the tax law in your country? If yes, under what conditions? If they have to fulfil exactly the same requirements as locally-based public-benefit foundations, please refer to above but indicate which documents need to be provided and translated:

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

A foreign foundation shall be a legal entity with its principal headquarters located in a country other than Slovakia and has foundation status under the laws of the country where its principal headquarters are located.

A foreign foundation may operate in Slovakia only through its branch under the same terms and conditions and to the same extent as a foundation established according the Slovak Act on Foundations.

All unrelated economic activities of public-benefit organisations are fully taxed, therefore, the same principle applies to foreign organisations which need to be registered in Slovakia.

- 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?**
- 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?**

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 deductions for charitable donations are non-existent for individuals and corporations.

In the tax deduction system, corporate and individuals (sole entrepreneurs) donors have a possibility of a tax credit regime for cash contributions that relate to research and development, but not necessarily only to foundations because R&D is primarily in the public and private business sector. A taxpayer may use 200% of its investment into the R&D sector as tax deductible (Section 30b of the Law on Income Tax). The reporting practice for donors is unclear and ambiguous. It can be concluded that the tax system is only partly favourable for making charitable donations.

Donors that are corporations can use the mechanism of the “charitable advertisement” which is a tax deduction from the tax base of 100% up to the ceiling of €20,000 that can be deducted from the income tax if it is provided to a foundation, non-profit organisation or civic association. These funds are also tax exempt on the side of the recipients.

Timeframe and purposes allowed

Funds received under these rules need to be spent (utilised) within one calendar year after the year when they were received. These funds can be used only for the following public-benefit purposes pursued by the above organisations:

- Health protection and support, prevention, treatment, resocialisation of drug addicts
- Support of sports
- Provision of social care
- Cultural heritage protection
- Education support
- Human rights protection
- Environmental protection
- Science and research
- Organising and intermediating of volunteer activities
- As of 25 April 2020 there is an additional purpose: addressing issues related to the Covid-19 pandemic.

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?

Gifts and donations for private individuals as donors are not tax-deductible items.

Individual donors: Sole entrepreneurs (not incorporated) have a possibility of a tax credit regime for cash contributions that relate to research and development, but not necessarily only to foundations because R&D is primarily in the public and private business sector. A taxpayer may claim 200% of its investment into the R&D sector as tax deductible (Section 30b of the Law on Income Tax). The reporting practice for donors is unclear and ambiguous. It can be concluded that the tax system is only partly favourable for making charitable donations.

Individuals as sole entrepreneurs/sole owners can use the mechanism of the “charitable advertisement” which is a tax deduction from the tax base of 100% up to the ceiling of €20,000 that can be deducted from the income tax if it is provided to a foundation, non-profit organisation or civic association.

Provisions under the section “Timeframe and purposes allowed” in answer to Question 1 apply here as well.

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

In the case of donors-individuals as sole entrepreneurs (unincorporated) using the “charitable advertisement” mechanism, it is cash. In the case of deductibility of expenses for R&D, it is cash as well. In the case of 1% matching of the corporate percentage tax designation, it is cash donation as well.

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?

Corporations as donors – have a possibility of a tax credit regime for cash contributions that relate to research and development, but not necessarily only to foundations because R&D is primarily in the public and private business sector. A taxpayer may use 200% of its investment into the R&D sector as tax deductible (Section 30b of the Law on Income Tax). The reporting practice for donors is unclear and ambiguous. It can be concluded that the tax system is only partly favourable for making charitable donations.

Corporations as donors can use the mechanism of the “charitable advertisement” which is a tax deduction from the tax base of 100% up to the ceiling of €20,000 that can be deducted from the income tax if it is provided to a foundation, non-profit organisation or civic association. These funds are also tax exempt on the side of the recipients.

Provisions under the section “Timeframe and purposes allowed” in answer to Question 1 apply here as well.

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

In the case of corporations as donors, when the “charitable advertisement” mechanism is used, it is cash.

In the case of R&D deductibility of expenses, it is cash as well.

In the case of 1% matching of the corporate percentage tax designation, it is cash donation as well.

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

The R&D deductibility applies only to domestic taxpayers on the giving and receiving end.

The “charitable advertisement” mechanism applies to domestic taxpayers on the giving end receiving end.

There are very limited tax credits or deductions in Slovakia. Therefore cross-border charitable donations from Slovakia to recipients abroad have also no fiscal effect for donors, be they individuals or corporations. The existing tax benefits on investments to R&D apply only if the receiving entity conducts activity in Slovakia. Similarly, tax deductibility of the sponsorship gifts for sports activity applies only to tax entities of Slovakia.

Cross-border giving to recipients outside of Slovakia does not bear any tax benefit for donors. Therefore there are no impediments to it and if an individual or corporation decides to provide a cross-border gift, there are no barriers to it and it does not require any specific procedure. There is very little information on this type of giving, if it exists at all. It can be assumed that this is not significant.

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 widely used system of the tax designation that allows any taxpayer, individual or corporate, to designate 1% or 2% (in the case of a corporation, this depends on whether the corporation provides a donation in value equivalent to 1% of its income tax) and 2% or 3% (in the case of an individual, this depends on whether the individual can prove 40 hours of voluntary work for a public-benefit purpose annually) of its paid income tax towards one or more recipients

(foundations, non-profit organisations, civic associations) that are registered in a publicly available list.

This mechanism of tax designation cannot be considered a private philanthropy. However, in the case of corporate taxpayers, it motivates them to donate to non-profit organisations from their private resources because the system includes a condition that if they do make a private donation in the amount of at least 1% of their paid income tax, then they may designate 2% instead of 1% from their paid income tax (Section 50 (1) (b) of the 595/2003 Law on Income Tax). So if a corporation makes a donation at that level (at least 1%), the total contribution to the recipient consists of 1% of charitable donation and 2% of tax designation. If the corporation does not make the minimum donation, it may designate only 1% from its paid tax. It should be noted that the corporation does not receive any tax deduction on the 1% private donation. The tax designation system is widely used (more than 50% of corporate and individual taxpayers use it and more than 30% of all CSOs register for it every year).

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)?

What information do donors have to provide to their tax authority in order 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 e.g. that income was actually spent for public-benefit purposes)?

In the case of the “charitable advertisement” mechanism, it is a [proof of payment to the foundation](#).²

In the case of R&D expenditure, deductibility it is a project description that needs to follow a specific [template](#).

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?

There are very limited tax credits or deductions in Slovakia, Therefore cross-border charitable donations from Slovakia to recipients abroad have also no fiscal effect for donors, be they individuals or corporations. The existing tax benefits on investments to R&D apply only if the receiving entity conducts activity in Slovakia. Similarly, tax deductibility of the sponsorship gifts for sports activity applies only to tax entities in Slovakia.

Cross-border giving to recipients outside of Slovakia does not bear any tax benefit for donors. Therefore there are no impediments to it and if an individual or corporation decides to provide a cross-border gift, there are no barriers to it and it does not require any specific procedure. There is very little information on this type of giving, if it exists at all. It can be assumed that it is not significant.

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.

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?

Receiving a grant/benefit/scholarship from a foundation is normally not subject to tax.

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?

The recipient of a grant is treated differently for tax purposes depending on whether it is an organisation that is established with non-business purposes (such as a foundation, civic association or not-for-profit organisation) or if it is a for-profit company (business).

If the recipient of the grant is a for-profit company:

- It must pay a tax on the received grant if the grant is related to its business and all the expenses covered by this grant can be then treated as a tax-deductible items; or
- The grant is exempt from the tax if the purpose of the gift/grant is for public benefit and all expenses covered from the grant are then treated as non-deductible items.

If the recipient of the grant is a not-for-profit organisation and such a grant enables the organisation to pursue a public-benefit purpose, the grant is tax exempt.

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

Grants and gifts received by individuals from abroad are considered as tax exempt.

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)?**

No. Slovakia does not have inheritance/transfer tax nor gift tax. However, if the asset that was inherited is sold, then the income from that transaction is taxable.

- 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?**

No.

- 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, there is a principle of unavoidable heir, namely the spouse and children. These heirs cannot be avoided by legacy testament.

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

There is no difference to point 4. Example: If the person who makes a testament provides all assets as a legacy gift to a public-benefit entity that is resident or non-resident, it is impossible to execute it without satisfying the lawful claim of unavoidable heirs.

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, there is no discussion about this issue.

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

There are more details required by banks for opening bank accounts.

- 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

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

Yes. Foundations are obliged to provide information about the beneficial owner (BO) [to the Registry authority at the Ministry of Interior](#).

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

Yes. It depends whether the founder of the foundation is a legal personality or an individual. Different information is required in each of these two cases.

If the founder of the foundation is an individual, then the BO is:

- The founder
- Individual who is entitled to appoint or dismiss the statutory body, governing body, supervision body of the foundation or its members.
- Individual who is the statutory representative, governing body or supervising body or member of these bodies.
- Individual who receives at least 25% of funds that the foundation provides in case the future recipients were determined. If future recipients of funds were not determined, the BO is a group of individuals who have a significant benefit from the founding or from the activities of the foundation.

If the founder is a legal entity, then the BO is an:

- Individual who has a direct or indirect share or they have in total at least 25% of voting rights in the legal entity or in its equity (endowment).
- Individual who is entitled to appoint or otherwise constitute or dismiss the statutory body, governing body, supervising body or any of its members.
- Individual who controls the foundation by some other means than those mentioned above.
- Individual who is entitled to economic benefit from at least 25% of the activity of the foundation.

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

Yes, the place where BOs are entered is the Registry of Non-Profit Non-Governmental Organizations.

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?

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

Yes, the Law on Public Collections. It applies to foundations as well in case they collect funds in ways as stipulated by the Law on Public Collections.

VII. Further information

Useful contacts

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- [SUPER ODPOČET výdavkov \(nákladov\) na výskum a vývoj \(R&D\)](#)
- [A K M V advokátska kancelária s.r.o. "Výročná správa nadácie v roku 2019 - do kedy sa predkladá?"](#)

Selected law texts online

- [Law on the Register of Non-Profit Non-Governmental Organizations](#)
- [Income Tax Law](#)
- [Law on foundations](#)
- [Freedom of Information Act](#)
- [Law on Public Collections](#)

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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