

2020

Legal Environment for Philanthropy in Europe

Spain

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?

Foundation Act 50/2002 defines foundations in Article 2.1 as non-profit organisations, whose assets are, according to the wishes of the founders, allocated permanently to the fulfilment of general-interest purposes. The common definition is: “assets serving a general interest purpose”. Art. 34 of the Constitution of 1978 recognises the right to establish a foundation for general-interest purposes.

Foundations that carry out their activities in more than one Autonomous Community, or in an Autonomous Community that lacks specific legislation, are governed by Foundation Act 50/2002. For foundations that operate only in one region, some Autonomous Communities have specific legislation for them.

Foundation Act 50/2002 covers foreign foundations that carry out activities in Spain on a regular basis if they can show that they are correctly constituted according to the law of their country of origin. In addition, these foundations are under the supervision of the state supervisory authorities (Protectorates) on the same terms as Spanish foundations.

In Spain, in accordance with **Law 49/2002**, of December 23, Article 2, in order to be considered a non-profit organisation, and in accordance with Law 49/2002, of December 23, Article 2, the following legal forms fall under the Foundation Act 50/2002:

- Foundation
- Association with social interests
- Delegations of foreign foundations registered in the Registry of Foundations.
- Non-governmental development organisations referred to in Law 23/1998, of July 7, on International Development Cooperation, provided they have any of the legal forms as a Foundation or an Association with social interests
- The Spanish sports federations, the regional territorial sports federations integrated in them, the Spanish Olympic Committee and the Spanish Paralympic Committee
- The federations and associations of the non-profit entities referred to in the article

Moreover, it is necessary to consider that, if the non-profit entities do not meet the requirements in order to apply the special regime, there is a **Regime of partially exempt entities** that is regulated in article 109 of the **Spanish Corporate Tax Law**.

This regime is also applicable to sports federations, professional colleges, unions or business associations, as defined in the Spanish Corporate Tax Law, article 9.3.

Likewise, political parties will be partially exempt from the tax, in the terms established in Organic Law 8/2007, of July 4, on financing of political parties.

Under this **Regime of partially exempt entities** some income will be exempt, according to article 110 Spanish Corporate Tax Law, and the rest will be taxed in the Corporate Tax, in accordance with the Spanish Corporate Tax Law, Article 29.1, at the general rate of 25%.

2. What purposes can foundations legally pursue?¹

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

The foundation must have assets that are allocated permanently to achieve **general-interest purposes** defined by the founder. Foundations cannot pursue any private purpose such as giving benefits to the founder or the founder's family.

At least 70% of the annual income must be used for the public-benefit purposes of the foundation.

According to Art. 2.2 Foundation Act 50/2002, a foundation is governed by its founder's will and its statutes as well as the law.

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?

Both **individuals and legal entities** (public or private) can set up a foundation according to Art. 8 Foundation Act 50/2002. The deed can be inter vivos (notarial deed) or causa mortis (form of a will). This founding document is forwarded to the registration office for approval and registration at national and regional level.

According to Art. 10 Foundation Act 50/2002, the founding document must contain the name and address of the founder, the founder's wish to set up a foundation, the aim of the foundation, a description of the assets of the foundation, the statutes, and the composition of the first board.

According to Art. 4.1 Foundation Act 50/2002, foundations receive legal personality after the public deed of incorporation has been registered in the **Register of Foundations**. The registration authorities have to register the foundation if the legal requirements are met. As stated below, a minimum capital of €30,000 is presumed sufficient to establish a foundation.

Board members are encouraged to register the foundation and the deed of incorporation within six months according to Art. 13 Foundation Act 50/2002. Otherwise, the foundation authorities can start a procedure to nominate new board members.

According to Foundation Act 50/2002, the National Register of Foundations will create a new section that will deal with coordinating the names included in the national and regional registers. For the first time it will include the regulation of public sector foundations.

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

Yes. Foundations are overseen by the **Protectorate, which checks whether foundations are acting in accordance with their statutes and the law**. According to Art. 4.1 Foundation Act 50/2002, foundations receive legal personality after the public deed of incorporation has been registered in the Register of Foundations. The registration authorities must register a foundation if it meets the legal requirements and the Protectorates have entered information in the Register confirming that the foundation conforms to the law.

By virtue of Royal Decree 1066/2015 of 27 November, the single protectorate for foundations under state jurisdiction has been established within the **Ministry of Culture and Sport** (with the exception of banking foundations). Consequently, as of December 2, 2015, communications or requests made in relation to the functions of the Protectorate must be addressed to the Protectorate of Foundations of State Competence of the Ministry of Culture and Sport -Plaza del Rey, 6, 1st floor, 28004.

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.

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)

There is a **National Register of Foundations and regional registers for each autonomous region**. So, foundations must register in the autonomous region where their main activity is pursued, but if it is pursued in more than one region, they should register with the National Register.

In December 2007, Royal Decree 1611/2007 regulating the Register of Foundations of national competence was adopted. It came into force in October 2008.

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

According to Royal Decree 1611/2007, Article 24, the following acts will be registered in the Registry:

- The constitution of the foundation and the successive disbursements of the initial endowment.
- The increase and decrease in the minimum founding capital required.
- The agreement of the foundation Board of Trustees by which the exact number of trustees is determined, when not determined by the foundation statutes.
- The appointment and acceptance, renewal, replacement, suspension and dismissal, for any reason, of the members of the Board of Trustees, or of their positions.
- The general powers and the delegations of powers granted by the Board of Trustees, as well as their modification and revocation. The registration of special powers will be optional for the foundation.
- The creation, modification and suppression of the bodies provided for in section 2 of article 16 of Law 50/2002, as well as the appointment, acceptance, renewal, replacement, suspension and cessation of its members.
- The appointment by the Protectorate of the person or persons who provisionally integrate the governing body and representation of the foundation in the case provided for in article 18.1 of Law 50/2002.
- The appointment of independent experts and account auditors.
- The modification or new wording of the statutes of the foundation.
- The creation or suppression of delegations of foreign foundations and the designation of the representatives of the foundation in them, as well as the powers or faculties conferred on them and their modification or revocation.
- The merger of foundations, whether constituting a new one, or incorporating one into another already constituted, and the termination, where appropriate, of the merged foundations.
- The judicial resolution that, according to article 42 of Law 50/2002, authorises the temporary intervention of the foundation and the assumption by the Protectorate of the statutory powers of the board of trustees, with expression of the fixed term by the judge and, where appropriate, its extension, which may also appear in a preventive annotation.
- The filing of the action of responsibility against all or some employers, when ordered by the judge when admitting the demand, and the judicial resolution that is dictated to the effect that may also be recorded in a preventive annotation.
- The extinction agreement ratified by the Protectorate or, where appropriate, the judicial extinction resolution.

- The liquidation of the foundation, which will include the accreditation of the destination given to the goods and rights.
- Nevertheless, this article provides that other acts would need to be registered in the Registry that Law 50/2002 of December 26, the Regulation of foundations of state competence, this Regulation or other current provisions declare registrable.

For example, regarding this consideration, according to Article 20 Law 50/2002, the governing bodies will promote, under their responsibility, the registration in the name of the foundation of the assets and rights that make up its heritage, and, according to Article 21 Law 50/2002, the disposal, onerous or free, must be registered, as well as the lien of the goods and rights that are part of the endowment, or are directly linked to the fulfilment of the foundational purposes.

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

According to Art. 37 Foundation Act 50/2002 and Article 4, Royal Decree 1611/2007, the **Registries are public**, considering that this publicity does not include any personal data that appears in the documentation of each foundation.

6. Is a minimum founding capital/endowment required?

- No
- Yes, amount:
 - A minimum capital of €30,000 is presumed sufficient to establish a foundation.

Nevertheless, this amount can be increased if the state supervisory authorities for foundations (the Protectorates) deem it necessary in view of a foundation's statutory goals.

If the founder wants to set up a foundation with less capital, he must then prove that this amount is sufficient to pursue its aims.

If the contribution is monetary, it may be made successively; 25% of the initial assets must be paid at the time of establishment, and the remaining 75% must be paid within the following five years.

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

According to article 21 Foundation Act 50/2002, the disposal, onerous or free, as well as the lien of the goods and rights that are part of the endowment, or are directly linked to the fulfilment of the foundational purposes, will require the prior authorisation of the Protectorate, which will be granted if there is just cause duly accredited.

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

a) Is it mandatory to have a:

- Supervisory board
- Governing board

Governance and representation of the foundation is entrusted to a board, which oversees asset management and ensures the fulfilment of the purpose of the foundation.

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

According to article 5 Foundation Act 50/2002, the governing board must consist of at least three members, one of whom they will elect as President if this is not foreseen in the deed of constitution or in the Statutes.

Likewise, the board of trustees shall appoint a Secretary - a position that may be held by a person outside the former, in which case this person will have a voice but not a vote - and who will be responsible for certifying the board of trustees' agreements.

Both individuals, who have full capacity to act, and legal entities, who must designate the person or individuals in order to represent them in the terms established in the statutes, have a right to be board members.

The board members will begin to exercise their functions after having expressly accepted the position in a public document, in a private document with a signature legitimised by a notary, or through an appearance made for this purpose in the Registry of Foundations.

Likewise, acceptance may be carried out before the Board of Trustees, accredited through a certification issued by the Secretary, with a notarised signature.

In any case, the acceptance will be formally notified to the Protectorate, and will be registered in the Registry of Foundations

According to article 18 Foundation Act 50/2002, the replacement of the board members will take place in the manner provided in the statutes. When this is not possible, the Protectorate will be empowered, until the statutory modification occurs, for the appointment of the person or persons who provisionally integrate the governing body and foundation representation.

The causes of termination of board membership are the following:

- Death
- Disability, incapacitation or incompatibility, in accordance with the law
- Termination of the position because of which they were nominated members of the board
- Occupying a seat on the board without the foreseen diligence
- Court decision that the member committed acts contrary to the law or to the bylaws
- Not having asked for the entry of the foundation in the Register of Foundations within six months of the drafting of the founding document
- Ending of a board member's term if he was appointed for a certain period
- Resignation
- Reasons established in the foundation's statutes
- The suspension of the board members may be provisionally agreed by the judge when the action for liability is brought against them.

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

Board members may have their expenses reimbursed. The law also permits remuneration of board members who provide services to the foundation other than those associated with being a board member, as long as:

- 1) The founder has not expressly prohibited it,
- 2) These activities involve a significant contribution, and
- 3) Previous authorisation has been received from the Protectorate.

Board members must carry out the position with the diligence of a loyal representative. They will be jointly accountable for any damages they cause through acts contrary to the law or to the bylaws, or through negligent behaviour.

In addition, board members can designate other persons to act on their behalf for certain purposes, as well as bodies other than the board to undertake specific activities.

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

First, we must say that foundations are governed by the will of the founder, as established in Article 2.2 of Law 50/2002. In addition, the founder can introduce any legal provisions and conditions they wish into the statutes (Article 11.1.f) of Law 50/2002). The founder may also establish a remuneration for employers (Article 15.4 of Act 50/2002) and may prohibit the modification of the statutes (Article 29.1 of Act 50/2002).

Founders may prohibit the amendment of the statutes and the fusion of the foundation at their discretion (art. 29 and 30 Law 50/2002).

- 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?

Foundations must pursue aims of general interest and must always be governed by the will of the founder and the statutes. In this case, the governing body of the foundation is called the Board of Trustees, which will adopt its agreements by majority vote in accordance with the statutes. Specifically, it is responsible for fulfilling the purposes established in the statutes, and there are no other particulars.

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

It is necessary to say that there will be a Registry of Foundations in which all the data and acts related to them will be registered (article 36 of Law 50/2002). Therefore, third parties have free access to all acts of the foundations through the mentioned Register.

- 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?

In Spanish legislation on foundations there is no specific definition of conflicts of interest, but there is a mechanism to avoid them, such as the adoption of agreements by majority vote (art. 14 Law 50/2002).

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

Yes, they can participate in decision-making through the Board of Trustees. This board will be composed of a minimum of three members called trustees who will adopt their agreements by the majority established by the statutes (art. 14 and 15 of Law 50/2002).

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?

Although foundations have limited liability, a debate is still going on as to whether the property of a foundation can be seized. Board members can be held civilly and criminally liable. They will be jointly accountable for any damages they cause through acts contrary to the law or to the bylaws, or through negligent behaviour.

The general standard of diligence for board members is the same standard of diligence applicable as for company administrators ("representante leal"/ loyal representative).

There is a "business judgment rule" by which board members will be exempt from liability if they voted against any agreement causing damage, or if they can prove they were not aware of the agreement, or being aware, tried to prevent the damage.

It is clear and it has been admitted by the doctrine and the case law that the responsibility of the board members is not limited to the repair of the damages caused to the foundation, but extends to those caused to third parties.

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

“Paid board members” are not allowed under Spanish law.

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?

According to Art. 17 Foundation Act 50/2002, the action of responsibility will be filed before the judicial authority and on behalf of the foundation:

- a) By the foundation's own governing board, after a reasoned agreement from the foundation. The employee in question is not allowed to participate.
- b) By the Protectorate.
- c) By dissident or absent board member as well as by the founder when he is not a board member.

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 Board of Trustees is in charge of the governance and representation of the foundation. If the statutes do not forbid it, the governing board can delegate these competences to one or more of its members or create an alternative body.

Nevertheless the following competences will always belong to the Board of Trustees: the approval of the annual accounts, the modification of the statutes, the merger and the liquidation of the foundation and those acts that need the authorisation of the Protectorate. All these actions will have to be registered.

Do the director and officers have powers of representation based on legislation?

As mentioned, the Board of Trustees will represent the foundation in accordance with article 14 of Law 50/2002.

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

Art. 24 Foundation Act 50/2002 permits economic activities as long as they are related to the aim of the foundation or are complementary to it. Competition laws will have to be taken into account.

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?

As established in Article 3.3 of Law 50/2002, in no case may foundations be set up with the main purpose of providing benefits to the founder or the trustees, their spouses or persons linked by a similar relationship, or their relatives up to and including the fourth degree, as well as to individualised legal entities that do not pursue general-interest purposes.

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?

According to Art. 24 Foundation Act 50/2002, Foundations may carry out economic activities whose object is related to the foundational purposes or are complementary or accessory to them, subject to the regulatory rules for the defence of competition.

Foundations can participate in the acquisition or sale of shares and assets in companies as long as they are not personally liable for the social debts, but if a foundation owns a majority of shares in a company it will have to inform the relevant Protectorate.

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

There were innovations in Foundation Act 50/2002 regarding the assets of the foundation composed of goods, rights and obligations liable to economic assessment that are part of the endowment, as well as regarding those received after the establishment, regardless of whether they are part of the endowment.

This is one of the areas where the freedom principle operates more strongly in the new Act. Authorisation by the Protectorate for acts of disposal of property of the endowment or property directly linked to the aims of the foundation is still needed. But, the procedure established is just a communication ex post of acts of disposal that affect goods or rights.

As stated before, foundations can participate in the acquisition or sale of shares and assets in companies, as long as they are not personally liable for the social debts, and, if a foundation owns a majority of shares in a company, it will have to inform the relevant Protectorate. (Art. 24 Foundation Act 50/2002).

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 in Spain can only allocate funds towards the aim of the foundation or complementary to it and any profits generated have to be reinvested in the pursuit of the purposes of the organisation.

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

The tax law for non-profit entities 49/2002 and the Foundation Act 50/2002 do not say anything regarding this issue.

However, the **Regime of partially exempt entities** aforementioned, that is regulated in article 109 of the Spanish Corporate Tax Law, is also applicable to professional colleges.

Likewise, political parties will be partially exempt from the tax, in the terms established in **Organic Law 8/2007, of July 4, on financing of political parties**.

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

According to Art. 29 Foundation Act 50/2002, the board of the foundation can amend the statutes if this is in the interest of the foundation and in line with the will of the founder.

The statutes must be amended when circumstances change in such a way that the foundation cannot achieve its general-interest purpose. The board of the foundation must change the statutes, unless the founder has stipulated the dissolution of the foundation in this specific case. Should the board not act, the supervisory authority will proceed with the necessary amendments.

Any alteration will have to be communicated to the Protectorate and be registered in the Register 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
- Public-benefit/activity report
- Tax report/tax return
- Other reports e.g. on 1% schemes
- Reports on governance changes (e.g. new board members)
- Report on conflict of interest (self-dealing and conflict of interest breach cases)

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

According to article 25 Foundation Act 50/2002, the foundations must keep an orderly and adequate accounting for their activity, which allows a chronological follow-up of the operations carried out.

An annual report will be approved by the foundation's Board of Trustees and must be submitted to the Protectorate. Once the Protectorate has examined and verified their formal correctness, it will deposit them in the Register of Foundations, where it is available to the public.

Foundations must also present annual action plans to the appropriate administrative authority, which outline the activities that are foreseen to pursue the foundation's purpose (article 25.8 Foundation Act 50/2002).

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

As stated, the protectorate, which will ensure the correct exercise of the right of foundation and the legality of the constitution and operation of foundations.

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)?

As stated, once the Protectorate has examined and verified the annual report, it will deposit them in the Register of Foundations.

The annual accounts comprise the balance sheet, the income statement and the activity review, and must be drafted clearly and show the faithful image of the patrimony, the financial situation and the results of the foundation.

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

According to article 25.5 Foundation Act 50/2002, an external audit is required if foundations meet two of the following conditions:

- The total amount of assets is over €2,400,000
- The total net amount of the annual turnover is over €2,400,000
- The average number of working staff is more than 50

In order to simplify the management and accountability of smaller foundations, provided they meet certain requirements, the law authorises them to use an abbreviated formula for accounting and for the annual report.

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

The audit will be contracted and carried out in accordance with the provisions of Law 19/1988, of July 12, on Accounts Auditing, providing the auditors with a minimum period of one month from the time the accounts were delivered to them, to prepare the audit report, which is formulated annually.

According to article 31 of the Foundation Act, the Board of Trustees is responsible for the appointment of an auditor.

The appointment will be carried out before the end of the year to be audited, subject to the contracting periods. Auditors may not be revoked before the end of the period for which they were appointed, unless there is just cause.

Exceptionally, the person in charge of the Registry of foundations under state jurisdiction may, at the request of the Protectorate or of any of the members of the Board of Trustees, appoint an auditor to verify the annual accounts of a given year, in cases where the Board of Trustees, being obliged to appoint an auditor, would not have done so before the end of the year to be audited.

The request for appointment of auditor must include, at least, the following circumstances:

- a) Identification of the applicant.
- b) Denomination and registration identification data of the foundation.
- c) Cause of the request.
- d) Date of the request.

In the case of lack of specific rules, the legal regime of auditors will be governed by the provisions of commercial law.

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:

According to article 21 Foundation Act 50/2002, the disposal, onerous or free, as well as the lien of the goods and rights that are part of the endowment, or are directly linked to the fulfilment of the foundational purposes, will require the prior authorisation of the Protectorate, which will be granted if there is just cause duly accredited.

Other acts of disposition and other issues must also be communicated to the Protectorate, which may exercise the corresponding liability actions against the board members.

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?

According to article 5 Foundation Act 50/2002, any denomination that does not comply with any of the rules established, or if it is established that it coincides or resembles that of a pre-existing entity registered in another public Registry, or with a denomination protected or reserved to other public or private entities by specific legislation, will not be allowed.

According to article 28 of the Foundation Act, if, as a consequence of the verifications, the Protectorate appreciates any breach of the applicable regulations, it will incorporate into the accounts deposited in the registry the observations it deems appropriate.

Nevertheless, the Protectorate is entitled to challenge acts and agreements of the Board that are contrary to the legal or statutory precepts by which the foundation is governed.

Annually, the Protectorate will send to the Ministry of Economy and Finance the nominal relationships of the foundations that have duly complied with the obligation to present the annual accounts and those that have breached said obligation or that have not met the requirements of the protectorate aimed at fulfilment of the obligation to present the mentioned accounts.

20. When and how does a foundation dissolve?

According to Art. 31 Foundation Act 50/2002, foundations may be dissolved if the period for which they were set up has expired, the aim has been fulfilled or it has become impossible to fulfil the aim or another case foreseen in the statutes or the law has occurred. The board may decide upon dissolution.

The Protectorate and in some cases the court will have to approve the dissolution.

Any dissolution must be published in the foundation register.

In case of dissolution, the remaining assets of the foundation must be transferred to foundations or private non-profit entities that pursue general-interest purposes.

Where the statutes of the foundation do not make any provision for the use of the assets in case of dissolution, the Protectorate will decide which foundation will receive the assets.

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?

The limit that can be spent on office/administration costs is regulated by Article 33 of Royal Decree 1337/2005. In this sense, such article establishes that the amount of the expenses directly incurred in the administration of the assets and rights that make up the foundation's patrimony, added to the expenses for which the trustees are entitled to compensation, may not exceed the greater of the following amounts:

- i) 5% of the foundation's own funds.
- ii) 20% of the accounting result corrected by the adjustments established in Article 32.

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)?

Both article 27 of Law 50/2002 and article 3 Law 49/2002 establish that at least 70% of the results of economic operations and income must be allocated to the purposes of the foundation. The rest must also be allocated to increasing the endowment or reserves in accordance with the agreement of the Board of Trustees.

The period for compliance with this obligation will be the period between the beginning of the financial year in which the respective results and income have been obtained and the four years following the end of that financial 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?

Recognition is given to all foundations legally constituted in another country and occasional activities are allowed with no requirements, but permission to regularly operate in Spain requires (Art. 7 FL 50/2002):

- Establishing a formal branch in Spain
- Registration with the competent public body
- Purposes of general interest and fulfilment of legal requirements for foundations

When foreign foundations' sole activity in Spain is fundraising, civil law does not allow formal registration.

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 activities abroad are allowed. There is no limitation.

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

There is no restriction on receiving donations from abroad.

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

First, Article 6 of Law 50/2002 establishes that foundations that carry out their activities in Spain must be domiciled in Spain. It also establishes that foundations that register in Spain to carry out a main activity abroad will have their statutory domicile at the headquarters of the Board of Trustees in Spain.

On the other hand, mergers are allowed by Article 30 of Law 50/2002 and Article 37 of Royal Decree 1337/2005.

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

Basically, registered Spanish foundations, as well as offices of foreign foundations, which are registered in Spain, receive a privileged tax regime upon request if they meet the requirements listed in the Tax Act.

So, foreign foundations can establish a branch in Spain but they need to register. The tax treatment in Spain only applies to the activities of this branch. However, many foreign foundations opt for the creation of a new foundation rather than setting up a branch.

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?)

In this way, and in order to qualify as a non-profit entity under Spanish laws, the following requirements are mandatory by the **Law 49/2002, of December 23, Article 3:**

General interest and social purposes (i.e. education, technological innovation, sports, cultural, health, work...)

At least 70% of the following income must be used for those general and social purposes:

- Income from economic operations
- Income regarding the transfer of assets or rights owned by the foundation (with the exception of those obtained in the onerous transfer of real property in which the activity of its specific object or purpose is carried out)
- Income obtained by any other means, once the expenses incurred are deducted to obtain such results or income. The contributions or donations received as patrimonial endowment at the time of creation or subsequently are not included.

The remaining 30% must be used to increase either the endowment or reserves.

The deadline for complying with this requirement shall be the period between the beginning of the year in which these incomes were obtained and four years following the end of that year.

No economic activity other than its social purposes can be developed. This means that **the net turnover for the year corresponding to all the non-exempt economic activity, which does not correspond with the object or interest, does not exceed 40% of the entity's total revenue.**

For the purposes of this Law, it is considered that non-profit entities develop economic activity when they carry out or participate in the production or distribution of goods or services. Renting of the property assets of the entity does not constitute, for this purpose, commercial exploitation.

Founders, representatives, members of the board of directors and their relatives cannot be beneficiaries of the main activities and cannot benefit from special conditions. Some exceptions apply to scientific research and technological developments.

Members of the Trustee Board (governing and representative body) are not remunerated positions.

Nevertheless, they can be reimbursed for the expenses they incur when carrying out their responsibilities. **Regarding this reimbursement, it is necessary to consider the limits according to the Income Personal Tax. This means the expenses/allowances will be exempt if they are within the limits of the Income Personal Tax regulations.**

In case of dissolution, the assets of the foundation must be allocated in their entirety to a non-profit organisation, according with Law 49/2002, of December 23, Article 16.

Finally, **formal and accounting requirements** are demanded; as the foundations must be registered in the corresponding register, they must fulfil the accounting obligations, prepare an economic memorandum, and submit annual accounts to the Protectorate.

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

If the aforementioned requirements are met, the entity is expected to qualify as a non-profit entity for Spanish purposes and a notification has to be sent to the Spanish Tax Authorities to inform them of the foundation's wish to be under that regime (Form 036).

It is important to bear in mind that this is an optional regime and is not subject to approval of the Spanish Tax Authorities.

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

Yes. Form 182 is the informative declaration that the foundations and associations declared of public utility and any other entity under Law 49/2002 have to file to the Tax Authorities when they receive donations or contributions.

The model must indicate the entity that receives the donations, the donor's information (DNI / CIF, name and surname / company name, postal code), the value of the donation and the deduction to which they are entitled.

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 statutory definition of public-benefit purpose (purpose of general interest, as it is referred to in the Spanish legal framework) either in civil law or in tax law. Case law regarding this issue is not very informative.

The Foundation Act 50/2002 defines what a public-benefit purpose is with an open list of general interest goals that a foundation must pursue:

Foundations will have to pursue general-interest purposes such as, defence of human rights, support for victims of terrorism and violent acts, social assistance and social inclusion, civic, educational, cultural, scientific, sports, sanitary, labour, institutional strengthening, development cooperation, volunteering, promotion of social action, environmental protection, promotion of the social economy, attention to people at risk of exclusion for physical, social or cultural reasons, promotion of constitutional values and defence of democratic principles and tolerance, development of the information society, scientific investigation and technological development (Art. 3.1. Foundation Act 50/2002).

The Spanish regulation of foundations establishes an illustrative open list of possible public-benefit purposes. According to legal scholars, the "general interest purpose" of foundations is only limited by the law (Articles 34 and 22.2, Spanish Constitution) if they pursue purposes categorised as criminal by the penal code. Other authors try to give a positive limit to the concept by saying that "general interest" refers to all purposes aimed at enforcing principles, institutions, and rights included in the Spanish Constitution.

Otherwise legal scholars agree that it is an open concept (concepto jurídico indeterminado) that addresses social needs in a particular moment, so it would change through history depending on what the society understands is a "general interest" issue. Foundations of public-benefit purpose then respond to unsatisfied social demands and take on State responsibilities (subsidiary principle).

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.

See above.

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

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights	X			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	X			
Social welfare, including prevention or relief of poverty	X			
Humanitarian or disaster relief	X			
Development aid and development cooperation	X			
Assistance to refugees or immigrants	X			
Protection of, and support for, children, youth or elderly	X			
Assistance to, or protection of, people with disabilities	X			
Protection of animals	X			
Science, research and innovation	X			
Education and training	X			
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)	X			
Health, well-being and medical care	X			
Consumer protection	X			
Assistance to, or protection of, vulnerable and	X			

disadvantaged persons				
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity		According to article 9.3 of the Spanish Corporate Tax Law, the Regime of partially-exempt entities that is regulated is applicable to sports federations, professional colleges, unions or business associations. Likewise, as defined in the Spanish Corporate Tax Law, article 9.4, political parties will be partially exempt from the tax, in the terms established in Organic Law 8/2007, of July 4, on financing of political parties.		
Advocacy				
Advancement of religion				
<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. The foundation’s purpose must benefit generic groups of individuals. Groups of workers of one or several companies and their relatives are examples of such groups (Art.3.2. Foundation Act 50/2002).

- 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?

Yes, in some cases.

For example, it is considered that the benefit of the employees of a company or the students of the university promote the public at large, but the benefit only for the members of a family does not.

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. According to Art. 3 Law 49/2002 and Art. 27.1 Foundation Act 50/2002, foundations have to dedicate at least 70% of their net income to the pursuit of their general-interest purposes (this percentage includes administration costs) and allocate the rest to increase the endowment or the reserves.

- 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?

According to Art. 33.2 Foundation Act 50/2002 and 3 of the Law 4/2002 in case of dissolution all assets of the foundation being dissolved should be committed to another foundation or general-interest purpose entity (for example: associations or even a public entity with general interest purposes).

The receiving entity should be designated either by the founder through the statutes, or by a decision of the Board of Trustees. If neither option is taken, the Protectorate will make the decision.

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**?

The board members/trustees cannot be paid for being part of the governing board. They can be remunerated for any other professional services provided to the foundation (Art 15.4. Foundation Act 50/2002), as long as:

- The founder has not expressly forbidden it
- These services involve a significant contribution to the foundation
- It has been authorised by the Protectorate

- 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 for non-profit entities 49/2002 provides that the donations and contributions that give the right to deductions must be irrevocable, pure and simple.

- 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”:

Yes. Article 33 of Royal Decree 1337/2005 regulating foundations establishes that “administration costs” should not exceed the higher of the following two figures: either 5% of a foundation’s equity or 20% of its net income.

The administration costs refer to the amount of the expenses directly incurred by the administration of the assets and rights that make up the foundation’s assets, added to the expenses for which the board members have the right to be compensated.

- 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.					
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?

As stated below, a minimum capital of €30,000 is presumed sufficient to establish a foundation. For that reason, the disposal, onerous or free, as well as the lien of the goods and rights that are part of the endowment, or are directly linked to the fulfilment of the foundational purposes, will require the prior authorisation of the Protectorate, which will be granted if there is just cause duly accredited.

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. According to Art. 31 of the Foundation Law, foundations may be dissolved if the period for which they were set up has expired

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)?

Yes, both bodies of law state that foundations must dedicate at least 70% of their net income to pursue their general-interest purpose within a period of 4 years.

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

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?

Article 6 of the Foundation Act only requires that the governing body of foundations registered in Spain that carry out their principal activity abroad must have their statutory address inside Spanish territory.

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)?

Indeed, a PBO can support or give grants to for-profit organisations, regardless of the provision that only donations made in benefit of non-profit organisations established in article 16 Law 49/2002 will have tax incentives.

Furthermore, according to Article 24 of Law 50/2002, PBOs can be shareholders of other companies provided that they are not liable for their debts.

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

According to Art. 6 of Law 49/2002, tax exemption on corporate income tax is granted for income from activities to support the purpose of the foundation and public grants and contributions from corporations to achieve the aim of the foundation (sponsorship agreements are treated like donations).

b) Investment income (asset administration)

Interest from fixed rate bonds

Article 6.2 of Law 49/2002 also states that income from moveable and immovable assets owned by the PBO, such as dividends and capital shares, interests (fixed rate bonds), and rents.

Equities

Article 6.2 of Law 49/2002 also states that income from moveable and immovable assets owned by the PBO, such as dividends and capital shares, interests (fixed rate bonds), and rents.

Income from leasing of a property that belongs to the foundation

Article 6.2 of Law 49/2002, states that the income from real estate (such as leasing properties which belong to the PBO) is exempt from Corporate Income Tax.

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)

In sum, some incomes related to economic activities disclosed in a list. It would be necessary to consult the Law 49/2002.

Because it is a very long list according to Art. 7 Foundation Act 50/2002 the following economic activities are exempted, as long as they are carried out in pursuit of the foundation's purpose:

- Promoting and managing social welfare activities, including activities auxiliary or complementary to these.
- Hospitalisation and health care assistance, including activities auxiliary or complementary to them.
- Scientific research and technological development.
- Activities of goods of cultural interest according to the regulation of the Historical Patrimony of the State and of the Autonomous Communities, as well as of museums, libraries, and centres of documentation.
- Organising musical, choreographic, theatrical, cinematic or circus performances.
- Foundation activities related to parks and other protected natural spaces.
- Education and vocational training.
- Organising exhibitions, conferences, colloquia, courses and seminars.
- Publication and sale of books, magazines, leaflets, audio-visual and multimedia material.
- Economic activities that are merely auxiliary or complementary to tax-exempt economic activities or to activities carried out to fulfil the statutory purpose of the entity. Economic activities will not be considered complementary if their net income exceeds 20% of the total income of the foundation.
- Minor economic activities which generate revenues that do not exceed €20,000.

According to Art. 10, other income derived from non-tax-exempt economic activities will be taxed at a special corporate tax rate of 10% (the general corporate tax rate is 25%).

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

According to article 6 Foundation Act 50/2002, public subsidies are exempt, except those that finance the realisation of non-exempt economic activities.

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

The tax law for non-profit entities 49/2002 does not say anything regarding this issue, except that, according to article 6 Foundation Act 50/2002, incomes arising from real estate such as dividends and company profit shares are exempt.

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

A separate capital gains tax is not levied.

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

This tax is regulated by VAT Act 37/1992.

All operations carried out by businesses are subject to this tax. Nevertheless, Art. 5.1 indicates that persons or entities that exclusively provide goods or services free of charge will not be treated like businesses. This means VAT is not levied on those activities of foundations that are free of charge. This is a general exception, but there are different kinds of exceptions in the regulation of the VAT:

- Exempt activities according to Art. 20.1, 20.1.6 and 20.1.12
- Services provided by entities of social character (Art. 20.1.8 and 20.1.14)
- Activities related to education and training carried out by authorised entities

Foundations are considered to be final consumers unless they carry out economic activities. They cannot claim a VAT refund.

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

No, as stated in Article 5 of Law 19/1991, only individuals are liable to capital tax. Therefore, a public benefit organisation is not subject to capital tax.

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

Foundations that make use of the special fiscal regime established in Title II of the Foundations Tax Act 49/2002 (i.e. foundations that meet the requirements indicated under "Income tax treatment" above) get an automatic exemption from the tax on transfer of assets.

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

The real property tax is a direct, local tax levied on the property value of real estate.

Art. 15.1 of the Foundation Tax Act stipulates that properties owned by foundations will be exempt from this tax, except those that are related to their economic activities, which are not exempt from the corporate income tax.

Art. 15.2 of the Foundation Tax Act states that non-profit entities will be exempt from the tax on economic activities levied on the economic activities listed in Art. 7 of this law. Nevertheless, those entities will have to register for this tax and unregister if the activity is terminated.

Art. 15.3 also stipulates exemption from the capital gains tax on urban land (it is a tax on the increases in the price of urban land.).

In addition, Art. 45 of RDL 1/1993 (Real Decreto Law) grants foundations an exemption from the tax on property transfers.

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

According to article 3 Law 49/2002, **formal and accounting requirements** are demanded; as the foundations must be registered in the corresponding register, they must fulfil the accounting obligations, prepare an economic memorandum, and submit annual accounts to the Protectorate.

According to the civil law:

- Establishing a formal branch in Spain
- Registration with the competent public body
- Purposes of general interest and fulfilment of legal requirements for foundations

According to the tax law, they have to satisfy the same requirements as Spanish foundations in order to benefit from the special tax regime. When foreign foundations' sole activity in Spain is fundraising, civil law does not allow formal registration, and therefore the special tax regime will not be applicable.

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?

Spain has not signed bi-lateral tax treaties, which provide for reciprocal tax treatment of PBOs, but has signed treaties for the avoidance of double taxation.

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?

Law 49/2002, of December 23, provides other kinds of benefits, relating to the non-retention of the exempt income received by this kind of entity (Law 49/2002, of December 23, Article 12).

Regarding the Non-Resident Income Tax, we have to consider the Royal Legislative Decree 5/2004. Specifically, Article 13 states that incomes from a Spanish source are subject to withholding tax, which will normally be 19%. In this regard, if an exemption from Article 14 of the Act is granted, a refund can be requested from the Spanish Tax Authorities.

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 credit.

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?

Deduction base amount up to	Deduction percentage
150 euros.	80
Rest deduction base	35

If donations or contributions with the right to deduction have been made in the two previous immediate tax periods in favour of the same entity for an amount equal to or greater, in each of them, than the previous year, the deduction percentage applicable to the base of the deduction in favour of that same entity that exceeds 150 euros, will be 40%.

There is a limit of 10% of the total taxable income in the form of a tax credit.

Regarding Art. 21 of Law 49/2002, no resident persons that have to pay the income tax can also benefit from fiscal incentives.

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

Value of the donation (cash or in-kind). Donations can include cash or any movable and immovable property. The right of usufruct is also included.

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 can deduct 35% of all donations up to a limit of 10% of their taxable income base The donation is treated as an overhead cost (expense).

If donations or contributions with the right to deduction have been made in the two previous immediate tax periods in favour of the same entity for an amount equal to or greater, in each of them, than the previous tax period, the percentage of deduction applicable to the base of the deduction in favour of that same entity will be 40%.

Donations in excess of the limit can be deducted in the following 10 years.

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

Value of his donation (cash or in-kind). Donations can include cash or any movable and immovable property. The right of usufruct is also included.

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

Not deductible.

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?

In Spain every taxpayer when filling out his income tax declaration can choose between giving a percentage to the Church, to a non-profit entity or giving to both of them.

- 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)?**

Donors must not fulfil any requirement in order to claim tax benefit, but it is the foundation that has to file to the Tax Authorities the form 182 when they receive donations, donations or contributions.

The form must indicate the entity that receives the donations, the donor's information (DNI / CIF, name and surname / company name, postal code), the value of the donation and the deduction to which they are entitled.

- 7. 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)?**

Gifts to a foreign PBO cannot be deducted for income tax purposes in Spain, unless a delegation of such foreign PBO is registered in the Spanish Register of Foundations to carry out its activities in Spain and unless the PBO meets all the requisites required under Law 49/2002.

- 8. 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?**

- 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?

The donors will get tax incentives when donations – through any tool – are done in benefit of non-profit organisations established in article 16 Law 49/2002.

The Tax Authorities consider the donations that are stated in the form 182.

IV. Tax treatment of beneficiaries

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

- 1. Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**
- 2. Legal entities: Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible for foundation funding? Are there any limitations on the economic activities of the beneficiaries?**
- 3. Are there any different or additional requirements that must be fulfilled by a beneficiary receiving funding from abroad?**

Individuals and legal entities are not entitled to special benefits if they are the beneficiaries of a grant or a donation from a foundation.

It does not matter if the funds come from abroad or from inside Spain, there are no special benefits.

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)?**

Indeed, in Spain there is an inheritance and gift tax and it is regulated by Law 29/1987. Art. 5 of this Law defines the passive subject of the tax as individuals, therefore it does not affect foundations – they only pay income tax.

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

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?**

Indeed, there is a reserved part of the inheritance that cannot be disposed of and must be given to the protected heirs. There are special rules in some Autonomous Communities, however, the general rule is that the protected part of the inheritance should be two thirds of the total inheritance. Therefore, only one third can be disposed of for delivery to third parties.

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

N/A

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?**

There are no developments.

Nevertheless, regulatory changes are foreseen as a consequence of the infringement procedure initiated by the European Commission against Spain, considering that the current regulations include discriminatory tax treatment of foreign non-profit entities, as it does not contemplate the possibility that similar non-profit entities can apply the fiscal regime of the patronage law.

Furthermore, the regulation does not contemplate the possibility for taxpayers residing in Spain to deduct donations made to non-profit entities in other countries.

In sum, the Commission considered that this situation is discriminatory and constitutes a restriction on the free movement of capital, according to the interpretation of the Court of Justice in Cases C-386/04, Centro di Musicologia Walter Stauffer and C-318/07, Persche. So, a Spaniard who makes a financial donation to a comparable foundation established in another Member State should be allowed to deduct the same amount as if that donation had been made to a Spanish foundation. Likewise, a foreign foundation that obtains income in Spain must be exempt from tax on that income, in the same way that a Spanish foundation would be.

The Spanish government agrees with the change and they are looking for the appropriate regulatory instrument.

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

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

In accordance with Article 39 of Law 10/2010 of 28 April on the prevention of money laundering and the financing of terrorism, the Board of Trustees, in the exercise of the functions attributed to them by Law 50/2002 of 26 December on Foundations, and the personnel with responsibilities in the management of foundations shall ensure that they are not used for money laundering or for channelling funds or resources to persons or entities linked to terrorist groups or organisations.

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

Yes, as we can see this in Article 2.1.x of Law 10/2010 of 28 April on the prevention of money laundering and the financing of terrorism.

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

The “beneficial owners” are defined by Act 10/2010 in art. 4 as:

- The natural person on whose behalf it is intended to establish a business relationship or intervene in any operations, or
- The natural person who ultimately owns or controls, directly or indirectly, a percentage higher than 25% of the capital or voting rights of a legal person, or by other means exercises control, direct or indirect, of management of a legal person.

Foundations must keep the documents related to deliveries and receipts for at least 10 years (Art 25), and will store copies of the documents supporting these operations, in optical, magnetic or electronic systems to ensure their integrity, the correct reading of the data, the impossibility of handling, and proper storage and location.

Foundations will ensure the proper management and availability of this documentation, both for internal control and to respond to any requirement from authorities.

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

The Register of Foundations is currently in charge of these functions, regulated by Royal Decree 1611/2007 of 7 December, which approved the Regulations of the Register of Foundations under state jurisdiction.

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

If, at regional level, different laws are being approved in relation to foundations, for example, on July 6, 2020 the Parliament of Cantabria approved its new law on foundations. For their part, other Autonomous Communities such as Castile and Leon have prepared the draft law on foundations.

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

Yes, currently through the Customs and Tax Plan for the year 2020 a new relationship is being implemented with the Tax Authorities based on technology and information exchange.

c) Tendency towards more transparency requirements?

Transparency is an increasingly necessary requirement for the foundation sector, for donors, for beneficiaries and for society at large. Therefore, the Spanish Association of Foundations is trying to provide the necessary instruments to try to reach the level of demand and commitment to transparency of foundations.

In addition, reforms to Law 19/2013 of 9 December on transparency, access to public information and good governance are being promoted (the last one in 2018).

Finally, through the public register provided for in article 36 of Law 50/2002, there is a trend towards greater transparency.

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

Yes, there is a tendency towards greater self-regulation through the laws passed by the Autonomous Communities.

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

Yes, it is now more common to have corporate foundations through which tax benefits can be obtained.

f) Other?

It is important to highlight as a clear trend that in recent years substantial improvements have been made in the tax treatment of donors, both in the percentage of deduction and in the encourage of loyalty.

Furthermore, as a result of the crisis caused by the COVID-19, benefits regarding foundations have become an important aid for society.

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

We understand you are asking if there is some kind of regulation for those foundations that collect donations from the general public. In some countries there are specific requirements. In that case we understand that the answer is no. The issue of patronage has been addressed in the previous question.

VII. Further information

Useful contacts

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Selected bibliography

- Blazquez Lidoy A., El IVA en las entidades no lucrativas (cuestiones teóricas y casos prácticos), CEF, 2002.
- Cabra de Luna, M.A., “Giving to Foundations in Spain: An Outline of Fiscal Benefits”, in: Social Economy and Law (SEAL), Autumn 2000, vol. 3 No. 2, European Foundation Centre
- Confederación Española de Fundaciones, Manual práctico de fundaciones y de incentivos fiscales, Confederación Española de Fundaciones (editor), Madrid, 1999
- Cruz Amorós M. y López Ribas, S.: La fiscalidad en las entidades sin ánimo de lucro: estímulo público y acción privada, Cideal y PricewaterhouseCoopers, 2004
- De la Cueva, A., in: The Tax Treatment of Cross-Border Donations - Including the Tax Status of Charities and Foundations, Bator, P. (editor), International Bureau of Fiscal Documentation, loose- leaf, Amsterdam, 1994-2001
- Fraguas Garrido, B., “Steuerliche Privilegien sind an Voraussetzungen gebunden”, in: Deutsche Stiftungen, Bundesverband Deutscher Stiftungen e.V. (editor), 3. Ausgabe, Berlin, 2001, pp. 74-75
- Pedreira Menéndez J., Régimen fiscal del sector no lucrativo y del mecenazgo, Civitas, 2003.
- Ruiz Olabuénaga, J. I., in: Foundations in Europe. Society Management and Law, Schlüter, A., Then, V. and Walkenhorst, P. (editors), London, 2001, pp.223-232
- Santiago Muñoz Machado, Miguel Cruz Amorós, Rafael De Lorenzo García (directores), Comentarios a las leyes de fundaciones y mecenazgo, Iustel, Madrid, 2005
- V.V.A.A. : Tratado de Fundaciones, Bosch, Barcelona, 2007.
- La dimensión social de la fiscalidad: discapacidad, tercer sector y mecenazgo. Estudios en homenaje a Miguel Cruz Amorós. Madrid, 2017.
- FUNDACIÓN, IMPUESTOS Y COMPETITIVIDAD. Fiscalidad del Mecenazgo. Madrid, 2017

Selected law texts online

- Foundation Act 50/2002
- Law on Patronage 49/2002
- <http://www.fundaciones.org/es/estatal>

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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