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Legal Environment for Philanthropy in Europe

Bosnia and Herzegovina

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?**

A foundation is a legal entity that has no members and has the goal of governing its assets in the public interest or for charitable purposes. A foundation becomes a legal person when it is registered under the Law on the Associations and Foundations of Bosnia and Herzegovina.

- 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?**

The foundation may be established by one or more natural or legal persons (hereinafter the founder/s). Founders of a foundation do not have to be citizens of Bosnia and Herzegovina, or legal persons that are registered in Bosnia and Herzegovina.

The foundation may be established by a unilateral declaration of will, contract, testament, legacies or other appropriate legal document which must contain the information necessary for the establishment and registration in the Register of Foundations.

The foundation must have a founding act, statutes, and a governing board; or acts and bodies that are essentially equivalent. For the foreign or international foundation, it is sufficient to have acts, regardless of their title, and bodies, which perform functions as defined by the Law. (See section "Rights and duties of board members").

The application for registration has to be submitted by a person authorised to represent the foundation appointed by the founding act of the foundation and contains:

- Founding act of the foundation
- List of founders
- Certified copy of the identity card of the founder when the founder is a natural person from Bosnia and Herzegovina; or a certified copy of a passport when the founder is a foreign natural person; or an extract from the register when the founder is a legal entity
- Identification document, or extract from the Register, proving the identity of the founder, when the foundation was established by the unilateral declaration of will, contract, testament, legacies or other relevant legal act
- Statutes of the foundation
- Statement by which the applicant under full moral, material and criminal responsibility declares that the foundation is not registered under the same name in another registration authority in Bosnia and Herzegovina
- Decision on the appointment of the governing body of the foundation
- Name, surname and address of the person authorised to represent the foundation

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

- Statements of the members of the board of the foundation accepting the membership in the board certified by the competent body
- Decision of the competent foundation authority on the appointment of the persons authorised to represent the foundation; certified copy of the identity card or passport and residence permit in Bosnia and Herzegovina when a person authorised to represent is a foreign citizen; and a certified signature of the person authorised to represent the foundation by the competent foundation authority
- Translation of the name of the foundation into official languages of Bosnia and Herzegovina by a certified court interpreter
- Decision on the appointment of members of the board of the foundation, along with certified copies of all members' identity cards; or a photocopy of passport and residence permit in Bosnia and Herzegovina when the board member is a foreign citizen
- Evidence of payment of cash or other forms of asset that the founder invests in the establishment of the foundation (minimum capital requirement of €1000)
- Sample and a description of the foundation logo, if it is stipulated in the foundation's statutes
- Decision on the appointment of other bodies of the foundation, if statutes of the foundation provide for such bodies
- Translation of the name of the foundation if the foundation also has a name in a foreign language, in accordance with the foundation's statutes. The translation shall be certified by a court interpreter
- Evidence of payment of administrative fees (€100)

The provisions of the Law on Associations and Foundations shall also apply to the registration of offices, branch offices or other organisational form of foreign or international foundations, or other international organisations, unless otherwise provided by the Law.

Application for registration of branch office or other organisational form must contain the following documents:

- Evidence of registration of foreign foundation in the register of the country of domicile
- The act of opening an office, branch or other organisational form in Bosnia and Herzegovina
- The name and address of the person authorised to represent the foundation in Bosnia and Herzegovina (and certified copy of the identification document of the authorised representative)
- Address of the headquarters and branch offices in Bosnia and Herzegovina

If the law of the country of foreign foundation doesn't require registration in the register of foundations, another written document, certified by a competent authority, which proves that the organisation is a legal person in the domicile country, should be submitted to support the application for registration.

If the decision on registration in the country of residence does not contain information on the statutory objectives and activities of the foundation, the statutes or other internal documents which establish the goals of the foundation should be submitted together with the application for registration.

The documents submitted by foreign or international foundations must be certified with an apostille stamp and translated into one of the official languages of Bosnia and Herzegovina by a certified court interpreter.

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?

The following information is kept at the Register:

- Full and abbreviated name of the foundation
- The address of the headquarters
- The registration number and date of registration of the foundation
- The objectives and activities of the foundation
- The name of the person authorised to represent the foundation entering into legal transactions
- The suspension of operation of the foundation
- The termination of the foundation

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: €1000

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

The foundation is not required to maintain property or any other particular level of assets in the course of its existence. So yes, spend-down is allowed.

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

a) Is it mandatory to have a:

- Supervisory board
- 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 governing board of a foundation must have at least three members. A board member of the foundation may be a citizen of Bosnia and Herzegovina, as well as a foreigner in accordance with the Law on the Movement and Residency of Aliens and Asylum. Board members cannot be under 18 years of age, an employee of the foundation, or a member of the other bodies of the foundation.

The founder appoints the first members of the governing board of the foundation. Subsequent modifications, the method of their election, competence, quorum, voting rules and the conditions and procedures for their resignation/removal shall be made in accordance with the statutes of the foundation. The statutes of the foundation may stipulate that governing board members may be elected and dismissed by the founder.

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

The governing board of the foundation is responsible for achieving the goals and activities of the foundation and may perform other duties defined by the statutes and in accordance with the Law.

The governing board of the foundation is responsible for:

- Decisions, statutes, amendments to statutes and other regulations established by the statutes
- Managing the property of the foundation
- Appointment of a person authorised to represent the foundation
- Decisions on the merge, division and dissolution of the foundation, as well as other statutory changes of the foundation
- Preparing financial statements and other reports
- Decisions on all other issues which are not within the competence of other bodies of the foundation

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

The founder/s have the right to elect and dismiss governing board members, if that right is stipulated in the statutes of the foundation. Fundamental decisions, such as change of purpose, can be made only by the governing board. The founder has no right to influence such decision-making.

- 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?

Fundamental decisions, such as change of purpose, or changes to or amendments of the statutes can be made only by the governing board.

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

The work of the registered foundation is public and transparent, which is determined by Law, so third parties have right of information.

- 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 has no exactly specified rules on conflict of interest. According to legislation in Bosnia and Herzegovina, conflict of interest can be defined as a situation where the objectivity of a person is or may be affected due to the conflict between their private interests and their professional, public interest.

A board member cannot be an employee of the foundation, or a member of the other bodies of the Foundation.

It is not allowed directly or indirectly to acquire or receive other tangible benefits gained from the activities of the foundation for founders, members of the governing bodies, responsible persons, employees or donors.

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

Staff cannot be members of the governing board. They may participate in board meetings but they have no voting rights.

- 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?**

The governing bodies of the foundation are obligated to manage the assets of the foundation with due diligence, in a respectable and legal way and in the best interest of the foundation. This rule is established as fiscal, administrative and civil.

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

There is no difference between voluntary (unpaid) and paid board members set out in the Law. However, good practice and the recommendation of the civil society sector prescribe that governing board members are volunteers.

Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities. Which authority has competence in such cases: administrative, tax-authority, only the judiciary power (attorney general) or beneficiaries/general public?

In the case of breaches of such duties, anyone who has knowledge of such breaches may bring a complaint. Administrative, tax-authority and judiciary power has competence in such cases.

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

The Law stipulates that the foundation is represented by an authorised person who is specified in the foundation act and in the statutes of the foundation. Yes, if that is stipulated in the foundation act and in the statutes of the foundation.

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

The foundation may carry out economic activities only if the primary purposes of these activities achieve the objectives identified in the statutes (related economic activities). The foundation can perform unrelated economic activity (economic activities that are not directly related to achievement of the basic statutory objectives of the foundation) only through a specially established legal entity.

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

There is no special legal/fiscal framework for grantmakers, nor are there any restrictions in this regard.

- 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, it is permitted. No, there are no limitations on voting rights. Yes, this is considered as an economic activity.

- 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 are no any rules/limitations regarding a foundation's assets management.

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.

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

Yes, the goals and activities of a registered foundation may not include engaging in election campaigns, raising funds for candidates, or financing candidates or political parties. A foundation will be dissolved if it continues to perform activities that are not in accordance with the statutory objectives of the Foundation.

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

The procedures for amending the statutes must be specified in the statutes of the foundation.

The foundation governing board has the exclusive authority to issue statutes, amendments to statutes and other regulations established by statute.

The foundation is required to apply to the Ministry for any change, and any change shall be entered in the register within 30 days.

These changes may include: the name and/or acronym of the foundation; address of the foundation's headquarters; foundation logo; objectives and activities for which the foundation was established; the names and addresses of persons authorised to represent the foundation; and members of the supervisory board of the foundation.

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)?

Yes, to the foundation authority (Ministry of Justice of Bosnia and Herzegovina, and the tax authority)

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

Yes, by the tax authorities.

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

The work of all registered foundations is public and transparent, which is determined by law, so the annual financial reports of all registered foundations on the national level are available on the website of the Ministry of Justice of Bosnia and Herzegovina.

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

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

If the foundation wants to or is obliged to submit an external audit of financial statements, then it is required to hire a certified auditing agency or an external auditor in accordance with the Law on Accounting and Auditing of one of the entities or Brčko District, depending where the head office of the foundation is located.

19. Supervision: Which authority, what measures?

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

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

- b) Does the supervisory body review reports?

- Yes
 No

- c) Are foundations subject to inspection?

- Yes
 No

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

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

If yes, please specify which type of decisions:

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

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

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

The enforcement measures are a ban on activities and a misdemeanour fine.

20. When and how does a foundation dissolve?

The foundation may be dissolved voluntarily or by force of law. The foundation will be dissolved if:

- The supervisory board of the foundation decides on the termination, or made a decision on the merger, separation, or transformation of the foundation
- If it is found that the foundation has ceased to operate
- The goals and activities of the foundation are contrary to the constitutional order of Bosnia and Herzegovina or are aimed at harming the country and inciting national, racial and religious hatred or discrimination prohibited by law.

- The goals and activities of the foundation include engagement in election campaigns, raising funds for candidates or financing candidates or political parties.
- The foundation, despite the warning in the form of misdemeanour punishment, continues to carry out activities that are not in accordance with the statutory goals of the foundation.
- The foundation after misdemeanour punishment, continues to act contrary to the provisions of the Law on Associations and Foundations.

21. Is there a maximum that can be spent on office/administration costs in civil law and/or tax law? If yes, what is the amount?

No.

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

There are no requirements of that kind. Yes, foundations can accumulate these expenses and the decision on that is made exclusively by the board of directors.

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?

There are no limitations in civil law.

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

There are no limitations in civil law.

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?

Transfer of the seat of the foundation or mergers is possible only within Bosnia and Herzegovina.

II. Tax treatment of foundations

1. What are the requirements to receive tax exemptions?

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

2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)

If it is necessary the foundation proves its status with the decision on registration in the foundation register issued by the Ministry.

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

Yes, reporting to the bodies from which grants 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?

No, there is no obligation to report to public authorities.

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?

According to the Law on Associations and Foundations of BH:

Public-benefit purpose is advocacy and provision of services or promoting improvement programmes in areas such as health, education, science, social protection, civil society, human rights and minority rights, helping the poor and socially disadvantaged, helping people with disabilities, children and the elderly, environmental protection, tolerance, culture, amateur sports, religious freedom and assistance to victims of natural disasters or for other similar purposes.

Charitable purpose is to help individuals and groups in need.

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.

According to the relevant Laws of the Corporate Income Tax of the entities (RS, FBH and Brcko District) generally public-benefit purpose is considered as:

FBH – humanitarian, cultural, educational, scientific and sporting purposes (except for professional sports) (numerus clausus),

RS – humanitarian, cultural and educational purposes (numerus clausus),

BD – humanitarian, cultural, educational, scientific and sporting purposes (numerus clausus).

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

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

disadvantaged persons				
Amateur sports	X			
Infrastructure support for public-benefit purpose organisations	X			
Party political activity				X
Advocacy	X			
Advancement of religion	X			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

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?

Yes.

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.?

There is no connection between tax-exempt status and a “non-distribution constraint”.

The Law on the Associations and Foundations of Bosnia and Herzegovina defines reimbursement of board members’ costs and financial support of governing board members. 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?

After the dissolution and termination of operations and settlement of the foundation’s liabilities, the remaining property and assets will be distributed in the manner determined by the statutes, to another registered foundation that has the same or similar goals and activities.

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**?

In accordance with the Law remuneration or reimbursement of expenses of board members in relation to the exercise of legitimate objectives and activities established by the statutes of the foundation are allowed.

- 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)

No.

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”:

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

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

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

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

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

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

12. Distributions and timely disbursement

a) Are foundations allowed to spend down their endowment?

Yes.

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

The foundation may exist for a limited period (there is no minimum length of time stated in the Law).

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)?

Neither civil nor tax law has such a requirement.

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”?

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?

No.

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

Yes.

15. Corporate income tax treatment. How are the following types of income treated for corporate income tax purposes? Are they taxable or exempt?

a) Grants and donations

Foundations in Bosnia and Herzegovina are not required to pay any income tax on grants and donations.

b) Investment income (asset administration)

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

Investment income is tax-exempt, except for income from leasing of property that belongs to the foundation.

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)

If the foundation is conducting registered economic activity (related) it is exempt from tax. But if the foundation is performing unrelated activity, it is required to pay tax on profit realised through the performance of that activity.

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

Tax-exempt.

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

Foundations are exempt from corporate income tax on profits realised on the basis of income from interest and dividends.

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

No.

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

Exceptionally, the foundation may be exempt from VAT on some of their purchases. The following are the only allowed cases:

- The importation of goods for certain limited purposes, which are expressly provided for by the Law on Customs Policy (in these cases, in addition to tariff exemptions, the foundation may use the exemption from payment of VAT)
- Projects that are exempt from VAT (and other taxes) in accordance with an international agreement signed by Bosnia and Herzegovina
- International projects providing assistance to Bosnia and Herzegovina, according to which Bosnia and Herzegovina has assumed an obligation to ensure that such projects are not subject to VAT.

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

N/A

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

Foundations are exempt from tax on the transfer of assets excluding assets that are used or have been used for carrying out activities.

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

No.

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

Foreign foundations in Bosnia and Herzegovina are subject to the same tax treatment as resident foundations.

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

N/A

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?

Yes, Bosnia and Herzegovina apply withholding tax to the income from local investments held by non-residents.

They cannot reclaim all or part of the withholding tax. Accordingly, this is applicable to foreign-based foundations.

III. Tax treatment of donors of foundations

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

Tax deduction.

2. Tax treatment of individual donors

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

According to the laws of the Entities (RS, FBH) and Brčko District, tax deductions are provided for individual donors who earn income from self-employment.

According to the laws of Entities (RS, FBH) and the Brčko District, regarding income tax, natural persons are provided the following benefits:

FBH – donations (in cash and assets) in the amount up to 0.5% of revenue in the previous year made towards cultural, educational, scientific, medical, humanitarian, sports and religious purposes are recognised as a tax expense.

RS – donations (in cash, assets or services) in the amount up to 2% of the income of natural persons-tax payers for humanitarian, cultural, educational or sports purposes, are recognised as a tax expense.

BD – donations in the amount up to 0.5% of revenue in the tax period, given in goods, assets or money made towards cultural, educational, scientific, medical, humanitarian, sports and religious purposes, associations and other persons who perform activities in accordance with special regulations

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

See above.

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?

According to the laws of the Entities (FBH and RS) and Brčko District on corporate income tax, the following tax incentives are provided:

FBH – donations (in cash and assets) for humanitarian, cultural, educational, scientific and sports purposes (except for professional sports) are recognised as an expense in the amount of up to 3% of total revenue during the tax period.

RS – donations (in cash, goods and services) to public institutions, humanitarian, cultural and educational organisations, is recognised as an expense in the amount of up to 3% of total income in the tax year.

BD – donations to public institutions and donations for charitable, cultural, educational, scientific and sports purposes in the amount of up to 3% of total income in that tax year.

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

See above.

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

Donations given to non-resident foundations that carry out activities in Bosnia and Herzegovina in accordance with the Law have the same treatment as donations given to resident foundations. Donors have the same tax treatment.

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?

None.

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

In accordance with the relevant laws, all legal entities are required to keep business and financial documentation (invoices, contracts, etc.) as evidence. Overview of business and financial documents is performed by competent inspection authority.

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?

See above.

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, they do not get any tax incentives when donations are done via specific tools and there is no particular process to follow.

IV. Tax treatment of beneficiaries

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

1. **Individuals: Are individual beneficiaries of grants required to pay taxes or are the grants tax exempt?**

Individual beneficiaries of foundations are exempt from tax on grants received from foundations.

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?**

No.

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

No.

V. Gift and inheritance tax

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

Generally foundations are exempt from tax on gifts.

- 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?**

Although the Law on Foundations and NGOs states that PBOs have a right to tax deduction, the Law on Corporate Income Tax does not prescribe tax rates nor does it differentiate between PBOs and other non-profits.

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

Please see question on tax treatment of individual donors and tax treatment of corporate donors.

- 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?**

No.

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

Non-resident foundations that carry out activities in Bosnia and Herzegovina in accordance with the Law are subject to the same treatment as resident foundations.

VI. Trends and developments

1. Are there current discussions about the question of whether cross-border activities of foundations or other non-profit organisations and their donors are protected by the fundamental freedoms of the EC Treaty? Have there been any changes to your country's legislation, resulting from the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? Any changes being discussed with regard to the free movement of trust structures resulting from the [Panayi Trust](#) and [Olsen and Others](#) cases?

No.

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

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

Yes, the Parliamentary Assembly of Bosnia and Herzegovina in 2014, adopted the new Law on the prevention of money laundering and financing of terrorist activities, and in 2016 it adopted amendments to the Law.

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

Yes.

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

No.

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

No.

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?

No.

VII. Further information

Useful contacts

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Selected law texts online

- [Law on the Association and Foundation of Bosnia and Herzegovina](#) (Official Gazette No. 32/01, 42/03, 63/08,76/11 and 94/16);
- [Rulebook on the way of keeping the register of associations and foundations of Bosnia and Herzegovina and foreign and international associations and foundations and other non-profit organisations](#) ("Official Gazette of BiH ", No: 68/18);
- [Law on Accounting and Auditing of the FBiH](#) ("Official Gazette of FBiH", no. 83/09);
- [Law on Accounting and Auditing of the Republic of Srpska](#) ("RS Official Gazette", no. 94/2015);
- [Law on Accounting and Auditing of the Brčko District of Bosnia and Herzegovina](#) ("Official Gazette of BD BiH", no. 6/06,19/07);
- [Personal income tax Law of Federation of Bosnia and Herzegovina](#) (Official Gazette of FBiH No. 10/08, 9/10, 44/11, 7/13 and 65/13);
- Personal income tax Law of Republica of Srpska "Official Gazette of Republic of Srpska" no. 60/15 and 66/18)
- [Personal income tax Law of of Brčko District](#) ("Official Gazette of BD BiH"" no. 60/2010 and 14/2017);

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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