

**2020**

Legal Environment for Philanthropy in Europe

# Hungary

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?**

Foundations are defined in the Civil Code (Act V. of 2013, Section 3:378) as follows: “Foundations (alapítvány) are legal persons set up to pursue the long-term objective defined in the charter document. The founder shall define in the charter document the funds made available to the foundation and the organizational structure of the foundation.” A foundation may not be formed with the objective of performing economic activities, but it can pursue these if they are directly connected to the achievement of the foundation’s goals.

Foundations are autonomous organisations with legal personality. Special types are party political foundations (regulated differently) and since 29 March 2019 foundations can be established as “trust foundations”. The trust foundation is also a legal person used for managing assets, and income derived from the assets, for a specific purpose or to the benefit of the beneficiaries.

2. **What purposes can foundations legally pursue?<sup>1</sup>**

- 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 application for registration of the foundation can be submitted by the founder.

The foundation is registered by the court. In order to be registered the founder submits the application for registrations and attaches the following documents:

- a) The charter of the organisation.
- b) The copy of the registered seat certificate.
- c) The statement of the members of the foundation’s management board approving their membership, their legal duties and conflicts of interest based on the authorisation granted by law.
- d) Certificate of the allocated sufficient assets of the foundation.
- e) If the organisation has a supervisory body, the statement of the members of the body approving the membership and the definitions of their legal duties based on the authorisation granted by law.
- f) The statement of the person who is assigned the founder’s rights that she/he approves her/his assignment.

The applications should be provided on an official application form and be submitted through the court’s electronic system.

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

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<sup>1</sup> 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.

- 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 national court registry keeps the following data:

- Registration number
- Number of registration decision of the Registration Court, date of legally binding decision of Court of Registration in connection with the organisation's registration
- Name of organisation
- Registered seat
- Name of the representative of the organisation
- Type of organisation
- Purpose of organisation and category of organisation according to purpose
- Data on transposal, termination, suspension
- Annual reports of the organisation
- Warrant of liquidation proceedings, winding up, bankruptcy, proceedings
- Data on the liquidation proceedings, winding up, bankruptcy, proceedings of the organisation

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 ((but court practice normally doesn't register founding capital below HUF300,000 ~900€)
- Yes, amount:

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

Foundations shall manage and use their assets in accordance with their purpose, as provided for in the charter document. The founder and new members may not appropriate the foundation's assets for other purposes and may not demand to recover such assets: Any provision of the charter document to the contrary shall be null and void. Any amendment of the charter document aiming to diminish the foundation's assets shall be considered null and void. (Section 3:384 and 393 of the Civil Code.)

No, spend-down foundations are not allowed.

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

a) Is it mandatory to have a:

- Supervisory board (only in case of public-benefit foundations with an annual income above HUF 50 million ~150,000 €)
- 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 board must comprise a minimum of three natural persons, at least two of which are residents of Hungary. Members of the board may be elected for a specified or unspecified duration.

Alternatively, the founder may appoint a trustee to function as a single-member managing body of the foundation. The provisions pertaining to the board of trustees shall also apply to the trustee.

(Section 3:397, 398 of the civil Code)

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

The board of trustees functions as the foundation's managing body. Members of the board of trustees are the executive officers of the foundation.

If the founder did not reserve the right to designate the chairperson of the board of trustees and did not transfer this right to another officer of the foundation or to another foundation organ, members of the board of trustees elect a chair from among themselves. The board of trustees convene at least once per year, called by the chair, but must also be convened at the request of any of its members, with the purpose and the reason indicated. (Section 3:399 of the Civil Code).

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 has authority to recall any member of the board of trustees before the expiry of his mandate, if he considers that the foundation's purpose is in imminent jeopardy.

Any amendment of the charter document aiming to alter the foundation's purpose shall be considered null and void, except if the foundation has fulfilled its purpose, or if achieving the foundation's objective is no longer possible and the foundation has enough funds for its new objective. (Section 3:393 of the Civil Code.)

e) Can the board or the founder amend the statutes including the purpose of the foundation? If yes, please indicate any particularities. What is the relationship between the powers of the founders, the statutes of the foundation and the power of the board members?

See above. The founder(s) draw up the statutes and appoint the board.

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

The designated beneficiary may not make any claims against the foundation, unless one of the following criteria are met:

- The charter document properly specifies the person of the beneficiary, the benefits due to such person, and the date when the benefits are due.
- The board of trustees has adopted a decision for providing benefits to the beneficiary and delivered this decision to the beneficiary, and the beneficiary has accepted the applicable conditions (Section 3:387 of the Civil Code).

The executive officer (the chairperson of the board) is required to keep the members of the legal person, or the founders informed concerning the legal person, and to provide access for them to the legal person's documents, records and registers (Section 3 :24). Annual reports of the foundation

must be made public. Broader right to information rules apply to public-benefit organisations, which in their statutes must include provisions on the accessibility of their board meetings and documents.

- 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?

According to the Civil Code, no beneficiary of the foundation or their close relative may hold a seat on the board. The founder and their close relatives may not have a majority in the board of trustees.

In the process of adopting a resolution, a person may not vote:

- a) For whom the resolution contains an exemption from any obligation or responsibility, or any advantage that is to be provided by the legal person.
- b) With whom an agreement is to be concluded according to the resolution.
- c) Against whom legal proceedings are to be initiated according to the resolution.
- d) Whose family member who is not a member or founder of the legal person has a vested interest in the decision.
- e) Who maintains any relation on the basis of majority control with an organisation that has a vested interest in the decision
- f) Who has a vested interest in the decision (Section 3:19 of the Civil Code).

A separate act (CLXXXI. of 2001) regulates the transparency of support from public funding sources. According to this, foundations may not receive public funding if any of the high-ranking public officials listed in the law, or any persons involved in the decision-making process on the award of funds or their close relatives sit on the foundation's board of trustees or other organs.

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

This is not regulated in law: It is at the discretion of the founder's decision and the foundation's statutes.

- 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 executive officer shall be held liable for damages caused to the legal person resulting from his management activities in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation.

The foundation (legal person) is liable for damages caused by the executive officer acting in his capacity as such. The legal person and the executive officer are jointly liable if the damage was caused intentionally (Section 3:24 of the Civil Code).

There is no difference between voluntary (unpaid) and paid board members.

- 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?**

In any legal person, the executive officer is the legal representative (Section 3:29 of the Civil Code). In the case of foundations it is normally the chair of the board, who exercises the power of representation independently.

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

Yes, the foundation may perform economic activities only if they are directly connected to the achievement of the foundation's goals, and without endangering the goal-related activities.

**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?**

No.

**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 the Civil Code, a foundation may not be a partner with unlimited liability in another legal entity, may not set up another foundation, and may not join another foundation.

**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?**

No, only in the case of "trust foundations".

**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, no limitations in this respect.

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

Only in case of public-benefit organisations which may not engage in direct political activity, and must be independent of parties and not provide support to them.

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

See above, it is not allowed.

**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)?

Annual financial reports and accounts, public-benefit reports as well as governance changes must be submitted to the registering court. Tax returns, including a report on the 1% income must be submitted to the tax authority.

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

Tax returns are checked by the tax authority, while annual reports are (in theory) reviewed by the court.

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)?

Yes, the annual financial and the public-benefit report, as well as report on the spending on the 1% income. The website is the default place of publication.

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

Only for foundations with an annual economic (not purpose-related) income above HUF 300 million (~ €857,000) in the 2 preceding business years.

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

The audit should be undertaken by a person or organisation who is a member of the Hungarian Auditor Chamber.

## 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?

If the court, in its “legal supervisory proceeding” finds irregularities or breaches in the organisation’s operations, it may:

- Issue a fine between HUF 10,000 and 900,000 (between ~ €30 and €2700)
- Nullify the resolution that runs contrary to law or the organisation’s statutes and order the organisation to take a new decision
- Convene the board of trustees to restore the lawful operation of the organisation
- Assign a supervisor (overseer) with the purpose of restoring lawful operation for up to 90 days
- Dissolve the organisation

## **20. When and how does a foundation dissolve?**

A foundation shall cease to exist if:

- a) It has fulfilled its purpose, and a new objective has not been determined.
- b) Fulfilment of the foundation’s purpose is no longer possible, and revisiting the objective or merging with another foundation cannot be done; or
- c) The foundation is not pursuing any activity with a view to fulfilling its goal for a period of three years.

The founder shall not have the right to dissolve the foundation.

Upon the occurrence of any reason for termination, the board shall notify the person or organ exercising the founder’s rights to take the necessary measures and shall relate said reason for termination to the supervisory body and the auditor as well.

If the person or organ exercising the founder’s rights fails to take proper action based on the reason for termination within 30 days, the board shall then report the reason for termination to the court of registry. Members of the board of trustees shall bear joint and several liability towards third parties for damages arising from non-compliance with the obligation of notification in due time.

In the event of the foundation’s dissolution without succession, the assets of the foundation remaining after all creditors’ claims are satisfied shall be provided for in the certificate of dissolution (Section 3:403 of the Civil Code).

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

No.

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

No, but see also Q12 d) below.

## **23. Under what conditions does the civil law in your country recognise a foreign foundation? Do they have to register? Does your law recognise the concept of trusts?**

Foreign foundations can conduct activities in Hungary, but there are no special rules applicable to them (see also Q21 below).

**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?**

Foundations can conduct activities abroad without limitations.

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

Act No. LXXVI of 2017 on transparency of associations and foundations funded from abroad prescribes certain registration, declaration and publication obligations for organisations that receive directly or indirectly from foreign sources annually HUF 7,200,000 (~ €20,600) or more.

However, **recently (on 18 June 2020) the European Court of Justice ruled** in case C-78/18 that Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union.

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

No.

## II. Tax treatment of foundations

### 1. What are the requirements to receive tax exemptions?

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

Foundations, like any other CSOs, are subject to corporate income tax (“**CIT**”) according to the Act No. LXXXI of 1996 on Corporate Income Tax. However they are exempt from the tax liability if the revenue realised from their business operations is not more than HUF 10 million (~ €28,500) and does not exceed 10% of the total revenue realised. The income from business operations is taxable. Business operations are any operations aiming or resulting in income or profit except:

- Accepting of donations or gifts
- Purpose-related activities, including public-benefit activities defined in the public-benefit organisation’s deed of foundation
- Placement or investment of available liquid assets in deposits, securities or shares

If a foundation is classified as a public-benefit organisation (“**PBO**”), it must not pay corporate income tax if the income of business operations<sup>2</sup> is not more than 15% of the total revenue. If the income of such activities exceeds the 15%, a ratio<sup>3</sup> of the donations received will increase the tax base.

As a tax incentive every public-benefit organisation can reduce its pre-tax profit by 20%.

Foundations not obliged to pay CIT are also exempt from local business tax. Foundations do not have to pay land and/or building tax if:

- The foundation is the owner, or it is a holder of a right in a real estate property belonging to the Hungarian State, and
- It uses the building/land exclusively for the purposes of the principal activities set out in its charter.

Foundations not obligated to pay CIT are exempt from duty on succession, on gifts, on remunerated transfer of property and procedural duty. Foreign resident foundations (obtaining assets or taking part in Hungarian administrative procedures) are tax exempt if the foreign foundation has no payable corporate income tax to the state budget of its country of residence.

As regards value added tax (“**VAT**”), the foundation is not subject to VAT as long as its business income subject to VAT remains below HUF 12 million (~ €34,300) based on Act No. CXXVII of 2007 on Value Added Tax.

Business income subject to VAT is generally any revenue generated by business activity carried out independently on a regular or continuing basis for the purposes of obtaining income, or that results in the obtainment of income. The law on VAT has its own definition of business income and cannot be interpreted according to the CSO law, therefore it is irrelevant whether or not the activity is within the scope of the public-benefit purpose of the foundation. This interpretation of the VAT Act was confirmed recently by the Supreme Court in its decision No. Kfv.I.35.639/2019/4.

Further, specific activities are also VAT-exempt, as follows: health and social care service, children and youth care service, postal services, infants’ nursery service, general and higher education

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<sup>2</sup> Generated by economic activity increased by the income realised by acquisition of a property, transferring the rights to use or ownership rights of a property.

<sup>3</sup> The rate shall be calculated as the quotient (up to two decimal places) of the revenue from business operations realised in excess of the preferential rate of revenue from the business operations, increased by income of the acquisition of a property, transferring the rights to use or ownership rights of a property and the total revenue from business operations increased by the sum, increased by income of the acquisition of a property, transferring the rights to use or ownership rights of a property.

service, services connected to sports and training provided to individuals, and the sale of peasant art products.

## **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?)**

General: Foundations (along with all other CSOs) must submit their annual financial report to the registering court, which publishes it in the [online registry](#).

Foundations are required to submit along with their financial report an Annex containing the financial report of their public-benefit activity.

If the average annual income<sup>4</sup> exceeds HUF 300 million (~ €857,000), the foundation is obligated to have its financial reports audited.

CIT: Tax exemption must not be claimed: If the foundation fulfils the conditions set out above it is entitled to the tax exemption.

Foundations shall submit a formal statement by 31 May of the year following the tax year, on a form in lieu of a tax return provided they did not generate any revenue from business operations during the tax year or if they claim no costs and expenses in connection with such activities and business operations.

If the foundation has generated revenues it shall submit a tax return by 31 May of the year following the tax year even if it has no CIT liability.

Local taxes: Foundations shall furnish to the tax authority a written statement declaring whether or not the criteria for tax exemption in case of land/building tax are met by the last day of the fifth month of the tax year.

Duties: Foundations shall submit a written statement before initiating an administrative/court procedure and before acquiring a vehicle/trailer stating whether the criteria for tax exemption are met. In every other case the tax exemption is inspected by the tax authority before levying the duty.

VAT: Foundations can choose the tax exemption at the time of the formation. VAT exemption means no right to deduct VAT, however.

Operating foundations without a tax number: If the foundation is already established, but has not conducted any business activity, it has no tax number. In case the foundation would like to change that, and requests a tax number in order to be able to conduct business activity, it may choose the tax exemption at the time of the request for a tax number.

Operating foundations with a tax number: If the foundation is already established, and therefore has a tax number but did not choose tax exemption, it can change that choice for the next year, until 20 December of the current year.

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

Yes, based on Act No. CXCV of 2011 on Public Finances, the foundation must report whether or not it used the public funds in accordance with their purpose. The exact requirements of the reports depend on the tender based on which the public funds were received.

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

Foundations are required to report in the supplementary notes to the financial report on their received donations by donor. The information to be reported is as follows:

- What kind of donors have donated: the state, the municipality, an international organisation or a business entity

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<sup>4</sup> Calculated on the basis of the two preceding years.

- The name of the programme/project
- The amount of the utilised donation broken down into personnel and material costs, and with a short narrative description

There is no obligation to report on the beneficiaries in detail. (And in practice there is no efficient control of the completeness of the above report.) However, if the foundation receives at least HUF 7,200,000 (~ €20,600) it has special reporting obligations, which will be detailed in Q IV.3.

**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?**

Yes, public-benefit activity is defined in the Act No. CLXXV of 2011 on the Right to Association on Public Benefit Status and on the Operation and Support to Civil Society Organizations (“NGO Act”) as: “Any activity which serves, directly or indirectly, the performing of the public task/duty specified in the organization’s articles of association (statutes) thereby contributing to fulfilling the common needs of society and individuals.”

However, this definition does not entitle the foundation to tax benefits by itself. If the foundation fulfils the conditions set out above, it can enjoy several tax benefits and tax exemptions, but if the foundation is registered as a PBO, generally a more beneficial tax status is available.

To be registered as a PBO the foundation must contribute to fulfilling the common needs of society and individuals by providing services to individuals who are not their employees or board members or volunteers. The foundation must also fulfil the criteria below:

Have appropriate resources (must fulfil one of these criteria):

- Its annual average income is more than HUF 1,000,000 (~ €2,850), or
- Its 2-year cumulated earnings after taxation is not negative, or
- Its personnel costs are at least 25% of the overall costs

Have appropriate public support (must fulfil one of these criteria):

- If the donations received from individuals in personal income tax donations is at least 2% of its income, or
- The costs of the public-benefit activity are at least 50% of the overall costs on average over the course of 2 years, or it has at least 10 volunteers on average over the course of 2 years

**6. Is there a statutory definition of what a public-benefit purpose is in the tax law of your country? If yes, please give us the definition.**

No, see definition above.

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

Public-benefit purpose	Accepted in tax law (for tax privileges)			
	Yes	Probably yes	Probably no	No
Arts, culture or historical preservation	X			
Environmental protection	X			
Civil or human rights	X			
Elimination of discrimination based on gender, race, ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination	X			

Social welfare, including prevention or relief of poverty	x			
Humanitarian or disaster relief	x			
Development aid and development cooperation	x			
Assistance to refugees or immigrants	x			
Protection of, and support for, children, youth or elderly	x			
Assistance to, or protection of, people with disabilities	x			
Protection of animals	x			
Science, research and innovation	x			
Education and training	x			
European and international understanding (e.g. exchange programmes/ other activities aimed at building bridges between nations)	x			
Health, well- being and medical care	x			
Consumer protection	x			
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity				x
Advocacy		x		
Advancement of religion	x			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

NB: As described above, the logic of the current legislation is different: It does not list types of activities (as it did before 2011), but rather makes public-benefit purpose a general definition.

## 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, as described above.

- 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?

Not clear. According to the Civil Code, foundations may be established with the purpose of curating the scientific, arts or sports achievements of the founder and their relatives or with the purpose of providing health care or scholarship to the founder’s relatives. These foundations are not excluded from obtaining public-benefit status if they can fulfil the other conditions (outlined above). In the absence of court practice in this respect, it is impossible to give a definitive answer.

## 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, strictly (Act CLXXV. of 2011, Art 34§).

- 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 the Civil Code (Art 3:404§), the founder in the statutes may provide for the assets in case of dissolution, with the restriction that the founder (or other donor) may not receive more than they committed to the foundation. Other than that, the assets should go to another foundation pursuing similar purposes.

## 10. “Altruistic” element

- a) Is remuneration of board members allowed in **civil law** and in **tax law**? If remuneration is allowed, are there any limits in **civil law** and/or in **tax law**?

Board members cannot be beneficiaries of the foundation, however, they may be remunerated without any specific limit.

- 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)

Yes, to the extent it is accessible for everyone else (and if it does not construe financial benefit for the donor/funder).

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

No such definition or limits. Of the items below, the ones marked with X are considered as administrative costs for sure, the others may or may not be.

- 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	

Since 29 March 2019 foundations can be established as “trust foundations”. The trust foundation is a legal person used for managing assets and income derived from the assets for a specific purpose or to the benefit of the beneficiaries. The trust foundation either owns the assets provided by the founder or manages as a trustee in a trust contract. For the above described activities, the trust foundation is a more fitting alternative. However, the trust foundation does not enjoy the above described tax benefits.

- 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, no restrictions in this respect.

- 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, it must be specified in the foundation’s statutes. While there is no minimum length defined, according to the Civil Code, the definition of a foundation itself includes the word: “long-term”. There is no relevant court practice specifying this provision further.

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



No, with one exception: income received from individuals in personal income tax donations must be spent by 31 December of the second year following the transfer of the donation. (Act CXXXVI. of 1996, Art 6/C§). In this case, the whole tax donation received should be spent and is considered as income.

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

No, however as described above the public-benefit status depends on the activity, the resources and public support of the foundation. If it provides no services to individuals at all, it will not obtain or maintain public-benefit status.

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 <sup>th</sup> 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 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.		x			

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

Yes, no specific limitations in this respect.

### 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, no specific limitations in this respect.

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

The main dividing line in this respect is whether the income is purpose-related (as described in the statutes) or derives from entrepreneurial activity: Only the in the latter case is the income taxable up to the limit described in Q1.

- a) Grants and donations - *exempt*
- b) Investment income (asset administration)
  - Interest from fixed rate bonds- *exempt*
  - Equities - *exempt*
  - Income from leasing of a property that belongs to the foundation –subject to corporate income tax as a tax base increasing item. *Investment activity must be in line with the foundation’s own investment rules*
- 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)

All of the above cases depend on whether the given economic activity is related to the purpose of the foundation (e.g. selling books -> if the foundation lists education among its purposes and publishes related books, this activity is purpose-related). Purpose-related economic activities are tax exempt, non-purpose related activities are taxable.

- d) Income deriving from grant expenditure towards public-benefit purpose/programme activities (such as loans, guarantees, equities)? - *exempt*
- e) Is major shareholding in a business undertaking considered as an economic activity and taxed accordingly?

Foundations are not allowed to be a shareholder with unlimited liability in another entity and not allowed to establish or join another foundation according to the Civil Code.

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

Yes, and they are consolidated with ordinary income and subject to CIT.

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

In case the foundation is exempt from VAT (as described in Q1: the foundation is not subject to VAT in case its income from business activity remains below HUF 12 million (~ €34,300) or if it pursues specific activities listed in the VAT Act), it will not be able to recover the corresponding input VAT.

If the foundation receives a donation from a foreign donor, the tax authority refunds the charged VAT paid by the foundation as part of the consideration, if the following apply:

- The acquisition of goods or received services are in the scope of a public-benefit purpose of the foundation
- The donor accounted the donation in line with the tax regulation in its country
- The donor enables the use of the donation with the condition that the beneficiary shall be exempt from the VAT liability
- The beneficiary is not entitled to deduct the VAT

The right to claim a VAT refund shall be available to the foundation at a rate that matches the percentage that the donation represents in the costs of carrying out the public-benefit activities.

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

No.

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

Duties apply, and foundations that are exempt from corporate income tax are also exempt from duties – see Q1.

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

They may be subject to land or building tax, however they are exempt if:

- The foundation is the owner, or is a holder of a right in a real estate property belonging to the Hungarian State, and
- It uses the building/land exclusively for the purposes of the principal activities set out in its charter

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

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

A foreign-based foundation is taxed in Hungary as far as it has a permanent establishment in Hungary and generates income in Hungary. Based on Section 2 Subsection 3 and 4 of the CIT Act, any non-resident individual whose principal place of business management is in Hungary shall be treated as a resident taxpayer. Foreign nationals and non-resident entities whose head office is located abroad shall be deemed taxpayers if they carry out business operations at their branches in Hungary, provided that they are not considered resident taxpayers due to the location of their head office. If the foreign-based foundation has a permanent establishment in Hungary, it will be taxed in the same way that Hungarian foundations are.

The CIT Act does not give definitions of the foundation and public-benefit entities, therefore, one should interpret it in accordance with EU Law. According to the Stauffer decision (ECJ C-386/04), the EU law precludes Member States from refusing to grant the same exemption in respect of similar income to a charitable foundation established under private law solely on the grounds that it is established in another Member State and has a limited tax liability. However Hungary has not implemented measures to comply with this decision.

If we interpret Hungarian tax law in accordance with EU law, considering (public-benefit) foundations, one may apply the tax law incentive if it is considered and registered (if required) as a (public-benefit) foundation in its country of its residence. Therefore, the Hungarian Civil Code, the Hungarian NGO Act and their formal requirements to establish and register a (public-benefit) foundation are not applicable in this respect.

In the case of a textual interpretation of Hungarian law, it is rather challenging for foreign (public-benefit) foundations to apply the same tax incentives as their Hungarian counterparts. For example, the NGO Act ties the public-benefit qualification to entering the entity into a registry, and only entities registered in Hungary are entitled to initiate such registration. Presuming that in the case of foundations established in the EU, Hungary will waive this condition (which is not supported by any law or Hungarian court decision). An EU-based foundation will need to possess the following to qualify for the beneficial tax treatment:

Statutes:

- Stating what kind of public-benefit activities have been conducted by the foundation and whether or not it fulfils a public mission
- Stating that the foundation does not preclude others than its members to use its services
- Requiring that the business activities cannot endanger the public-benefit activities
- Stating a non-distribution constraint
- Stating that the foundation is not allowed to conduct political activities

Financial reports of the last two years.

**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?**

No.

**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?**

There is no withholding tax in Hungary on income generated by non-individuals.

### 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?

Generally, CIT taxpayers cannot reduce their tax base with the costs that were not incurred in the interest of business operations. However, in case of donations to public-benefit organisations (including foundations) the amount of the donation can be accounted as a cost, which decreases the tax base.

Furthermore, the pre-tax profit should be decreased by 20% of the non-repayable financial support or grant, or assistance provided in the form of goods or services during the tax year, without consideration to public-benefit status, under donation agreements with public-benefit organisations for supporting their activities performed in the public interest. An amount equalling 40% of the donation may decrease the pre-tax profit if provided under a long-term donation agreement.

In addition, a VAT exemption applies to public-benefit donations.

#### 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?

None (a limited tax relief existed until 2008, but no new system has been introduced since despite advocacy efforts).

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

N/A.

#### 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 answer in Q1.

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

Non-repayable financial support or grant, or assistance provided in the form of goods or services during the tax year without consideration.

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

In case of donations to foreign, non-resident entities the costs are considered as not being incurred for business purposes, and therefore CIT taxpayers cannot reduce their tax base with these types of donations.

#### 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?

As mentioned earlier, private individuals can donate 1% of their annual personal income tax obligation to foundations pursuing public-benefit activities. This scheme however does not provide any incentive to the private individual (the payable tax is transferred to the foundation instead of to the state budget).

#### 6. What are the requirements that the donor must fulfil and/or what is the information they must provide in order to claim tax benefits? What information must donors provide to their tax authority in order to receive tax incentives for their donation (e.g. submitting details on the organisation they support: statutes, annual financial report, documents providing

**evidence for certain tax law requirements, for instance to show that income was actually spent for public-benefit purposes)?**

The donor must ask the public-benefit organisation to issue a certificate made out for tax purposes. The certificate must include the name of the issuer and the taxpayer, their registered offices and tax numbers, the amount of the donation and the objective supported.

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

No tax benefit can be claimed as discussed earlier, therefore the question is not applicable.

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

No.

- Requesting money in public (street, door-to-door)
- Via TV and radio campaigns
- Via sms
- Crowdfunding

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

No specific rule applies.

## 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?

Income received from a public-benefit foundation provided in accordance with the public-benefit purpose of the foundation is tax exempt, if provided for one of the following:

- For studies pursued in educational institutions, research, foreign study trips (as scholarships)
- As social aid to persons with special social needs
- Payments made to the participants of students' or other leisure/recreation sports organisations in the form of a maintenance grant, not exceeding HUF 5,000 (~ €13.5) per occasion

Furthermore all revenues are tax exempt if they were acquired:

- In kind by a private individual from a public-benefit foundation in accordance with the objectives laid down in the statutes
- In money, on a monthly basis up to 50% of the prevailing minimum wage

### 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?

Act No. LXXVI of 2017 on transparency of associations and foundations funded from abroad prescribes certain registration, declaration and publication obligations for organisations that receive directly or indirectly from foreign sources annually HUF 7,200,000 (~ €20,600) or more.

However, recently (on 18 June 2020) the European Court of Justice ruled in case C-78/18 that Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union.

## 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)?**

Foundations not obligated to pay CIT are exempt from duty on succession, on gifts, and on remunerated transfer of property. Foreign resident foundations (obtaining assets or taking part in Hungarian administrative procedures) are tax exempt if the foreign foundation has no payable corporate income tax to the state budget of the country of its tax residence.

- 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?**

The general tax rate of the duty on succession and gifts is 18%. In the case of ownership or any rights in home real estate the tax rate is 9%. In the case of vehicles and trailers the duty is a fixed amount depending on the capacity of the vehicle.

The general tax rate of the duty on remunerated transfer of property is 4% of the market value of the property. In the case of real properties or shares in companies qualifying as real estate holding companies, the tax rate is 4% for the market value below HUF 1 billion (~ €2,800,000). Above this amount it is 2%, but in this case the amount of the payable duty cannot exceed HUF 200 million (~ €571,400).

Foundations not obligated to pay CIT are exempt from duty on succession, on gifts, and on remunerated transfer of property. Foreign resident foundations (obtaining assets or taking part in Hungarian administrative procedures) are tax exempt if the foreign foundation has no payable corporate income tax to the state budget of the country of its tax residence.

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

The tax exemption applicable to foundations does not depend on the amount, but on the CIT liability and therefore on the ratio of the business income of the foundation.

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

Yes, one-third of the estate.

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

Foundations not obligated to pay CIT are exempt from duty on succession. Foreign resident foundations are tax exempt if the foreign foundation has no payable corporate income tax to the state budget of the country of its tax residence.



## 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, to the contrary, with the government attempting to restrict foreign funding to Hungarian civil society organisations.

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

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

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

Not clearly, banks and similar institutions normally consider board members as such.

**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 latter is the case: The "regular" register applies.

5. **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?**

Yes, there is talk about replacing the act on the transparency of foreign-funded organisations repealed by the ECJ with some other legal tool. However, no concrete plans have yet been made public. The plans may include any or all of the options a, b or c below:

- a) Law revision in the pipeline
- b) Discussion about the role of supervisory authorities (civil law, charity regulator, tax authority) and collaboration among them? Decentralisation or centralisation of supervisory structures? Use of watchdog/rating agencies?
- c) Tendency towards more transparency requirements?

- d) Tendency towards more self-regulation? Self-regulation replacing hard law regulation?
- e) Tendency to use alternative forms to classic public-benefit foundations
- f) Other?

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

Yes, the Nonprofit Act (CLXXV. of 2011) includes some basic provisions on the collection of donations (collections should not disturb others, collectors must identify the organisation on behalf of which they act, donations must be entered in the organisation's books, etc.).

## VII. Further information

### Useful contacts

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### Selected bibliography

[Ökotárs Alapítvány - Civil Társ Programiroda](#)

[NIOK Alapítvány - Nonprofit.hu](#)

### Selected law texts online

[Civil Code](#)

[Non-profit Act](#)

[Public Finance Act](#)

[Act on Corporate Tax](#)

[VAT Act](#)

[1% Act](#)

[Act CLXXXI. of 2011](#)

## 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](http://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](http://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](http://www.efc.be)

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**Donors and Foundations Networks in Europe AISBL (Dafne) and  
European Foundation Centre AISBL (EFC)  
2020**



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