

2020

Legal Environment for Philanthropy in Europe

Portugal

COUNTRY PROFILE

By Rui Gonçalves,
Madalena Potes, and
Olivia Taylor*
Calouste Gulbenkian
Foundation

*UCLA School of Law Summer Public Service Fellowship

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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?**

Portugal has a Framework Law for Foundations (FLF), approved by the Law n. 24/2012, of July 9, which defines the general principles and rules applying to foundations and that prevail over other laws specifically addressing different types of foundations or other matters. Foundations are also recognised as being part of the social economy in Portugal according to the Basic Law of the Social Economy (Art. 4.d) Law nº 30/2013, 8 May).

Definition

The FLF provides a basic definition of a foundation as a non-profit legal person, endowed with assets which are both sufficient and irrevocably allocated to the realisation of a social-interest purpose (Article 3.1). The FLF then presents a tentative list of social-interest purposes which are defined as those that benefit one or a category of persons that are different from the founder, her/his descendants and/or persons that are related to the founder by friendship or business ties (Article 3.2.).

Types of foundations

Foundations are always autonomous organisations with legal personality, and the FLF outlines three major types of foundations under the aforementioned basic definition (Article 4.1 FLF), based on the founder's origin (private vs public) and the founder's influence in the foundation's endowment and management:

- Private foundations are foundations created exclusively by one or more private persons or created in partnership with private and public persons but the latter, individual or collectively, do not have a dominant position over the foundation (15.1). According to article 14.1. of FLF, private foundations are private law legal persons endowed with the required assets and economic support to fulfil social-interest goals.
- Public foundations of public law are foundations created exclusively by public persons under public law.
- Public foundations of private law are foundations created in partnership between private and public persons when the latter, individual or collectively, have a dominant position over the foundation.

Dominant position exists whenever the initial endowment is exclusively or predominantly of public origin or whenever the public legal entities have the right to appoint or remove the majority of the members of the foundation's governing bodies (Article 4.2 FLF).

The provision of these three types of foundations seeks to limit or condition the possibility of the state to create foundations, especially public foundations of private law which the FLF specifically and explicitly forbids the state to participate in or create new ones and subjects those already existing to the public law rules (article 57). It should be acknowledged that the FLF was approved by the Portuguese Parliament in 2012 in an attempt to restrain a practice that is commonly described as "The escape to Private Law by the Administrative Law", i.e. a way for the state actors to avoid the constraints of administrative law using mechanisms of private law.

Other types of foundations

The FLF mentions other types of foundations based on their missions that are subject to specific legal regimes:

- Foundations of social solidarity (articles 39 to 41), which can only be incorporated by private persons (article 15.2)
- Foundations for cooperation and development (articles 42 to 44)
- Foundations for the creation of private higher education establishments (articles 45 to 47)

Religious foundations have an autonomous legal regime. Foundations with a Christian Catholic purpose are influenced both by an international agreement between Portugal and the Holy See for Catholic Church foundations and Arts. 33 to 51 of Law 16/2001, 22 June, on the freedom of religion. Generally, churches and other registered religious communities can autonomously establish or recognise local or regional churches, religious communities, entities of consecrated life, or other institutions, with the nature of associations or foundations.

Although not mentioned specifically, the FLF does not exclude the creation of corporate foundations using the general provisions for private foundations and without imposing additional legal constraints.

Public utility/benefit

After three years of relevant activity, private foundations can additionally be granted the public utility/benefit status if the following criteria are met (article 24):

- a) Non-profit community-based activity in areas of social relevance such as citizenship and human rights promotion, education, culture, science, sport, juvenile civic engagement, child, elderly, disadvantaged and with special needs persons protection, consumers rights, climate and natural heritage protection, discrimination based on gender or race, poverty eradication, health and well-being promotion, disease control and prevention, entrepreneurship, innovation, economic development and heritage preservation.
- b) Being regularly incorporated and with compliant bylaws.
- c) Non-development of economic activities, as the main activities, in competition with entities which cannot apply to the public-benefit status.
- d) Holding the human and financial resources necessary to fulfil the statutory mission.

The public-benefit status is granted by the Prime Minister and is a precondition for foundations to apply or benefit from tax exemptions (article 9 of Decree 460/77, 7 November – amended by Law 40/2007, 24 August, and Decree 391/2007, 13 December). Private social welfare institutions are governed by a specific legal regime (Decree 519-G2/79, 29 December, Decree 119/83, 25 February, with later amendments specifically Decree 172-A/2014).

2. What purposes can foundations legally pursue?¹

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

Only social-interest foundations are permitted in Portugal, or at least social-interest activities must be the main activities of foundations in Portugal (art. 3 and 14.2 of FLF). Social-interest purposes are defined by FLF as those that benefit one or a category of persons that are different from the founder, her/his descendants and/or persons that are related to the founder by friendship or business ties, in particular the following (article 3): assistance to persons with disabilities, to refugees, to migrants and to violence victims; cooperation for development; education and training; preservation of historical, artistic and cultural heritage; preventions and eradication of poverty; citizenship promotion and human rights protection; promotion of culture and the arts; community and social integration; scientific research and technological development; humanitarian intervention; sports and physical well-being; international and European dialogue promotion; entrepreneurship, innovation and economic, social and cultural development; employment protection; health promotion and disease prevention and control; climate and natural heritage protection; consumer protection; family support and protection; child and elderly protection; housing.

¹This 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.

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?

Whereas private foundations are incorporated by an inter vivos act or by will of the founder (article 16 FLF or Art. 185.1 CC), public foundations are set up by a legislative act (article 50 FLF), if incorporated by central or regional government, and by a deliberation of the Municipality assembly, if incorporated by local authorities.

Private foundations

Since January 2020 - Decree-Law n.º 157/2019, of October 22 - the incorporation of a foundation by a living founder can be performed through a notary deed or a notarised private document (article 3 of Decree-Law n.º 157/2019, of October 22) and becomes irrevocable once the State approval of its legal status is required (at request of the founder or officially) – article 17.2. In case of a foundation incorporated by will of the founder, their heirs can only cancel the incorporation if there are grounds to challenge the will according to the legal succession regime (article 17.3).

According to article 18 of FLF, in the institution act, the founder shall state the foundation's goals and the necessary assets allocated to its fulfilment, as well as the official address for the headquarters, the structure and governance of the foundation, and the statutes shall regulate the terms of the foundation's modification or extinction and, in the case of the latter, fix the destiny of the assets as well.

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

Legal personality or status of the foundation is granted by state approval, currently a competence of the Prime Minister with the power to delegate (Article 6 and 20 FLF and Art. 158.2 CC). The Prime Minister has delegated this responsibility to the Minister of the Presidency of the Council of Ministers (Order 3440/2016, 8 March, Art. 3).

The current legal framework has moved from a pure discretionary recognition to a more “normative” state approval, with a list of social-interest goals or model statutes, for instance, being provided by the administrative authority (Order n.º 11648-A/2016). The rationale behind this change was to address the concerns regarding a possible “politicisation” of the state approval of foundations. Once the criteria defined are met, the state must grant legal personality to the foundation.

FLF describes the procedure for the state approval of a private foundation's legal status which is conducted exclusively online with an application submitted in the Presidency of the Council of Ministers internet portal (article 22). The application form shall include the following documentation (22.2):

- Documents that give evidence of the foundation's establishment and the founder's identification, as well as the founder's contribution to the foundation's endowment or to the financing of its activities
- Evidence of a sufficient initial endowment
- Memo outlining the foundation's aim or aims and its areas of activity
- Detailed description of the assets allocated to the foundation
- Letter of honour from the founder attesting that the assets allocated to the foundation are free of litigation
- Real estate evaluation
- Proof of bank transfer of the initial cash contribution
- Statutes and date of publication
- Nomination of the persons to the governing bodies of the foundation

According to article 23 of FLF the recognition authority shall refuse the legal personality to a foundation in the following circumstances: when the aims of the foundation are not considered of social interest, namely if they benefit the founder or his/her family or a very limited group of beneficiaries related to them; the assets allocated to the foundation's goals are insufficient and there are not reasonable expectations of this insufficiency to be supplemented, in particular if the assets are encumbered or do not generate sufficient return to the realisation of the foundation's goals; incompatibility of the statutes with the law; defects or omissions in the founders intent; or existence of litigation with the foundation's assets.

Ordinance 75/2013, 18 February, article 3 states that the minimum endowment for a foundation is €250,000 with at least 30% of this sum in cash.

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)

For the moment, foundations in Portugal are registered in the National Registry of Legal Entities. However, in January 2020, a single Registry of Foundations started to be implemented, following the implementation of the provision of art. 8 of FLF and the approval of Decree-Law n.º 157/2019, de 22 de outubro. This new registry will have simplified procedures for updating and reporting, including formal government authority (Registry, Supervision and Tax) partnerships to facilitate cross-checking information. Thus far, the implementation of this new Registry has not yet concluded.

Additionally, beneficial ownership registration is mandatory for all legal entities, including foundations, and best practices consider the members of the board the ultimate beneficial owners of the foundations for this purpose.

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

For the moment, the register keeps the founding documents, identification of the board members, and, if applicable, information on change of name or purpose, transfer of registered office, dissolution etc. For the new Registry of Foundations it is mandatory to register the following:

- The State Approval request application as well as the subsequent decision or refusal of recognition
- The decision of public-utility/benefit status
- Statutes modification, including the amplification or change of the foundation's goals
- The nomination, renovation and termination due to any reason other than time of the mandate of the members of all the foundation's governing bodies
- Merger of foundations
- Dissolution of the foundation
- Closing of the assets liquidation
- The beginning and end dates of the mandate of the liquidators

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: case by case

Although Portugal does not have a stipulated minimum, the administrative authority must refuse recognition if the assets are estimated to be insufficient for the pursuit of the foundation's purpose (Art. 23.1 FLF and Art. 188.2 CC). The FLF offers the guideline that an initial endowment of at least €250,000 would generally be considered "sufficient assets" (Art. 22.3 FLF and Art. 2 of Order 75/2013, 18 February).

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

No. Nonetheless, in the case of private foundations with public-utility status and public foundations, the sale of assets of the foundation which have been allocated by the founder(s), and specified as such in the founding act, and which have a special significance for the foundation's purpose, requires authorisation by the recognition authority: Otherwise the sale will be void (Art. 11 FLF). Thus, "special significance" is understood in practice to include not only material assets, but also financial assets. Plus, they should respect the annual limits imposed by civil law on the office and administration costs.

In addition, although spend-down foundations are not explicitly addressed, the FLF allows for a foundation to terminate if there have been insolvency proceedings, inactivity for three years, or if the pursuit of the foundation's goals has become exhausted or impossible (Art. 35 FLF). In this way, foundations may spend-down endowments under the legal regime until the foundation is terminated. Furthermore, the law admits the founder to determine what can trigger the termination of a foundation, which in theory could be the legal basis for "spend-down foundations" in Portugal [article 35.1b)].

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

The FLF requires that a foundation has the following two-tier governance structure (Art. 26):

- A board of directors responsible for the ultimate management of the foundation's assets, as well as deciding on the amendment of the statutes, the modification of the foundation and dissolution of the foundation
- An executive commission, responsible for the day-to-day management
- A supervisory board responsible for supervising the foundation's management and accounts

The foundation's statutes have discretion to designate other facultative bodies, namely a board of founders or trustees with a fiduciary role of ensuring the compliance with the foundation's statutes and the respect of the founder's will. The mandates of the governing bodies' members shall be temporary, except for the lifetime roles specifically created by the founder.

- 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 law requires that the board of directors must have an uneven number of members and that one of these members is nominated as its president (Art. 27.2 FLF and Art. 162 CC). The management commission can be part of the board of directors (Art. 27.2 FLF).

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

In Portugal, it is not the law but the foundation's statutes that determine the rights and duties of board members (Art. 29.1 FLF and Art. 164.1 CC). Regarding negative rights and duties, Art. 29.2 FLF warns nevertheless that members of the foundation's bodies may not cease to cast their vote on decisions taken in meetings in which they are present as they are directly and potentially responsible for any damage arising out of these decisions, unless their discord has been documented in the minutes of the meetings.

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

In Portugal, foundations are autonomous legal entities and, in that regard, founders do not have any explicit "rights" during the lifetime of the organisations they incorporate, except of course if, in the case of living founders, they have any lifetime position in the management of the foundation, which is possible - the FLF forbids lifetime mandates for the members of the governing bodies except for the ones specifically created by the founder in the bylaws (article 26.3).

In addition, the founder's will serves as a benchmark during the foundation's lifetime, namely, when amending the statutes, changing the purpose of the foundation, or even when merging the foundation with another foundation (Arts. 19.3, 31, 32 and 33 FLF and Arts. 187.3, 189, 190 and 190-A CC).

Very important, the founder can determine a specific cause that triggers the dissolution of the foundation [article 35.1.b)] and the destiny of the foundation's assets in case of the dissolution (article 18.2 of FLF).

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

Yes, statutes can essentially be amended, at any time, upon the request of the foundation's board, as long as the purpose of the institution is not substantially changed and the will of the founder is respected (Arts. 31 FLF and 189 CC). More specifically, Arts 32 FLF and 190 CC state that after hearing the board of the foundation and the founder, if living, the recognition authority can extend the foundation's purpose if the profitability to society of the available means dictate it, and can change the purpose of the institution when the initial aim has been fulfilled, has become impossible to achieve, no longer has social interest, or when assets are insufficient for it.

However, changing the purpose is not allowed if the founding act itself explicitly prohibits it or if it dictates the dissolution of the foundation in lieu of changing its purpose. Thus, the relationship can ultimately be viewed as giving conditioned substantive amending power to the board, which is always relative to the more absolute power that the founder's will and original statutes hold on to throughout the foundation's evolution.

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

There are no specific rights granted to third parties, but foundations shall approve and publicise codes of conduct with self-regulation of good practices, including the participation of the beneficiaries in the life of the foundation (Art 7.1. FLF).

- 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?

Although the FLF does not have a definition of conflict of interest, it provides that foundations shall approve codes of conduct and good practices including conflict of interest. Furthermore, the Code of Public Contracts (CPC) has a definition of "conflict of interest" that can be understood as a guidance for private foundations: "any situation in which any employee or director of the contracting entity or any service provider acting on behalf of the contracting entity intervenes in the preparation or in the process of procurement of a public contract or can influence its outcomes, has a direct financial interest, economic or other personal interest capable of jeopardizing her/his impartiality or independence in the context of the aforementioned procurement."(Art. 1.-A. 4 CPC).

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

The law does not address this issue.

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?

Is there a solid case law, if any, regarding the duty of due diligence?

The FLF states that, in the absence of specific provisions in the foundations' statutes, the obligations and liabilities of the members of the governing bodies of the foundations follow the rules on the mandate, adapted accordingly (article 29.1, which reproduces article 164.1 of the Civil Code). Moreover, article 29.2 of the FLF (also in accordance with article 164.2 of the Civil Code) provides that the members of the foundations' governing bodies cannot abstain from casting their vote in any meeting in which they participate and are therefore responsible for any losses and damages arising from all the decisions that have been taken by the boards in which they participate, unless they have expressly voted against that particular decision. In addition, article 165 of the Civil Code provides that foundations shall be liable for the actions of its representatives in the same terms as the principal is liable for the actions of its agents. This said, according to article 1161/(d) of the Civil Code *ex vi* article 29.1 of the FLF and article 164/1 of the Civil Code, board members of foundations are required to, among other acts, render accounts of their actions.

In addition, and despite no express reference by either the FLF and the Civil Code to the subsidiary applicability to foundations of the Companies Code, it is commonly accepted that the members of the management of foundations are also subject to the key duties imposed on companies' directors, in particular those outlined in article 64 of the Companies Code.

As such, and given the similarity between the role of board members and the role of the agents in a mandate agreement, each based in a fiduciary *jural* relation as managers of assets of which they are not the legal owners, it is possible to argue that the members of the management bodies of a foundation are also subject to the following duties:

- Duty of care, which requires that they must have the availability, the technical skills and the proper knowledge about the foundation's activities for the performance of their roles, deploying in this context the diligence of a judicious and organised officer; and,
- Duty of loyalty to the extent that they must perform their roles in the best interest of the foundation and, in the absence of shareholders, other relevant stakeholders that contribute to the foundation's sustainability, such as employees, grantees and partners.

On what concerns the supervisory boards, the Companies Code imposes the same duties of care and best interest of the foundations, deploying high standards of professional diligence and loyalty.

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

Portuguese law does not differentiate between unpaid and paid board members.

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

There is not a specific provision on the subject, therefore general rules of civil and criminal liability apply and most likely any authority may be able to make a claim.

There are no general rules providing that the directors of a foundation are liable towards an entity other than the foundation itself. It is arguable therefore that the members of the management of foundations are only liable towards the foundation for wilful breach of their duties (article 513 of the Civil Code) and there is no joint liability between the various directors approving a resolution – they will be severally liable towards the foundation.

The foundation will, however, be liable towards third parties for the actions of its board members to the extent that the same would have been liable – that is to say, to the extent that such board members breached a third parties' right (article 165 of the Civil Code). And, as consequence, the

foundation would be entitled to claim damages from such directors if it was found that they breached the rules of their mandate.

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?

Representation is not specified in law. Rather, the FLF (art. 28) and the CC (art.163) state that representation of a foundation, whether in or out of court, is left up to statutory design. In the absence of statutory provisions, yes, the administration or whoever is designated by it will be responsible for representation.

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

Foundations are allowed to pursue related economic activities (Art. 160.1 CC). However, public-utility status and its tax benefits do prevent the foundation from carrying out this economic activity as its principal activity: This provision aims to avoid giving foundations an unfair competitive edge with other entities not benefiting from the public-benefit status. (Art. 24.1 c) FLF).

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?

The Portuguese law does not detail or limit funding legal entities that are conducting economic activities in addition to their public-utility activities.

It is worth mentioning Art. 10 of CIVA (VAT) that defines what a “not-for-profit” institution is for VAT exemption purposes as those organisations who simultaneously:

- a) Never distribute profits and whose managing bodies do not have, for themselves or through intermediaries, a direct or indirect interest in the results of its exploits;
- b) Prepare accounting that covers all its activities and is available for tax services, namely to verify what is referenced in the previous paragraph;
- c) Practice pricing approved by the public authorities, or for those operations not under the public authorities’ approval, pricing lower than is required for analogous operations by taxable commercial entities,
- d) Do not enter into direct competition with taxable persons.

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, they are permitted to be major shareholders in a company without limitation to voting rights, and being a major shareholder is considered an economic activity in the eyes of the law.

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, there are no rules or limitations regarding asset management outside of the FLF provision referred to in response I.7 regarding recognition authority approval for the sale of assets with special significance to public and private foundations with public-utility status.

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)

There are not any rules or limitations regarding this matter. Without any specific legal framework, foundations have been able to already have some experiences in social bonds and impact investing so far.

Since 2018, financial fluctuations by social investors towards social impact bonds are 130% tax deductible (article 19-A of the Tax Benefits Statute). Social investors are private or public entities, or entities from the social economy, with philanthropic or business aims which contribute with financial resources to the development of social innovation and entrepreneurship initiatives with a social impact aim.

The Resolution of the Council of Ministers n. 157/2017, of October 19, defines social impact bonds as non-refundable grants with partner contractors which are granted to innovation and social entrepreneurship projects in priority areas of public policy contingent on measurable outcomes.

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

Political party related or general lobby/advocacy activities are not “social interest” activities and therefore should be excluded from the foundation’s activities.

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

See response to I.8(e) on requirements for amending statutes regarding the foundation’s purpose.

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, all reports including governance changes should also be submitted to the supervisory authorities. Additionally, the Secretary-General of the Presidency of the Council of Ministers, acting as the foundations authority, must receive the annual financial report and the annual activity report (usually including the public-benefit/activity report) as well as new board members’ reports within 30 days of their appointment.

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

The law does not have further provisions specifically on the checking or review of reports but the implications of the requirements listed above in I.18 (b) are that the respective authorities check the submissions.

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, a Portuguese foundation and foreign foundations active in Portugal have a duty of transparency to the public, namely, to continually provide on its website reports and accounts with the official

opinions of the supervisory bodies from the last three years, activity reports for the same period, and the annual external audit report when certain requirements are met (Art. 9.1 d FLF). This annual public information must appear 30 days after its annual approval which must be made by 30 April each year (Art. 9.5 FLF).

Furthermore, a private foundation with public-utility status and a public foundation must also provide on their websites at all times a description of their initial assets and an itemised list of the financial support received in the last three years from public legal persons if any (Art. 9.3 FLF).

Failure to comply with this duty prevents access to any public financial support during the financial year following the non-compliance or longer if non-compliance continues (Art. 9.8 FLF).

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

The FLF only requires a Portuguese foundation and foreign foundations in Portugal to submit to an external audit if their annual global income is equal to or greater than €2,000,000 according to the terms of Article 3.1(b) of the Corporate Income Tax Code - Art. 9.1 c, Art. 9.3 FLF and Art. 1 of Ordinance 75/2013, 18 February).

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

No, there are no requirements for auditing standards or agencies and the law is silent on who would undertake the audit. In practice, a private firm or externally nominated audit commission entity conducts this audit.

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:

Formal approval is required for the sale of assets with special significance. See the response to I.7 for further information on this approval.

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 law relies on two measures to enforce compliance. First, the foundation may have its public-utility status revoked. Second, in more serious situations, the foundation may be dissolved. The FLF links these consequences for non-compliance with the duty of transparency (Art. 9.8 FLF), including repeated noncompliance with limits on staff and administrative spending (Art 10.2) and, in general, cessation of the prerequisites for public-utility status and serious or repeated breach of law applicable to the foundation (Art. 25.6 c) and d).

20. When and how does a foundation dissolve?

A foundation may be dissolved by the recognition authority after being informed by the board of any of the following events happening: the lapse of a set term of a foundation, inactivity for three years, court declaration of insolvency for maintaining the foundation, achievement of purpose, impossibility of purpose, or when the actual aim does not match the purpose defined in its statutes (Arts. 35 FLF and 192.1 and 193 CC). The foundation's statutes may define additional causes for dissolution. A court may also have the power to dissolve a foundation directly when it uses illicit or immoral means to pursue its purpose, or when the existence of a foundation becomes harmful to the public.

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?

Yes, for some foundations. The FLF does not detail maximums for private foundations without public-utility status but private foundations with public-utility status and public foundations have the following maximums:

- A foundation whose activity mainly consists of financial grants or community support may not spend above one-tenth of its annual income on administrative costs and at least two-thirds of the spending must go directly to pursuing the statutory purpose (Art. 10 FLF);
- A foundation whose activity mainly consists of providing their own services to the community may not spend above two-thirds of its annual income on administrative costs (Art. 10 FLF).

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)?

Only for foundation with tax exempt status: Art. 10.3 b) of the Corporate Income Tax Code – CITC states that a foundation must allocate at least 50% of overall net taxable income to its social purpose by the end of the 4th year after which it was obtained, unless there was just impediment to compliance within that period. By specifying taxable income, donations or contributions that qualify for tax deductibility according to the Tax Benefits Statute (TBS) and the Stamp Tax Code (STC) and administration costs seem excluded from the spending requirement total. The article (paragraph 5) also warns that this part of the income is retroactively subject to taxation if the foundation is non-compliant.

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

Article 5 of the FLF allows the recognition of a foundation created under foreign law that intends to steadily pursue its purposes in Portugal if it has a permanent and registered office there. However, opening such an office also first requires the recognition authority to verify the same information required by law for recognition of a Portuguese foundation (Arts. 22 and 5 of the FLF). Thus, yes a foreign foundation must essentially register and the conditions are ultimately very similar to those required for national foundations.

Notwithstanding the FLF, Portugal signed the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (Strasbourg, 24 April 1986). This Convention has primacy over Portugal's national law and it applies to associations, foundations and other private institutions (hereinafter referred to as "NGOs") that: i) have a non-profit aim of

international utility; ii) were established by a body governed by the internal law of a Party; iii) carry out activities with effect in at least two states; and iv) have a statutory office in the territory of a Party, and central management and control in the territory of the same Party or another Party” (Article 1.º). Other state parties to the Convention must automatically recognise the legal personality of such a foundation on their territory (Article 2.º) upon verifying its statutes or other formation acts (Article 3.º). Art. 4 further states that: “the application of this Convention may only be excluded if the NGO invoking this Convention, by its objective, its purpose or the activity which it actually exercises: a) contravenes national security, public safety, or is detrimental to the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others; or b) jeopardises relations with another state or the maintenance of international peace and security”.

On what concerns trusts, the Portuguese law does not recognise the concept of a legal person as a trust. Any foreign trust seeking to be recognised in Portugal might take alternate legal personhood i.e. a foundation. There is a possibility of establishing a contractual version of a trust and the tax law in Portugal taxes this trust as a financial structure.

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

Yes, the Portuguese law allows a foundation to 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.

No, the Portuguese law does not impose limitations on receiving donations from abroad.

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

There are neither limitations on transference of the seat, nor on cross-border mergers of foundations.

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?)

Foundations incorporated as private institutions of public welfare are automatically tax exempt (10.1.b) CITC). Other private foundations must request the tax exemption from the Minister of Finance and shall have previously requested and be granted by the Prime Minister the public-utility status - 10.1c) and 10.2 CITC, Art. 25.2 FLF.

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

No, although private foundations with public-utility status and public foundations must report public funds received within the last three years on their websites in compliance with the duty of transparency (Art. 9.2 of FLF).

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

Yes, there is an obligation insofar as Art. 9.4 FLF requires that a foundation's annual report be submitted to the Secretary-General of the Presidency of the Council of Ministers on activities, and the accounts contain clear and sufficient information on the types and global amounts of benefits granted to beneficiaries and on donations or subsidies received. Donors must also be reported to the Tax Authorities where the Tax Benefits Statute (TBS) applies.

Anti-money laundering and financing of terrorism laws also likely mandate reporting suspicion of funds of criminal origin to the central department of investigation of the Attorney General of the Republic (Directive (EU) 2018/843 and Proposal n. ° 16/XIV).

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 Art. 1.1 of Decree 460/77, 7 November, legal entities of public utility are associations or foundations that pursue aims of a general interest or pursue the interest of the national community or of any region or district, cooperating with the central or local administration. Both art. 2.1 a) of the above mentioned Decree (as amended by Decree 391/2007, 13 December) and Art. 24.1 a) FLF stipulate that private foundations may only be declared of public utility when they carry out their action in relevant favour of the community, with non-profit-making aims, in areas of social importance such as the promotion of citizenship and human rights, education, culture, science, sport, social interaction of young persons, protection of children, young persons, the elderly, disadvantaged individuals, and citizens with special needs, consumer protection, the protection of the environment and the natural heritage, the fight against discrimination on the grounds of gender, race, ethnic background, religion or any other form of discrimination prohibited by law, the prevention and eradication of poverty, the promotion of health and physical well-being, the protection of health, the prevention and control of disease, entrepreneurialism, innovation and economic development and the preservation of the cultural heritage.

The public-benefit status is granted by the Prime Minister and is a precondition for foundations to apply for or benefit from tax exemptions (article 9 of Decree 460/77, 7 November – amended by Law 40/2007, 24 August, and Decree 391/2007, 13 December). Private social welfare institutions

are governed by a specific legal regime (Decree 519-G2/79, 29 December, Decree 119/83, 25 February, with later amendments specifically Decree 172-A/2014).

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.

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

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

Health, well- being and medical care	x			
Consumer protection	x			
Assistance to, or protection of, vulnerable and disadvantaged persons	x			
Amateur sports	x			
Infrastructure support for public-benefit purpose organisations	x			
Party political activity			x	
Advocacy		x		
Advancement of religion		x		
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

8. Support of “the public at large”

- a) Do the activities of a foundation with public-benefit status for tax purposes generally have to benefit “the public at large”?

Yes.

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

No, as the founder or her/his family affiliates cannot be the sole beneficiaries of a foundation, according to Art. 2.1 f) of Decree 460/77, 7 November, as amended by Decree 391/2007, 13 December, and art. 23,1 b) (a contrario) which states that the legal status should be refused if the aims of the foundation benefit only the founder or a small universe of beneficiaries related to the founder.

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, Art. 10.3 c) CITC is effectively a “non-distribution constraint” in stating that the tax exemption status requires that the board members lack any direct or indirect interest, by themselves or through an intermediary, in the outcomes of the economic activities pursued by the foundation.

- 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?

Theoretically, nothing in the FLF prohibits reversion of assets to private ownership or specific public benefit(s) through an express provision made by the founder in the founding act on this matter (article 12.1 of FLF). However, if no such express provision exists, the assets that remain after liquidation are handed over to an association or foundation with similar purposes, designated by the foundation’s board or by the recognition authority, in that order. And in the event that the assets are rejected, they finally revert to the state (Art.12 FLF).

10. “Altruistic” element

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

The FLF does not address the issue of remuneration of board members, nor the Civil Code. This issue is only addressed in Decree 119/83, 25 February, concerning private social welfare institutions. Accordingly, concerning these type of institutions, remuneration is only expressly allowed when the statutes do not prohibit it and when the volume of financial transactions or the complexity of the administration of the institution requires a board member’s extended presence (Art. 18.2).

- 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, as an exception to the principle that donations should not have any type of benefits in return (art. 61 of Fiscal Benefits Statute) it is allowed nevertheless for a donor/funder to receive benefits that do not exceed 10% of the donation, according to art. 64 of Fiscal Benefits Statute.

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

Yes, the FLF details maximums although the tax code does not. See the response to I.21 for the maximum amounts.

- 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?

Not explicitly but effectively a foundation may spend down its endowment. See the response to I.7.

- 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, foundations can be set up for a limited period of time and no minimum length of time exists (Art. 35.1 a) FLF and Art. 192.1 a) CC).

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

Yes, tax law, not civil law, requires a certain percentage of income be spent within a set period of time. See the response to I.22.

- 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, neither the civil nor tax law requires 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?

Abroad activities are likely to be compatible with the public-benefit tax status as long as they do not constitute the majority of the foundation’s activities as the tax exemption is linked to the public-benefit status, i.e. the latter is only granted to institutions that contribute to the “national” or “general” interest and therefore justify the waiving of the tax burden.

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, public-benefit organisations with a tax-exempt status may give grants to for-profit organisations in Portugal.

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

Generally, tax-exempt status is dependent on the effective relation with the statutory aims (art. 54.º, 3, of CITC).

b) Investment income (asset administration)

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

Generally, investment income is subject to tax except if the foundation has tax-exempt status specifically for this type of income.

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)

Generally, economic activities are subject to tax except if within the scope of the pursuit of the statutory aims.

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

Income deriving from grant expenditure towards public-benefit purpose activities is subject to tax except if the foundation is tax exempt.

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

Generally, major shareholding in a business undertaking would only be tax exempt if clearly within the scope of the pursuit of the statutory aims.

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

Capital gains are subject to corporate income tax.

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

There is no VAT refund scheme for the irrecoverable VAT costs specific for public-benefit foundations. There are nevertheless some sales of goods and services that are exempted from VAT if performed by foundations.

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

Generally, the value of assets would be capital tax levied if specifically exempted.

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

A private law foundation of public utility is exempt from property sale and purchase tax on acquiring real estate that is directly and immediately intended for the realisation of its philanthropic purposes (Code on Property Sale and Purchase Tax - CPSPT – Art. 6.d) and e) although the tax authority must specifically grant the exemption (Art. 10). Furthermore, if said property is subsequently transferred, or used for a different purpose, without the consent of the Ministry of Finance, the foundation must pay, as a penalty, the previously exempted tax (Art. 11.1).

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

Yes, private foundations of public utility may be exempt from the municipality real estate tax on property used directly or the pursuit of their purpose (TBS – Art. 44.1 e) and f) with recognition by the tax authority (Art. 44.8).

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 may request public-utility status under the general terms of the Portuguese law if they have a permanent office in Portugal (Articles 5, 24, and 25 FLF).

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?

Yes, Portugal applies withholding tax to income from local investments held by foreign-based foundations in the terms provided by articles 94.3b), 94.5 and 87.4). Foreign-based foundations in countries with which Portugal has signed bi-lateral tax treaties *can reclaim total or partial refund*.

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?

As for individual donors, the system of tax credit applies; meaning an amount can be deducted from the actual tax to be paid (reduction in amount of tax paid) – article 63 of Tax Benefits Statute (TBS).

As for corporate donors, the system of tax deduction applies; meaning a reduction in the gross amount on which tax is calculated (reduction in taxable income/tax base) - article 62 of Tax Benefits Statute.

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?

The TBS provides tax incentives to individual donors whereby they may subtract 25% of the donation from their total income tax in the respective year. However, because this incentive mirrors that of the corporate donor, if there is a limit on deduction for a corporate donor, then the amount subtracted may not exceed 15% of their total income tax in the respective year (Art. 63.1).

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

Only donations in cash qualify for tax deductibility (art. 63 of the TBS).

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?

Corporate donations are only relieved from the ceiling on tax deduction when they benefit the state or foundations whose initial assets the state contributed to, or, in relation to donations to the initial endowment, when they benefit exclusively private foundations with predominantly social aims - TBS, Art. 62.1 c) and d) and 9 - if specifically recognised both by the Minister of Finance and by the Minister of the Council of the Presidency of Ministers and the statutes of the foundation provide that in case of dissolution the assets revert to the state or non-profit institutions in the sense of article 10 of CITC. These donations are considered as costs in an amount corresponding to: 140% of the total when they are exclusively channelled to social aims; 120% of the total when they are exclusively channelled to environmental, sport or educational aims; or 130% when they are subject to multi-annual agreements signed for specific aims that fix the goals to be achieved by the beneficiaries and the amount to be granted by the corporate donors.

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

In-kind or cash donations qualify for tax relief.

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

Portuguese tax law does not mention donations to non-resident public-benefit foundations and therefore it is very unlikely that the tax authority would give the same tax incentive to foreign organisations, especially if we consider that these foundations are not registered in Portugal and therefore do not have a Portuguese tax number. Some references made by the TBS to NGOs and other Portuguese beneficiary entities operating overseas [Art. 62.3 d), e) and f)], especially humanitarian and emergency aid organisations recognised both by the Ministry of Foreign Affairs and the Ministry of Finance, may indicate that philanthropic work conducted abroad does not exclude per se domestic tax incentives.

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?

The donor may assign 0.5% of individual income tax due to any public-utility institution of charity, assistance or humanitarian purposes, private social welfare institution, or a religious institution listed by the Tax Authorities.

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 donors themselves only have to ensure that their donations in cash greater than €200 is made via a payment method which allows them to be identified e.g. by bank transfer, nominative bank cheque or direct debit (Art. 66.3 TBS). Outside of this requirement, donors must rely on the entities receiving the donations to comply with obligations to declare the donation to the Tax Authorities. For this purpose, these entities must i) issue a document proving the amounts received from patrons; ii) keep an up-to-date register of patron entities with the name, tax number, date and amount of each donation that has been given; iii) by the end of February of each year, provide the Directorate-General for Taxes with an official declaration of the donations received in the previous year (Art. 66.1 TBS). Furthermore, the document of proof must list the legal status of the beneficiary entity, the legal grounds for that status, and either the amount of the donation in cash if the donation is monetary, or the identification of goods, when the donation is in kind (Art. 66.2 TBS).

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

There are no different or additional requirements when a donor is giving to a foreign-based foundation.

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

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

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

No.

IV. Tax treatment of beneficiaries

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

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

Tax exempted if the benefit is considered a scholarship or a prize.

- 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, there are no different or additional requirements.

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)?**

Yes, gift and inheritance tax exists. The national law governs the gratuitous transfer of property, and according to it, public-utility foundations are exempt from stamp duty (Art. 6c and d).

- 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?**

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

- 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, according to Arts. 2156 to 2178 CC a part of the estate (up to 2/3) is reserved for the spouse, and descendants and ascendants.

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

See the response to III.4. Generally, donations made pursuant to the TBS are not subject to this tax.

VI. Trends and developments

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

There are no current discussions on cross-border activities of foundations and no changes have been made to Portugal's legislation regarding the ECJ judgements above.

- 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?**

No, in Portugal, non-profit organisations are considered as "assimilated" – they will have some duties but not as obliged entities in the meaning of the Anti-Money Laundering Directive.

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

No, however, best practice considers the members of the board as the ultimate beneficial owners of a foundation as they are in charge of the activity of a foundation.

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

The former; Portugal has a specific register for BO of legal entities.

- 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?

Entities that promote public fundraising must assure for each fundraising activity that they collect information about the identities of supporters and beneficiaries, along with the amount (by individual and by operation) donated and the method of payment. Whenever the entities suspect that funds have criminal origin they are obliged to report this to the central department of investigation of the Attorney General of the Republic.

VII. Further information

Useful contacts

Portuguese Centre of Foundations, Rua Rodrigo da Fonseca, n.º 178 – 6.º esq. 1070-239 Lisboa Portugal, Tel.: +351.21.353 82.80, Fax: +351.21.353.82.85, www.cpf.org.pt

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- [Ordinance 75/2013, 18 February](#)
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- [Law on combating money laundering and preventing finance of terrorism](#)
- [Law on freedom of religion](#)
- [Proposal on anti-money laundering](#)
- [Private social welfare institutions](#)
- [Public Utility Status](#)
- [Registry of foundations](#)
- [Stamp Tax Code](#)
- [Tax Benefit Statute](#)
- [VAT Code](#)

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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