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Legal Environment for Philanthropy in Europe

Switzerland

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?**

While the term “foundation” is not legally defined in Swiss law, Art. 80 et seqq. Zivilgesetzbuch (ZGB – Swiss Civil Code) provides the legal framework for foundations in Switzerland. According to Art. 80 ZGB the formation of a foundation requires assets being endowed for a specific purpose.

Types with own legal personality (“independent foundations”): (1) “conventional/ordinary” foundations (Art. 80 et seqq. ZGB); (2) ecclesiastical foundations (Art. 87 ZGB); (3) family foundations (Art. 87, 335 ZGB); (4) corporate foundations; (5) foundations concerning employee benefits schemes (Art. 89a ZGB, Art. 331, 331 a-f, 361, 362, 673, 674 para. 3 Obligationenrecht [OR – Swiss Code of Obligations]), which are subject to certain special regulations (see Art. 48 ff. Bundesgesetz über die berufliche Alters-, Hinterlassenen- und Invalidenvorsorge [BVG – Federal Act on Occupational Old Age, Survivors' and Invalidity Pension Provision]); (6) investment foundations (Art. 53g BVG, Art. 80 et seqq. ZGB), which serve the joint investment and management of pension assets by pension foundations as investors; and (7) public law foundations (Art. 59 para. 1 ZGB).

Dependent foundations: A dependent foundation is not a legal person but consists of special funds transferred by the founder to a natural or legal person (for instance an “umbrella foundation”) and which are permanently linked to a specific purpose. Trusts, such as the Anglo-Saxon variety of dependent foundations, are often used as devices for estate and tax planning, asset protection as well as charitable purposes. Although Switzerland has no trust law of its own, trusts are not uncommon. Due to the ratification of the Hague Trusts Convention (HTC), Switzerland is obliged to recognise foreign trusts and to apply to them the law under which they were created. However, the introduction of a Swiss trust law is currently under discussion.

Associations (Art. 60 et seqq. ZGB) and cooperatives (Art. 828 et seqq. OR) are frequently used as legal alternatives to philanthropic organisations. The company limited by shares (Art. 620 et seqq. OR) and the limited liability company (Art. 772 et seqq. OR), which can also be set up with a non-profit purpose, are other possible legal forms.

- 2. What purposes can foundations legally pursue?¹**

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

The founder is generally free to determine the purpose of the foundation (so-called freedom of foundation or freedom of the founder). Of course, general legal restrictions are to be observed when determining the purpose; in particular, the purpose may not be in violation of mandatory laws or fundamental moral views. The foundation may have a purpose for the public benefit, a private purpose or even a mixed purpose, but cannot be of a self-serving nature (no “foundation for the founder”, no “self-purpose foundation”). Political purposes are allowed within the general restrictions. In order for a foundation to be eligible for tax exemption, it must have a philanthropic or public purpose and meet the specific requirements of the tax law.

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

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?

According to the so-called register or normative system, foundations acquire the status of a legal entity with full legal personality upon their entry into the commercial register (Art. 52 para. 1 and Art. 81 para. 2 ZGB, Art. 94 Handelsregisterverordnung [HRgV – Swiss Commercial Register Ordinance]). In addition to its publicity effect, the entry also has a constitutive effect (BGE 120 II 137, 141). Prior to the entry, the foundation obtains the legal position of a “nasciturus” (Art. 31 para. 2 ZGB). Since January 2016, all Swiss foundations (apart from public law foundations) must be entered into the commercial register. Due to an amendment made to Art. 52 para. 2 ZGB, the previously exempted family and ecclesiastical foundations now fall within the general registration requirement.

The actual foundation transaction, the act of endowing assets, is a one-sided legal transaction not requiring acknowledgement by another party. The desired legal effect is achieved by the mere declaration of intent made by the founder.

The foundation deed requires the following information:

- The intention to form an independent foundation
- The identification of the assets to be transferred to the foundation
- The description of the foundation’s purpose

As for the rest, the founder may set up and organise the foundation virtually at his or her own discretion. It is possible to establish a foundation by means of a legal transaction inter vivos (Art. 81 para. 1 ZGB) or by a disposition mortis causa (Art. 81 para. 1 in connection with Art. 493 para. 1 ZGB). Ever since the revision of the Swiss foundation law which came into effect in 2006 and contrary to a previous judgment of the Swiss Federal Supreme Court (BGE 96 II 273), it is also permitted to establish a foundation by way of a contract of inheritance and not only by way of a will.

The documents required in the registration process are further specified in Art. 95 HRgV.

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

Foundations acquire legal personality upon their entry in the commercial register; accordingly, in the process of formation the state is involved as a registration authority. However, this does not imply a classic state approval with/without discretion, as the actual endowment transaction is a unilateral legal transaction not requiring acknowledgment by another party (provided that the legal requirements are fulfilled). Once it has been incorporated, the foundation is – as the only legal entity under Swiss private law – subject to supervision by a state authority (Art. 84 para. 1 ZGB).

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)

In Switzerland, foundations are obliged to be entered in the state “commercial register”. Since 2016 all Swiss foundations (except of the public law foundations) are required to register. Before, family foundations and ecclesiastical foundations did not have to register.

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

The information kept in the register is stipulated in Art. 94 and 95 HRegV. Among others, the entry in the commercial register contains the following information:

- The fact that the legal entity which is entered into the commercial register is a foundation
- The name of the foundation as well as its VAT Number
- The seat of the foundation as well as its legal domicile
- The legal form of the organisation
- The date of the foundation deed or the date of the disposition mortis causa establishing the foundation; regarding ecclesiastical foundations whose incorporation cannot be documented, the date in the minutes of the governing board that confirms the existence
- The purpose
- In case of a reservation to amend the purpose according to Art. 86a ZGB, a reference to the foundation deed outlining the details of such reservation
- The names of the members of the foundation's governing body
- The names of the individuals authorised to represent the foundation vis-à-vis third parties
- The competent supervisory authority
- The name of the external auditor or, in case of an exemption, a reference to the exemption and the date of the supervisory authority's underlying decision

In comparison to ordinary foundations, ecclesiastical and family foundations are not subject to state supervision and they are not obliged to appoint external auditors (therefore they do not have to submit the related documentation, Art. 95 para 2 HRegV).

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:

Not by law. However, according to the practice adopted by the Federal Foundation Supervisory Authority (Eidgenössische Stiftungsaufsicht), the initial capital must be at least CHF 50,000 (~€ 46,000).

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

The law does not stipulate requirements of the dedicated assets, and in general the founder is free in determining their scope and their consumption. Nevertheless, the foundation must be provided with sufficient assets to fulfil its intended purpose (so-called means-to-ends ratio = Zweck-Mittel-Relation). The consumption depends on the specifications of the founder.

Spend-down foundations are not stipulated by the law explicitly, but they are admissible under the normal conditions. A foundation can be set up as a spend-down foundation right from the start or it can be converted into one by amending the statutes.

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

The foundation's governing body and the way it is to be administered are set forth in the foundation deed (Art. 83 para. 1 ZGB). The founder may set up written regulations providing for the organisation of the foundation in more detail: This procedure may facilitate implementing required changes or modifications (BGE 76 I 77). The foundation always requires a governing organ which ensures the foundation's legal capacity, and which is entitled to manage and represent the foundation. The governing body is the governing board (usually called "foundation board"). Pursuant to Art. 83b ZGB, foundations are also obliged to appoint external auditors (unless there is an exemption). Other organs are optional. Considering the above, it can be concluded that Switzerland follows a one-tier governance model.

However, the implementation of corporate governance rules into foundation law has gained significant momentum resulting in a "foundation governance" over the last couple of years. A lot of work has already been done with regard to self-regulatory mechanisms/guidelines: The Swiss Foundation Code 2015, which was published in its third edition in 2015, is designed for grantmaking foundations and includes 3 principles, 29 recommendations, and an extensive commentary. Currently, the fourth edition of the Swiss Foundation Code is on its way and expected to be published in summer 2021.

a) Is it mandatory to have a:

- Supervisory board
- Governing board

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

No formal requirements; the founder may provide instructions or rules regarding the organisation by means of written regulations.

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

Duties are specified according to the foundation deed. The members of the governing body are responsible for the management of the foundation. According to Art. 55 ZGB, they bind the foundation by concluding transactions as well as by their other actions.

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?

As the foundation is irrevocable and the founder loses control over the assets that must serve the purpose of the foundation in accordance with the original intention of the founder, the founder's influence after the establishment is limited.

Since 1 January 2006, a founder may request an amendment of the foundation's purpose if the founder has reserved this right in the foundation deed and provided that at least ten years have elapsed since the foundation was established or since the last amendment has been requested by the founder (Art. 86a ZGB). Additionally, in the case of charitable or public-purpose foundations the foundation must preserve its non-profit purpose following the amendment.

The request is submitted to the competent supervisory authority. The right to change the foundation's purpose is neither transferable nor heritable and, in the case of a legal entity as founder, expires 20 years after the establishment of the foundation at the latest.

The implementation of Art. 86a ZGB was both politically and dogmatically controversial because, strictly speaking, it contravenes the underlying separation principle as regards the founder and the foundation (Trennungsprinzip) – traditionally one of the pillars of Swiss foundation law.

In the foundation deed, the founder may also retain specific rights (such as the appointment of board members). However, fundamental amendments of the Statutes always have to follow the strict rules of Art. 85 et seqq. ZGB.

- 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?

The founder may reserve and exercise the right to amend the purpose pursuant to Art. 86a ZGB (see answer to d).

Pursuant to Art. 85 ZGB modifications of a foundation's organisation are permitted as an exception, provided that the reorganisation is urgently required in order to preserve the foundation's assets or to safeguard the pursuit of its purpose. In addition, the supervisory authority may amend the objects (purposes) of the foundation according to Art. 86 ZGB if they have altered in significance or effect to such an extent that the foundation has plainly become estranged from the founder's intentions. In both cases, the competence for the implementation of the relevant modifications lies with the special federal/cantonal/municipal authority as set forth in Art. 85 and Art. 86 para. 1 ZGB (even though in practice they are usually requested by the governing board).

A simplified procedure exists for minor or insignificant amendments of the foundation's purpose as well as minor organisational modifications (Art. 86b ZGB).

There is currently a political motion in discussion. According to the preliminary draft, the founder's rights shall be optimised by extending the right to amend the foundation deed to include organisational changes, pursuant to Art. 86a ZGB, and by simplifying procedures for minor amendments to the foundation deed.

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

The law does not provide for special rights. A general right of information for beneficiaries or for third parties is accepted by parts of the doctrine. However, there is — based upon jurisprudence — the possibility to file an official complaint with the competent state supervisory authority in case of a legitimate interest. The competent supervisory authority is thus responsible for evaluating complaints made by third parties which concern the legality of the foundation's activities or of the foundation's bodies. Moreover, the current revision seeks to provide for a clearer regulation of the foundation supervision complaint.

- 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?

Rules according to the foundation deed, if provided. Also the Swiss Foundation Code 2015 contains, in particular, practical governance guidelines on conflicts of interest (see "Recommendation 11 ": https://www.swissfoundations.ch/wp-content/uploads/2019/07/FoundationGovernance_Bd.13_SwissFoundationCode2015.pdf).

Apart from this self-regulation, there is no explicit rule in the foundation law prohibiting self-dealing. According to the Swiss Federal Supreme Court, contracts resulting from self-dealing are permitted and valid if the nature of the contract excludes the danger of causing a disadvantage for the substituted party. Art. 718b OR, which addresses contracts between a company limited by shares and its representative, can possibly be applied to foundations by way of analogy. This provision stipulates that such contracts must be made in writing.

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

Yes, if provided for in the foundation deed or by legal delegation by the governing board according to the legal rules.

- 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?

There is no general standard. The diligence is derived from the underlying contractual relationship between the foundation and the individual board member.

According to the prevailing opinion, the “business judgement rule” is applicable to foundation organs. Further, no liability arises unless a board member has acted negligently (Art. 97 and 41 OR).

Foundation law does not provide for a specific basis for the liability of the organs. The appointed organ is therefore liable according to the general provisions, i.e. internally (towards the foundation) according to the underlying contractual relationship as well as for any unlawful acts (Art. 41 et seqq. OR), and externally (towards beneficiaries, contractual counter-parties and any other third parties) only for unlawful acts (Art. 55 para. 3 ZGB in connection with Art. 41 et seqq. OR).

In addition to the appointed organ, there are – based on court practice – also de facto bodies (“factual organs”). The legal figure of the “factual organ” includes any person effectively participating in or influencing the decisions normally reserved for appointed organs. Internally (towards the foundation), a factual organ may be held liable according to the basic principles for (management) activities and actions performed without due authority (Art. 419 et seqq. OR) as well as for any unlawful acts (Art. 41 et seqq. OR). Externally (towards beneficiaries, contractual counter-parties and any other third parties), a factual organ is liable only for unlawful acts (Art. 55 para. 3 ZGB in connection with Art. 41 et seqq. OR).

Internal relationship: In general, an organ is established by the “organ agreement”, an agreement sui generis which is mainly based on the provisions of employment and contract law. The organ is liable only if actual damages occur in connection with a breach of contract on the basis of negligence and if adequate causation between the breach of contract and the occurred damage can be established. Art. 419 and 420 OR constitute the basis for the internal liability of the factual organ; the factual organ is required to exercise the same due diligence in terms of quality as an appointed organ because the same basic principles for a contractual liability apply for both organs.

External relationship: Externally, the foundation is liable with all its assets. In addition, the acting organs may be held personally liable if they acted negligently (Art. 55 para. 3 ZGB).

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

A differentiation between voluntary and paid board members is discussed controversially in literature. The supporters of a differentiation refer to Art. 99 para. 2 OR which provides for a less strict liability for a party acting without any personal benefits.

Because of this uncertainty, a political proposal has been lodged to enshrine the limitation of liability for honorary board members (see the preliminary draft of a revision of foundation law).

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

Concerning the legality of the foundation’s activities or the conduct of the foundation’s bodies, everyone with a legitimate interest can file an official complaint with the competent state supervisory authority. The legitimation of the foundation supervisory complaint presupposes a more precisely defined personal interest of the complainant in controlling the activities of the foundation’s bodies. Notwithstanding the foregoing, anyone can file a notification with the supervisory authority (although this is not a legal remedy). The same actions can imply not only regulatory but also civil law consequences. Direct damages against the foundation itself or the governing board can therefore be enforced under the rules of civil law with civil remedies. In the event of grave misconduct, criminal proceedings may be initiated.

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

The governing board represents the foundation towards third parties. All modifications are up to the statutes. The governing body responsible for management, according to Art. 55 ZGB, confers rights to the foundation and binds the foundation by concluding transactions and by its other actions. The

governing body, which may consist of one or several natural or legal persons, is often referred to as a foundation board/foundation council/board of trustees (Stiftungsrat), foundation board of directors (Stiftungsvorstand), foundation commission (Stiftungskommission) or curatorship (Kuratorium).

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

Yes, these are allowed. Foundation law does not stipulate a ceiling/limit on economic activities. However, tax law may impose (factual) limitations on economic activities, as profit motives are, in principle, incompatible with the requirements of acting in the public intent and with selflessness. As a general rule, a potential tax exemption can depend on the commercial activity being subordinated to a non-profit purpose. However, tax authorities encounter difficulties in providing equal treatment, for instance regarding impact investments.

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

There are no legal restrictions regarding funding legal entities that are conducting economic activities in addition to their public-utility activities by the governing law (provided that the funds are in accordance with the purpose of the foundation). When it comes to tax exemption, however, the tax authorities are very restrictive by making sure that the funds be used in the public interest.

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, foundation law allows foundations to be major shareholders. However, there is a difference between business foundations, whose very purpose it is to be a major shareholder, and ordinary foundations, for which normally a balanced portfolio is envisaged. Furthermore, special rules apply to charitable foundations, which aim to qualify for tax exemption.

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?

Not within the rules applicable to conventional foundations. There are, however, some rules developed by jurisprudence and guidelines established by associations. Additionally, specific rules are laid down in the Federal Law on Occupational Retirement (BVG) which apply to foundations concerning employee benefits schemes. These rules may also serve as a guideline for the asset management of conventional 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. However, the tax authorities encounter difficulties in providing equal treatment, for instance regarding impact investments.

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

As already mentioned, the Swiss law strictly separates an organisation's form under civil law and its tax status. Swiss civil law does not prohibit such activities. With regard to the tax exemption, the purpose must be in the public interest and serve an open circle of beneficiaries. Therefore, serving the interests of a certain (political) group usually does not qualify for tax exemption.

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

Changes of a foundation's organisation are permitted as an exception pursuant to Art. 85 ZGB, provided that the reorganisation is indispensable for the preservation of the assets or for the protection of the purpose of the foundation. If the original purpose of the foundation has significantly or effectively changed and the foundation apparently no longer represents the founder's intent, the purpose of the foundation may be amended in light of the changed circumstances pursuant to Art. 86 ZGB. In both cases, a federal or cantonal authority is competent to implement the change(s), as set forth in Art. 85 and Art. 86 para. 1 ZGB.

With respect to changes of the organisation, only the supervisory authority is allowed to request such changes, while the governing organ has only the right to be heard. Following the revision of the foundation law, which has been in force since 1 January 2006, the governing organ of the foundation may now request an amendment of the purpose of the foundation.

Since this revised law was adopted, minor or insignificant changes of the foundation's purpose as well as minor organisational changes may also be realised in a simplified procedure pursuant to Art. 86b ZGB. The provision in Art. 86a ZGB is completely new: Since 1 January 2006, a founder may request an amendment of the foundation's purpose.

The founder may request a change of the foundation's purpose if the founder has reserved this right in the foundation deed and provided that at least ten years have elapsed since the foundation was established or since the last amendment has been requested by the founder. Additionally, in the case of charitable or public-purpose foundations the foundation must preserve its non-profit purpose (and, therefore, keep its tax exemption status) following the amendment. This provision was highly disputed both politically and dogmatically because it may be considered as a – partial and limited – breach of the principle of separation, which has traditionally been a fundamental pillar of Swiss foundation law.

As mentioned earlier, there is now a related political proposal which aims to optimise the founder's rights by extending the right to amend the foundation deed to include organisational changes and by simplifying procedures for amending the foundation deed.

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)

As soon as the new Art. 84b ZGB enters into force in the course of the reform of the Swiss corporation law (adopted in June 2020) the governing board must also separately disclose to the supervisory authority on an annual basis the total amount of the remuneration paid directly or indirectly to it and to any management.

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)?

If the foundation's range of activity is not limited to a single canton but includes the whole of Switzerland and/or international activities, the Federal Foundation Supervisory Authority will be the competent supervisory authority. On this federal level, non-profit foundations are supervised by the General Secretary of the Federal Department of the Interior, which demands an activity report, annual financial statements, audit report (provided that the foundation is under an auditing obligation), a list of the current board members, and the board's approval of the annual reports. Pursuant to Art. 84 para. 1bis ZGB, the cantons may subject foundations at communal level to

supervision at the cantonal level. The internal cantonal competence with regard to supervisory authorities is regulated by cantonal law.

Tax reports must be submitted to the tax authorities and to the competent supervisory authority upon request. The supervisory authority does not decide on tax exemptions.

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

Supervisory authorities. Foundations are supervised by the state authority (confederation, canton, commune) to which they are assigned (Art. 84 para 1 ZGB).

However, it is the competent tax authority's responsibility to check if an organisation meets the necessary material requirements for a tax exemption.

Hence, the competent supervisory authority does not decide on the question of whether or not a foundation should be exempted from taxes based on its non-profit status. In addition, the competent supervisory authority does not monitor whether a foundation fulfils the requirements for tax exemption. However, in practice, the competent supervisory authority may inform the competent tax authority in case of doubtful or problematic activities which could have an impact on the foundation's tax status.

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)?

There is no duty to publish any reports, nor will they be published by the authorities.

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

Art. 83b ZGB provides for the general obligation to appoint external auditors. This obligation to conduct audits is subject to certain exceptions: Family and ecclesiastical foundations are generally exempted (Art. 87 para. 1bis ZGB). Furthermore, individual foundations may be exempted by the supervisory authority according to Art. 83b para. 2 ZGB and an ordinance based upon this provision (opting-out) if they have small assets (total assets must be below CHF 200,000 [~ € 188,000] in two consecutive business years) and if they do not publicly collect donations.

However, the exemption from the obligation to conduct audits does not release the foundation from its obligation to report to the supervisory authority. Of course, exempt foundations may very well voluntarily conduct a limited or official audit or an audit that is not based on statutory regulations (opting-in, Art. 83b para. 4 ZGB). In this regard, Art. 83b para. 3 ZGB refers to the provisions of the Code of Obligations on external auditors for public limited companies.

A foundation is subject to an official audit to be conducted by an external auditor if it exceeds two of the following parameters in two consecutive business years: Total assets of CHF 20 million (~ € 19 million); revenue of CHF 40 million (~ € 38 million); or an annual average of 250 full-time employees (Art. 727 para. 1 No. 2 and 727b para. 2 OR in connection with Art. 83b para. 3 ZGB). If these limits are not exceeded, the foundation is subject to a limited audit of its annual financial statements (Art. 727a and 727c OR in connection with Art. 83b para. 3 ZGB). Thus, foundations are at least subject to a limited audit, unless they have been exempted by the supervisory authority according to Art. 83b para. 2 ZGB and an ordinance based upon this provision (opting out).

A special characteristic of foundation law is that the supervisory authority may demand that an official audit be conducted if this is considered necessary to reliably assess the asset and profit situation of the foundation, even if the foundation is only subject to a limited audit (Art. 83b para. 4 ZGB). The auditor will submit a copy of the audit report and any important messages regarding the foundation to the competent supervisory authority (Art. 83c ZGB).

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

The Revisionsaufsichtsgesetz (RAG – Audit Admission and Oversight Law) implements an admission procedure that is to be followed by all natural persons and auditing agencies wishing to provide auditing services. The supervisory authority checks if the applicant meets the statutory requirements (Art. 2 lit. a and Art. 3 et seqq. RAG).

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

The legal relationship between the foundation and the supervisory authority is subject to public law since the state acts in its sovereign capacity.

Ever since the reorganisation of the supervisory system in 2012, certain cantons have consolidated their classical foundation supervision and the oversight of foundations concerning employee benefits schemes within a single public, but independent body. In addition, some cantons have created joint inter-cantonal supervisory bodies. Furthermore, some cantons have separated the supervision of classical public-benefit foundations from the oversight of foundations concerning employee benefits schemes.

b) Does the supervisory body review reports?

- Yes
- No

c) Are foundations subject to inspection?

- Yes
- No

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

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

If yes, please specify which type of decisions:

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

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

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

The supervisory authority is entitled to give instructions that are binding for the foundation organs and has the right to sanction the foundations if they fail to follow the instructions.

Doctrine and legal practice differentiate between preventive (precautionary) and repressive (restorative) supervisory measures. Preventive supervisory measures are, for example, regulations pertaining to the investment of assets, the foundation organs' obligation to provide an annual report, and the submission of regulations and changes thereto. The repressive measures aim at eliminating the consequences of mistakes made by the foundation organs; for example, reminders, warnings, reprimands, the revocation of a decision made by the foundation's organs, replacement of measures, fines, a criminal complaint, and in serious cases even the removal of the foundation's organ. However, the supervisory authority may only control the foundation organs' discretion on misuse and it must not replace the organs' decisions by its own discretion. In addition, the

supervisory authority must always adhere to the general principle of proportionality when implementing supervisory measures.

20. When and how does a foundation dissolve?

Since a foundation is bound by the will of the founder, it cannot dissolve itself - in contrast to corporations. Certain circumstances are required for the dissolution of a foundation. The competent federal or cantonal or municipal authority will dissolve the foundation upon request or ex officio if the purpose of the foundation can no longer be achieved and if the foundation cannot be maintained by amending the foundation deed or if the purpose of the foundation has become illegal or immoral (Art. 88 para. 1 ZGB). Any interested party may file an application or bring an action for the dissolution of a foundation (Art. 89 ZGB). The dissolution must be reported to the commercial registrar so that the entry may be deleted. Furthermore, foundations have the possibility to merge and to transfer assets. Foundations can either be set up as spend-down foundations by the founder or can be transformed into a spend-down foundation within the rules of statutory amendments. Once the foundation has spent the assets, it will be dissolved.

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, but the competent supervisory authorities ensure that the administrative costs are kept at a level appropriate to the size of the foundation.

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 obligation at all. The authorities, of course, will ensure that the purpose is actually fulfilled.

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

The recognition is assessed according to Art. 154 Bundesgesetz über das Internationale Privatrecht (IPRG - Swiss Federal Code on Private International Law). A foundation will be recognised if it was incorporated correctly in its country of origin. There are only a few exceptions, e.g. if the recognition would be considered contrary to the Swiss "public order".

Although Switzerland has no trust law of its own, trusts are not uncommon in the Swiss legal landscape. Due to the ratification of the Hague Trusts Convention (HTC), Switzerland is obliged to recognise foreign trusts and to apply to them the law under which they were created. However, the introduction of a Swiss Trust law is currently under discussion.

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, without limitations. There might, however, be an effect on the tax evaluation of the foundation since the purpose must be in the public interest from a *Swiss* perspective.

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

No, there are no limitations or specific reporting rules for foundations. Considering good governance standards, as recommended in the Swiss Foundation Code, established principles should be followed, e.g. for identifying the donating party as the "Know-your-customer" rule.

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?

Yes, according to the specific requirements of Swiss private law (although there are disputes in relation to which regulations are applicable). The particular problems in the European area in connection with the freedom of establishment do not affect Switzerland.

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

Pursuant to Art. 56 lit. g Bundesgesetz über die direkte Bundessteuer (DBG - Swiss Federal Law on Direct Federal Taxes), legal persons pursuing public or charitable purposes are exempt from taxes on profits that are exclusively and irrevocably dedicated to such purposes. This regulation applies accordingly to cantonal taxes imposed on profit and capital (Art. 23 para. 1 lit. f Steuerharmonisierungsgesetz [StHG – Swiss Federal Law pertaining to the Harmonisation of Direct Taxes of the Cantons and Municipalities]).

In very general terms, an entity is required to satisfy the following conditions: (1) purpose of public interest, (2) unlimited circle of beneficiaries, (3) exclusive and irrevocable contribution of the funds, (4) altruistic or selfless character, and (5) actual activity.

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?)

The foundation must file an application for tax exemption with the competent tax authority.

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

No.

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

No, neither foundation nor tax law provide for specific rules. However, of course the international framework regarding rules on money transferring has to be considered.

Moreover, it must be taken into account that while fulfilling the duty of the annual reporting to the competent supervisory authority (where there is a description of the activities of the foundation), the authority gains insight into the names of the donors and beneficiaries.

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?

No.

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.

Both the Swiss Federal Law on Direct Federal Taxes (DBG) as well as the Swiss Federal Law pertaining to the Harmonisation of Direct Taxes of the Cantons and Municipalities (StHG) use the general legal term “non-profit” in their description of the requirements for a tax exemption. The relevant regulations (Art. 56 lit. g DBG and Art. 23 para. 1 lit. f StHG) are essentially the same. The only difference is that the StHG not only allows for an exemption from profit taxes but also from capital taxes because the cantons, in contrast to the Confederation, impose capital taxes on legal persons.

In its circular no. 12 of the year 1994, the Swiss Federal Tax Administration defines the term “non-profit” in more detail and provides that two cumulative requirements must be met: On the one hand, promotion of the general public interest and on the other hand, selflessness/altruism. The relevant public (Swiss) opinion is decisive when determining if an activity is in the general public interest.

Public benefit may be promoted by activities in charitable, humanitarian, health promoting, ecological, educational, scientific, and cultural areas (circular no. 12 no. II. 3. a). Circular no. 12 names as examples social care, art and science, education, the promotion of human rights, the protection of the environment, homeland, and animals, as well as development assistance. Public benefit is determined by the overall opinion of society (BGE 114 Ib 277, 279).

Furthermore, circular no. 12 demands an open circle of beneficiaries and states that the restriction to one family, the members of an association or certain professionals would be too limited (circular no. 12 no. II. 3. a). An activity is considered selfless/altruistic if it is neither linked to the legal person's own economic or personal interests nor to those of its members or close related persons (BGE 114 Ib 277). Based on the rulings rendered by the Swiss Federal Court, a non-profit organisation and its organs have to make sacrifices in the public's best interest (BGE 113 Ib 7, 9 et seq.). In general, there is a lack of disinterestedness/altruism when a business purpose is pursued, unless such activity is subordinate to the non-profit purpose. The operation of a business may only have a supporting function, and, furthermore, it must not represent the sole economic basis of the legal person (BGE in ASA vol. 19, p. 328 et seq.). In the event that essential capital contributions are made to companies, the non-profit purpose must prevail over the maintenance of a company: This presumes that the organisation is supported by substantial funding from its company and that these funds are actually used for non-profit activities (Koller 2007, p. 453 et seq.; circular no. 12 no. II. 3. c).

The (Swiss) general public interest is not limited to domestic activities. A legal entity which is not active in Switzerland but abroad may also be exempted from taxes, provided that its activities are in the general public interest and that they are selfless/altruistic. The actual implementation of such purposes must be proven by way of proper records, e.g. annual reports, and annual financial statements (circular no. 12 no. II. 3. a). Also, legal persons with their registered office located abroad can be exempted from taxes if they would be subject to taxes in Switzerland based on an economic connection, e.g. as a real estate owner.

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. The tax authorities have shown a rather strict treatment over the years.

- 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?

It depends: The above-mentioned circular no. 12 demands an open circle of beneficiaries and states that the restriction to one family, the members of an association or certain professionals is too limited

(circular no. 12 no. II. 3. a). However, in practice it will depend on the quality of such limitation, the quantity of (potential) beneficiaries and other elements.

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.?

No. However, too large a compensation for board members can be detrimental to tax exemption.

- 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?

Foundation law does not provide for the distribution of assets and liquidation. Thus, the general provisions laid down in Art. 57 and 58 ZGB apply which refer *inter alia* to the liquidation regulations pertaining to companies limited by shares and cooperatives (Art. 913 OR). The assets of a foundation with public-benefit status for tax purposes must stay in the public-benefit sphere. The remaining funds will be transferred to another non-profit organisation with 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**?

No limits in civil law, as long as the remuneration serves the foundation’s purpose.

If the foundation expects to be exempted from taxes, the tax authorities expect the board members to be working on an honorary basis, although expenses may be covered. Only if board members render services outside of their regular obligations as board members, remuneration in line with general market conditions may be paid. The Swiss tax authorities recommend that this remuneration principle be spelled out in the statutes. However, the matter is controversial, and a number of authors argue in favour of allowing a (modest) remuneration of board members.

A central element of the currently discussed reform proposal are tax incentives: According to the preliminary draft, an appropriate remuneration to the strategic management bodies by non-profit organisations should no longer lead to refusal or withdrawal of tax exemption.

- 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. However, if more than just a “reward” is granted, the thresholds for VAT-liable sponsorship will be exceeded.

- 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”:

Basically, the foundation has to indirectly or directly use all of its funds to fulfil its purpose. A foundation may lose its non-profit status if it utilises less than 50% of its funds for the purpose that the tax privileges are based upon. It is difficult to compare foundations with regard to the ratio between total expenses and management costs, but it may be assumed that management costs below 10% are considered low and should not cause any problems whereas costs in the region of 10-20% are generally considered appropriate.

- Personnel costs (staff salaries/payroll costs)
- Board remuneration
- Costs of external audit
- Other legal/accounting costs
- General office overheads (rent/mortgage payments, utilities, office materials, computers, telecommunications, postage)
- Insurance
- Publicity and promotion of the foundation (e.g. website, printed promotional materials)

- Asset administration costs
- In the case of an operating foundation – costs related to programmes/institutions run by the foundation
- Costs related to fundraising

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

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

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

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

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

12. Distributions and timely disbursement

- a) Are foundations allowed to spend down their endowment?

Yes, if provided for in the statutes.

- 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 this is allowed. No, there is no minimum length of time.

- 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.

- 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, as long as the purpose is actually fulfilled.

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?

The (Swiss) general public interest is not limited to domestic activities. A legal entity which is not active in Switzerland but abroad may also be exempted from taxes, provided that its activities are in the general public interest and that they are selfless/altruistic. The actual implementation of such purposes must be proven with proper records, e.g. annual reports and annual financial statements (circular no. 12 no. II. 3. a). Some cantonal tax authorities have in practice adopted a very strict approach with a view to activities performed abroad by requesting that a minimum threshold amount of overall distributions be spent domestically (e.g. 30-50% of all distributions), although it is not clear on what legal basis.

Also, legal persons with their registered office located abroad can be exempted from taxes if they would be subject to taxation in Switzerland based on an economic connection, e.g. as a real estate owner.

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. However, tax authorities encounter difficulties in providing equal treatment.

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

No taxation.

- b) Investment income (asset administration)

Interest from fixed rate bonds

- Equities
- Income from leasing of a property that belongs to the foundation

c) Economic activities (related/unrelated)

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

No taxation.

A special purpose business is an entity that carries out economic activities that are indispensable for the realisation of the organisation's purpose (e.g. an educational home maintains a training workshop). In this case, the profits made from special-purpose businesses are exempted from taxes. Supporting businesses that are clearly subordinate to the non-profit purpose are permitted (e.g. a kiosk at a museum). The same basically applies to other commercial businesses: Profit-making activities do not harm the non-profit principle as long as they are subordinate to the overall organisational activities.

In theory, split accounts (taxable and non-taxable) are possible if a non-profit foundation runs a taxable business. The authorities, however, are reluctant to grant such a split tax status.

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

See above.

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

See above. Holding foundations are permitted and foundation law does not impose any restrictions on foundations being major shareholders.

However, income derived from a position as a substantial shareholder of a company is only exempted from taxes if the organisation's interest in maintaining the company serves a non-profit purpose.

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

No.

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

Basically, the rules applicable to the direct federal taxes also apply to the MWSTG (Swiss Law on Value Added Tax): Only legal persons who waive distributions of the net profit to members, partners and organs may be recognised as non-profit organisations.

Non-profit organisations that achieve annual revenues of up to CHF 150,000 (~ € 140,000) are exempted from the subjective obligation to pay taxes (Art. 10 para. 2 lit. c MWSTG). In addition, certain revenues of non-profit organisations are also exempted from the objective obligation to pay taxes (Art. 21 no. 12, no. 13, no. 17 and no. 27 MWSTG). For the definition of a tax-exempted organization Art. 3 lit. j MWSTG refers to Art. 56 lit. g DBG. Donations are so-called non-revenues which are not subject to the value added tax (Art. 18 para 2 lit. a and d MWSTG).

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

Non-profit organisations do not have to pay profit taxes for capital interest, dividend income etc. On the other hand, income from capital shares in companies is only exempted from taxes if the organisation's interest in maintaining the company serves a non-profit purpose.

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

Yes, e.g. the real estate gains tax or stamp duties.

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

The cantons are competent to regulate the property gains tax. Art. 23 para. 4 StHG provides that the cantons also have to impose the property gains tax on such legal persons who are otherwise exempt from taxes. This means that if a foundation that exclusively pursues non-profit purposes and is therefore exempt from taxes makes a profit from the sale of its real property, such profit will be subject to taxes.

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

Yes, non-profit organisations with their registered offices abroad are entitled to direct privileges in the form of an exemption from profit taxes and capital taxes payable in the cantons under the same conditions as national foundations. Which documents have to be provided depends on the tax authority.

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?

Only a few tax treaties have been signed, for instance with Great Britain and Northern Ireland (together SR 0.672.936.712); Liechtenstein (SR 0.672.951.43); and France (SR 0.672.934.91).

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?

No specific rules for foundations.

III. Tax treatment of donors of foundations

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

Deduction.

2. Tax treatment of individual donors

The Swiss income tax law allows natural persons certain socio-politically motivated deductions (e.g. donations, alimony, and support payments under family law), a complete list of which is provided by the law (Art. 9 para. 2 StHG, Art. 33 DBG). Art. 33a DBG, which has been in force as of 1 January 2006, also includes the above-mentioned voluntary contributions to tax-exempted organisations having their registered office in Switzerland. On a federal level, monetary contributions as well as contributions in kind of CHF 100 (~ € 94) or more per fiscal year made by natural persons are deductible from the income, whereas the maximum deductible is 20% of the taxable income decreased by certain expenditures (Art. 26 – 33 DBG resp. Art. 33a DBG). The transfer of assets from an individual donor to a tax-exempt foundation is usually exempted from gift taxation.

The cantons determine the maximum deduction allowed under the cantonal and municipal tax laws independently (Art. 9 para. 2 lit. i and Art. 25 para. 1 lit. c StHG).

- 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?

Monetary contributions as well as contributions in kind of CHF 100 (~ € 94) or more per fiscal year made by natural persons are deductible from the income, whereas the maximum deductible is 20% of the taxable income decreased by certain expenditures (Art. 26 – 33 DBG resp. Art. 33a DBG).

The transfer of assets from an individual donor to a tax-exempt foundation is usually exempted from gift taxation.

The cantons specify independently the maximum deduction allowed under the cantonal and municipal tax laws. Moreover, the cantons have the exclusive competence to regulate gift taxes in particular.

Under current laws, donations to charitable organisations can only be deducted from taxable income to a limited extent (except for the Canton Basel-Land where an unlimited amount of donations is deductible). The preliminary draft for a reform of foundation law, which is currently being discussed, provides suggestions to extend the tax relief by the possibility of carrying forward the deductions for several years.

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

Both monetary contributions as well as contributions in kind.

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?

See above.

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

Both monetary contributions as well as contributions in kind.

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

The law clearly states that the receiving organisation must have its registered office in Switzerland (Art. 33a and Art. 59 para. 1 lit. c DBG; Art. 9 para. 2 lit. i and Art. 25 para. 1 lit. c StHG). Donations made to organisations having their registered office abroad are thus not deductible from direct taxes.

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?**

N/A

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)?**

General information on the organisation they support. Basically, if the supported organisation is itself tax-exempt, the tax authority responsible for the donor's tax return will rely on this information. However, it may demand further documentation if deemed necessary.

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?**

Not applicable since direct donations to foreign-based organisations are not eligible for tax deduction (Art. 33a and Art. 59 para. 1 lit. c DBG).

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, the tax deductibility does not differentiate between donation channels.

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?**

Depends on factual circumstances of the individual case. For instance, an exemption from income tax would be granted if the grant or other benefit cumulated with other income of the beneficiary does not exceed the means for maintenance of the beneficiary in question.

- 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?**

Depends on factual circumstances of the individual case.

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

No, of course the normal compliance requirements for international money transfer must be respected.

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)?**

The cantons have the exclusive competence to regulate the imposing of inheritance and gift taxes. Donations to non-profit organisations are often exempt from those taxes. However, a uniform definition of the tax exemption based on the public benefit does not exist.

In some cantons it exists. However, donations to non-profit organisations are usually exempted from gift taxation.

- 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 gift tax rates vary on a cantonal basis. However, donations to non-profit organisations are usually exempted from gift taxation.

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

No.

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

Yes. There is now a revision discussed, which aims to lower the compulsory shares: The share of the children shall be reduced from $\frac{3}{4}$ to $\frac{1}{2}$, the share of the parents shall be abolished entirely.

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

Donations to foreign non-profit foundations are only exempted from gift or inheritance taxes in certain cantons in case of a treaty providing for reciprocity.

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 is no direct impact for Switzerland as it is not a member state of the EU. There is, however, a discussion among scholars as well as a debate on the political level.

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

The Swiss Federal Act on Preventing Money-Laundering and Terrorism Financing has been in force since 1 April 1998. As a member state of the Financial Action Task Force on Money Laundering, Switzerland regularly revises and modernises its anti-money laundering and anti-terrorism financing regulations.

The Swiss Financial Market Supervisory Authority introduced new regulations against money laundering. A financial intermediary is therefore obliged to ask for specific information about the founder, the authorised representative, the categories of persons which may be beneficiaries and the board members of the foundation before entering into a new business relationship with a foundation.

The de-risking practices of banks make transfer of funds to politically delicate countries and world regions more difficult. There is a trend that procedures become more regulated and difficult with every new law – also regarding foundations and the NPO-sector as a whole.

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

With regard to the classical purposes of a foundation, it does not fall under the national money laundering legislation. Nevertheless, it cannot be excluded that in the case of certain effective activities and arrangements a foundation may fall under its scope (see Art. 2 para. 3 Geldwäschereigesetz [GwG – Anti-Money Laundering Act], Art. 7 Geldwäschereiverordnung [GwV – Anti-Money Laundering Ordinance]).

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

No. However, there is a general definition in Art. 2a para. 3 GwG for those who fall under the scope of the GwG.

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

No.

6. Are there any other recent trends or developments affecting the legal and fiscal environment for public-benefit foundations in your country such as one or more of the following?

a) Law revision in the pipeline

With the submission of the parliamentary initiative to “strengthen Switzerland as a foundation country” the current revision of the foundation law was set in motion. The legal commission of the council of states opened a consultation procedure on the preliminary draft of a revision of foundation law, which lasted until March 2020. The proceedings are still pending, the political will for reform, however, is still uncertain.

The following areas are subject of the revision of the Swiss foundation law:

- Regular publication of data on organisations exempt from taxes due to non-profit status
- Regulation of the foundation supervision complaint
- Optimisation of the founder's rights by extending the right to amend the foundation deed to include organisational aspects and simplifying the procedures for amendments to the foundation deed in general
- Limitation of liability for honorary board members
- No refusal or withdrawal of tax exemption where non-profit organisations pay appropriate remuneration to the members of their governing board
- Tax incentives in the form of an increase in the permissible donation deductions and the possibility to carry forward deductions over several years

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?

Recently, there have been efforts to outsource the federal supervision of foundations to an independent public establishment (see draft of a federal act on the reorganisation of the Federal Foundation Supervisory Authority of 2 March 2016). That act would have enshrined certain principles and would also have had an impact on the cantonal supervisory authorities with their cantonal practices. However, in the meantime the project has been abandoned.

Besides, on the occasion of the amendment of the BVG in 2012, the cantonal supervisory authorities were reorganised (though the impact for “ordinary foundations” was just a side effect).

c) Tendency towards more transparency requirements?

In general, the Global Forum made recommendations to Switzerland concerning the automatic exchange of information. The proposal to amend the Federal Act and the Ordinance on the International Automatic Exchange of Information in Tax Matters aims to take the necessary measures to implement the Global Forum's recommendations. This concerns, among other things, certain due diligence and registration obligations; the inclusion of a document retention obligation for financial institutions; as well as definitions. Some exceptions are also to be removed or adapted.

As for now non-profit foundations and associations remain excluded from the AIA (and thus also excluded from the CRS).

However, the process is going towards more transparency as the parliament approved amendments of the AIAG (Federal Act on the International Automatic Exchange of Information in Tax Matters), which is expected to come into force in 2021.

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

The development observed in recent years leads towards more foundation governance, therefore self-regulation continues. Especially the Swiss Foundation Code, which will be published in its 4th edition this summer, is receiving widespread attention.

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

The ordinary foundation is still very popular for non-profit purposes. For smaller projects, often “dependent foundations” under the umbrella of “umbrella foundations” are used instead of independent foundations.

f) Other?

There is also a recognisable tendency that endowed public-benefit foundations are subject to financial market regulations.

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

New regulations have been introduced on 1 January 2013 in Art. 89 ZGB pertaining to funds raised through public collection for public-benefit purposes. Such funds (so-called “Sammelvermögen”) are legally qualified as dependent foundations. This revision does not affect foundations with own legal personality.

VII. Further information

Useful contacts

[Center for Foundation Law at the University of Zurich](#)

[Swiss Foundations](#)

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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

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2020**



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