

# Austria

## Legal Environment for Philanthropy in Europe 2024

By Susanne Kalss, Vienna University of Economics and Business  
Administration

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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?**

In Austria two main categories of foundations exist:

**Public-benefit foundations** under the Federal Foundations and Funds Act (BStFG 2015)/*Bundes-Stiftungs und Fondsgesetz 2015* as well as those governed by provincial legislation (provincial legislation is not described in this profile). Foundations that are active in more than one province fall under the Federal Act. According to Art. 2.1 BStFG, foundations are legal entities established upon the transfer of assets that are used for public-benefit or benevolent purposes. Foundations need to retain a minimum capital of €50,000 at any time according to Art. 2.1 BStFG. In contrast, **Funds** are allowed to use not only their revenues, but also their endowment to pursue public-benefit purposes.<sup>1</sup>

**Private foundations** are regulated by the Private Foundations Act 1993 (PSG)/*Privatstiftungsgesetz vom 14. Oktober 1993*. They can pursue public-benefit purposes as well as private purposes. However, only a few private foundations have been set up exclusively for public-benefit purposes. A legal definition is found in Art. 1.1 PSG. A private foundation is a legal entity that has received assets dedicated to the pursuit of purposes specified by the founder. A private foundation may also spend its endowment.

2. **If your jurisdiction provides for different laws for different foundations/philanthropic organisations, please indicate this here, and then specify under further relevant questions whether a different answer applies to these type of foundations/philanthropic organisations.**

As mentioned above, Austrian law distinguishes between public-benefit foundations and private foundations, which are also regulated in various statutory provisions. If the following questions are answered differently regarding these two forms, it will be addressed.

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

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

A public-benefit foundation has to pursue public-benefit or benevolent purposes. According to Art. 2.3 BStFG and Art. 35.2 BAO/*Bundesabgabenordnung*, the purpose is of public-benefit/*gemeinnützig* if the spiritual, cultural, moral, or material development of the general public or a specific circle of beneficiaries is supported. According to Art. 2.4 BStFG and Art. 37 BAO, a benevolent purpose is support for people in need.

<sup>1</sup> Kalss in Doralt/Nowotny/Kalss, *Privatstiftungsgesetz* introduction No.52.

<sup>2</sup> This question focuses only on public-benefit foundations (see the definition in the [glossary](#) developed for this project).

For private foundations, the founder provides the foundation with assets to pursue a purpose of the founder's choice, be it for public or private benefit. All legal purposes are possible except the purpose of having for-profit commercial activities.

**4. 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?**

A public-benefit foundation, according to the BStFG, receives legal personality when it is entered in the register of all foundations and funds/*Stiftungs- und Fondsregister*, which is operated by the Ministry of Internal Affairs. The foundation does not need approval by the foundation authority, but the authority does have the capacity to prohibit the formation of the foundation. (either provincial administration or the relevant federal ministry). The founding declaration/*Gründungserklärung* is the constituent element of the foundation. It has to set out the founder's wish to set up a foundation by dedicating certain assets for the pursuance of a public-benefit or beneficial purpose according to Art. 7 BStFG and needs to be registered at the tax office/*Finanzamt* Vienna 1/23. The founding declaration must contain the foundation's name and domicile, assets, purpose, beneficiaries, organs and rules on annual accounting. A founding declaration can also be set up through a will/*letztwillige Gründungserklärung* according to Art. 12 BStFG.

Private foundations under the PSG need to be established by notarial deed or through a will. No state approval is required, but the private foundation must register with the company register at the Commercial Court. The assets are reviewed before registration. According to Art. 2 PSG, the name of the foundation must contain the wording "*Privatstiftung*".

**5. 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

Since 2015, public-benefit foundations under BStFG no longer need approval by the foundation authority, but the authority does have the capacity to prohibit the formation of the foundation. The founding declaration needs to be registered at the tax office Vienna 1/23, which checks if the requirements according to Art. 41 BAO are fulfilled.

Likewise, private foundations under PSG do not require state approval. Registering at the company register is sufficient for private foundations.

**6. 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)

A register of all foundations under the BStFG (public-benefit foundations) is maintained by the Ministry of Internal Affairs. Private foundations have to register in the company register.

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

Public-benefit foundations: According to Art. 22 BStFG, the national register maintained by the Ministry of Internal Affairs has to include for each public-benefit foundation the following information: Name, domicile, address, purpose, beneficiaries, name and address of the members of the representative board, founding declaration and amendments, change of corporate form or dissolution (if applicable) and accounting documents.

Private foundations: According to Art. 13 PSG, the following information is included in the company register: Information required by Art. 3 Company Register Act/*Firmenbuchgesetz (FBG)*, purpose, date of statutes, statutes/amendment of statutes, and if applicable the name and dates of birth of the members of the supervisory board. Accounting documents are not kept in the register.

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

Public-benefit foundations: According to Art. 22.1 BStFG, the register maintained by the Ministry of Internal Affairs is open to the public. Upon demand, everyone is permitted to get information about the items mentioned above (see Art. 22.2 BStFG) and also to get copies of the registrations.

Private foundations: According to Art. 9 Commercial Code ("*Unternehmensgesetzbuch*"), the company register is publicly available. Everyone is permitted to get information about the items mentioned above (see Art. 13 PSG) and also to get copies of the registrations.

## 7. Is a minimum founding capital/endowment required?

- No
- Yes, amount: see question below.

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

Foundations under BStFG need to retain a minimum capital of €50,000 at any time according to Art. 2.1 BStFG.

Private foundations under PSG must receive an endowment of at least €70,000, which can be spent to pursue the purpose of the foundation.

## 9. 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

Public-benefit foundations under BStFG as well as private foundations under PSG are governed by a board.

A private foundation must have an accountant/*Stiftungsprüfer* and also a supervisory board of trustees/*Aufsichtsrat* (Art. 14 PSG), if it has more than 300 employees or governs a

company of this size (Art. 22 PSG). The accountant is appointed by the court or the supervisory board of trustees. The person must be a certified accountant and tax expert and cannot be a beneficiary of the foundation, member of a foundation organ or employee of the foundation. The PSG contains detailed provisions about the composition and appointment of the advisory board. Beneficiaries can inquire into the affairs of the foundation according to Art. 30 PSG.

- 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 members of the first governing board have to be named in the founding declaration (Art. 7.1.7 BStFG). The founding declaration has to include further rules for the appointment, dismissal, term of office and provisions regarding the representation of the foundation. The board must consist of at least 2 natural persons (Art. 17.1. BStFG).

The governing board of a private foundation is normally appointed by the founder (Art. 15.4 PSG) or the curator. The board must have at least three members, two of which must be resident in the EU or the European Economic Area. Beneficiaries and their close relatives cannot be members of the board, nor can legal entities.

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

The board of a foundation under BStFG represents the foundation towards third parties and has the duty to properly manage the foundation. The governing organs have to act according to the foundation statutes and the law (see Art. 17.2 BStFG). Rules regarding the remuneration of members of the governing organ have to be included in the founding declaration (see Art. 7.1.16 BStFG).

The governing board of a private foundation manages the foundation, ensures the furtherance of the purpose, and represents it towards third parties (Art. 17 PSG). If the founding act does not say otherwise, all board members must act jointly to legally bind the foundation. If the private foundation has no supervisory board, all binding acts involving a board member need to be approved by all other board members and the competent court. The board is responsible for bookkeeping and accounts (see Art. 18 PSG). Reasonable remuneration of board members is specified according to Art. 19.1 PSG unless the founder has decided differently. The amount shall be determined by the court (unless the founder has decided differently).

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

The founder of a foundation under BStFG can change the statutes at any time. The founder may alter the purpose of the foundation if this right has been provided for in the founding act or the original purpose cannot be fulfilled (Art. 11.2 BStFG). The founder can also withdraw the founding act (Art. 27.1.3). The founder can be a member of the board. The founder cannot be the only board member because the board must consist of at least two members.

The founders of private foundations have important rights. They can appoint and dismiss members of the organs, and change or withdraw the founding act (if these rights are provided for in the founding act), among other things. The founder can be a lifetime board member. As long as the founder is a member of the board, they are excluded from receiving benefits from the foundation. The founder cannot be the only board member because the board must consist of at least three members.

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

See above.

- f) What are the rights of third parties (e.g. right of information)?
- g) What rules are in place to ensure against conflict of interest? What is the legal definition of a conflict of interest under your legislation? How is self-dealing prohibited?
- h) Can staff (director and/or officers) participate in decision-making? How and to what extent?

**10. 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?**

Foundation board members can be held civilly and criminally liable.

Public-benefit foundations: According to Art. 17.2 BStFG, board members have to fulfil their obligations in compliance with the law and statutes in an orderly and diligent manner. No legal distinction between unpaid and paid board members exists.

Private foundations: According to Art. 17.2 PSG, each board member has to fulfil their obligations (stipulated in the law and statutes) economically and with the diligence of a conscientious manager. No legal differentiation between unpaid and paid board members exists.

There is no business judgment rule concerning foundations in a special regulation. However, the Austrian Supreme Court/*Oberster Gerichtshof* applies the business judgement rule developed in the field of companies to the board members of a foundation.<sup>3</sup>

The standard of diligence for board members can be raised, but not lowered.

**11. 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?**

According to Art. 7 BStFG, the founding declaration of a public-benefit foundation has to include representation rules. The board represents the foundation towards third parties according to Art. 17.2 BStFG.

According to Art. 17.1, PSG board members have to represent private foundations towards third parties.

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<sup>3</sup> OGH 23.02.2016, 6 Ob 160/15w.

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

Public-benefit foundations under the BStFG can conduct commercial activities as long as they fall within the objectives of the foundation.

Private foundations under the PSG must not engage in primarily commercial activities. They can have ancillary economic activities such as museum shops or restaurants. They must not run a separate business or be a personally liable partner in a company.

**13. 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?**

**14. Are foundations permitted to be major shareholders in a company? Are there any limitations to voting rights? Is this considered as an economic activity? Are foundations allowed to engage in active ownership of companies that they own (for example through board representation, informal strategy discussions or the right to be consulted on key issues such as CEO succession)?**

A private foundation (Austrian Foundation) must not run a separate business or be a personally liable partner in a company, but may manage a holding company or group of companies through major shareholding, although due to the prohibition of engagement in primarily commercial activities (as mentioned above), the management must not be exercised in an extensive way.<sup>4</sup> Therefore operational or tactical decisions cannot be shifted to the private foundation to a large extent. This also applies to veto rights. The private foundation must generally concentrate on the strategic responsibility of its corporate divisions. In a case where a private foundation uniformly manages a domestic corporation or controls it due to a direct shareholding of more than 50%, it may be obliged to set up a supervisory board.

Nevertheless, the Austrian foundation may hold shares up to 100% of a company and manage and control the whole group.

**15. 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?**

The assets of a foundation under BStFG must be administered in accordance with Art. 446 ASVG/*Allgemeines Sozialversicherungsgesetz*, which means a secure and conservative investment, unless the founders have decided otherwise (Art. 8.1.5).

A private foundation must not run a separate business or be a personally liable partner in a company. A private foundation may manage a holding company or group of companies through major shareholding, although due to the prohibition of engagement in primarily commercial activities (as mentioned above), the management must not be exercised in an extensive way.

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<sup>4</sup> OGH 01.12.2005, 6 Ob 217/05p.



**16. 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)**

As far as the allocation of grant funds is concerned, Austrian foundation law does not contain explicit provisions. For basic restrictions and regulations, see previous question.

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

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

The statutes of a foundation under BStFG can be amended at any time. This includes amendments of the foundation's purpose, if this right has been provided for in the founding act or the original purpose cannot be fulfilled (Art. 11.2 BStFG). According to Art. 11.1 BStFG, the same rules as for setting up the foundation apply to any changes of the statutes. Therefore, the amendment needs to be registered at the tax office Vienna 1/23 and may not be prohibited by the foundation authority. Amendments are entered in the register of all foundations and funds/*Stiftungs- und Fondsregister* (Art. 11.5 BStFG).

The founder of a private foundation can change the founding act of the foundation. However, this needs to be mentioned in the statutes according to Art. 33.2 PSG. The board can also decide to amend the articles if the circumstances have changed dramatically, and the amendment is necessary for the foundation to further pursue its purpose. This needs to be approved by the court, and the changes have to be registered in the register of companies/*Firmenbuch*. The changes only come into force after having been inserted into the *Firmenbuch* (Art. 33.3 PSG).

**19. 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)

The public-benefit foundation has to produce an annual financial report. The board of the private foundation has to produce an annual financial report of the foundation as well as the controlled companies (consolidated annual financial report).

No special report must be submitted by private foundations; only the annual report must be submitted to the tax authority. If there is no donation this information must be submitted.

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

According to Art. 20.7 BStFG, the organs of the public-benefit foundation must send yearly accounts to the foundation authority within 9 months after the end of the business year.

The board of private foundations is responsible for the yearly accounts (Art. 18 PSG). They need not be disclosed to the public.

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

Tax authorities check private foundations and public foundations. Public foundations are also supervised by the foundation authority.

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)?

Annual reports/accounts of foundations (public-benefit foundations or private foundations) do not need to be made publicly available.

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

An accountant/*Stiftungsprüfer* appointed by the court or the supervisory board reviews the yearly financial report of the private foundation (Art. 20 PSG). There is no supervisory authority, but the register of companies/*Firmenbuch* has to control decisions of the private foundation before entering changes of the statutes or the appointment of board members in the register.

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

Private foundations are audited by accountants/*Stiftungsprüfer* who examine the annual report of the board. Only professional accountants/auditors can be appointed as *Stiftungsprüfer*. The competent court or the supervisory board appoints them according to Art. 20 PSG.

## 20. 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

According to Art. 15, public-benefit foundations under BStFG are subject to the supervision of the relevant foundation authority. Appointments or resignations of the board have to be reported to the foundation authority within four weeks (Art. 11.4 BStFG). If management duties are not fulfilled properly, the accountant may intervene and ask for improvement within six months. Should no improvement be evident, the accountant has to make a report to the foundation authority, which can dismiss the board (Art. 20.5 BStFG).

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 foundation must be registered and therefore supervised. The authority is entitled to dissolve the foundation if the purpose does not comply with the law or the articles of the foundation (Art. 27 BStFG).

## 21. When and how does a foundation dissolve?

A public-benefit foundation under the BStFG is dissolved if its remaining assets are worth less than €50,000, the purpose cannot be fulfilled, or the founder has withdrawn the founding act (Art. 27 BStFG). The remaining assets are distributed to the beneficiaries listed in the statutes or given to another foundation with similar aims.

The founder of a private foundation can terminate the foundation, if such a provision was specified in the statutes (Art. 34 PSG). In addition, according to Art. 35 PSG, dissolution takes place in the event of insolvency, limited duration of the foundation, or if the board decides to dissolve the foundation or the court takes this decision. The board must decide upon dissolution in the special cases specified in Art. 35.2 PSG, e.g. if circumstances enumerated in the statutes have taken place, the purpose has been reached, or it can no longer be reached. After liquidation, the remaining assets have to be distributed to the beneficiaries listed in the statutes (Art. 36 PSG).

## 22. 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?

## 23. 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)?

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

Foreign foundations conducting activities in Austria will be recognised as legal entities provided that such foundations have their principal place of business in the country where they are registered. Within the scope of the freedom of establishment pursuant to Art. 54 TFEU, foreign foundations will also be recognised if they have their principal place of business in Austria.

**25. 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?**

Civil law allows foundations to conduct activities abroad. Within the scope of freedom of establishment pursuant to Art. 54 TFEU, it is possible for foundations to have their principal place of business in another EU/European Economic Area Member State.

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

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

## 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

Three types of foundations receive tax incentives – Those that pursue directly and exclusively:

- Public-benefit
- Benevolent purposes
- Religious purposes

According to Arts. 34 – 47 Federal Tax Act/*Bundesabgabenordnung* (BAO), “public-benefit purposes” are defined as those that support the community at large. A large number of persons must therefore benefit from the foundation (Art. 35 BAO). The second qualifying purpose is termed “benevolent”. According to Art. 37 BAO the Federal Tax Act, benevolent purposes are those that support persons requiring assistance, even a small group of people. The third group consists of foundations that pursue “religious” purposes (Art. 38 BAO).

### 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?)

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

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

### 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. 2 BStFG, a public-benefit foundation has to pursue public-benefit or benevolent purposes, which are defined in the Federal Tax Act/*Bundesabgabenordnung* (BAO).

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

According to Art. 35 Federal Tax Act/*Bundesabgabenordnung*, the purpose is of public benefit if the spiritual, cultural, moral or material development of the general public is supported.

**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				
Advocacy				
Advancement of religion				
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

## 8. Support of “the public at large”

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

According to Art. 36 Federal Tax Act, to receive tax exemption the activities of a foundation (public-benefit foundation or private foundation under the Private Foundations Act (“*Privatstiftungsgesetz*” - PSG) have to benefit the public at large.

- 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?

The effective support of a small number is only possible if the purpose of the foundation is in general open to a large number.

## 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.

- b) What happens with the foundation’s assets in case of dissolution? Can the assets revert to private ownership, or do they have to stay in the public-benefit sphere?

According to Art. 39.5 Federal Tax Act, in case of dissolution the assets of tax-exempt foundations (whether public-benefit foundations or private foundations) – except the assets deposited by founders – must be applied to public-benefit, benevolent or religious 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**?

**Tax law:** According to Art. 39.4 Federal Tax Act, unreasonably high remuneration of board members of public-benefit foundations or private foundations is forbidden. Reasonable remuneration of board members is allowed. A defined statutory maximum amount does not exist.

**Civil law:** Public-benefit foundations: Rules regarding the remuneration of members of the governing organ have to be included in the founding declaration (see Art. 7.1.16 BStFG). Unreasonably high remuneration of board members is forbidden. A statutory maximum amount does not exist. If remuneration is not specified in the statutes, board members have to work on an honorary basis.

Private foundations: According to Art. 19 PSG, board members of private foundations are generally entitled to remuneration. A limit does not exist. Unreasonably high remuneration will exclude private foundations from 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)

According to Art. 39.4 Federal Tax Act, to receive/preserve tax exemption it is forbidden for anybody to get non-purpose-related benefits from the foundation. Therefore, a donor/funder is not allowed to receive any type of benefit.

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

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

Special statutory regulations concerning “administration costs” exist neither in civil nor in tax law. Unreasonably high administration costs will certainly exclude private or public-benefit foundations from tax exemption.

## 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					X



foundation is required to maintain the founder, their spouse and descendants.					
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?

Private foundations are allowed, whereas public-benefit foundations need to retain a minimum capital of €50,000 at any time according to Art. 2.1 BStFG.

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?

Private foundations are allowed to be set up for a limited period of time. Public-benefit foundations generally must be set up for an unlimited period/*dauernd* of time (Art. 2.1 BStFG).

c) Does the **civil law** and/or **tax law** of your country require a foundation to spend its income (or a certain amount of the income) within a certain period of time, e.g. within the next financial year? If yes, is there a specific amount/percentage of the income that

must be spent within this time? Which resources would be considered as income? E.g. would donations/contributions designated for building up the endowment be included in/excluded from the income to be spent? What expenditures would count towards the disbursement of income (e.g. would administration costs be included/excluded?)?

Neither civil nor tax law has such a requirement.

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

Neither civil nor tax law has such a requirement.

Example: Does the **civil law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.	x				

Example: Does the **tax law** of your country require the following of a public-benefit foundation?

	Yes	Probably yes	Unclear	Probably no	No
A foundation accumulates its income for 5 years, only in the 6 <sup>th</sup> year are there distributions for the public-benefit purpose of the foundation.	x				

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

Foundations operating mainly abroad can lose their special tax status.

### 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)?

### 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
- 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)

Foundations (under BStFG and PSG) that pursue directly and exclusively public-benefit, benevolent or religious purposes according to Arts. 34 - 47 Federal Tax Act/*Bundesabgabenordnung* are tax-exempt according to Art. 5.6 Corporate Income Tax Act/*Körperschaftsteuergesetz*. They are only subject to corporate income tax on their purpose-related commercial income.

Private foundations, which do not qualify under exemptions provided by Art. 5.6 or 5.7 Corporate Income Tax Code, are taxed according to Art. 13 of the same law. Private foundations pay corporate income tax of 23% on land and forest income, rental and lease income, and commercial income (*Gewerbebetrieb*). If the foundation invests its assets in resident company shares or participation, the dividends are not taxed (Art. 10.1. Corporate Income Tax Act). According to Art. 13.2 Corporate Income Tax Act, private foundations can, under certain conditions be tax-exempt on their foreign-sourced investment income. Other profit income (e.g. returns from investment funds or income from the sale of shares in a resident company) is taxed at a rate of 23% (see Art. 13.3 and Art. 22.2 Corporate Income Tax Act). Once the private foundation gives grants to the beneficiaries, a deduction of 23% can be made (Art. 24.5. Corporate Income Tax Act).

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

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

Foundations under BStFG receive various tax incentives as mentioned in the previous sections. Yields are taxed according to the provisions of Art. 21.2 and 21.3 Corporate Income Tax Act.

Private foundations: Capital gains are taxed at a rate of 23% (see Art. 13.3.1.b and Art. 22.2 Corporate Income Tax Act). Once the private foundation gives grants to the beneficiaries, a deduction of 23% can be made (Art. 24.5. Corporate Income Tax Act).

**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 special regulation for foundations as regards VAT.

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

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

See answer to Section I, question 16.

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

According to Art. 2.3.b Real Property Tax Act/*Grundsteuergesetz*, foundations (under BStFG and PSG) that pursue directly and exclusively public-benefit or benevolent purposes are exempt from real property tax under the condition that the property is actually used for benevolent purposes.

**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

Corporate Income Tax: According to Art. 1.3 and Art. 5.6 Corporate Income Tax Act, foreign foundations (private foundations/public-benefit foundations with residence or directorate in EU/EEA Member States, according to Art. 27 Federal Tax Act) get the same tax benefits concerning their income under the Corporate Income Tax Act as national foundations. Foreign foundations are tax-exempt if they pursue directly and exclusively public-benefit, benevolent or religious purposes, according to Art. 34-37 Federal Tax Act.

As of August 2008, due to the invalidation of the Gift and Inheritance Tax by the constitutional court, donations (lifetime as well as posthumous donations) to (national/foreign) foundations (private foundations/public-benefit foundations) will be subject to the Foundation Receipt Tax Act/*Stiftungseingangssteuergesetz*. Donations to foreign foundations with a public-benefit, benevolent or religious purpose are exempted from this tax (i) if they are registered in EU/EEA Member States and (ii) if they can prove their public-benefit, benevolent or religious purpose through annual activity reports and annual accounts (otherwise they are taxed at a flat rate of 2.5%). Under these conditions, foreign foundations get the same tax benefits as national foundations.

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

**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?**

According to Art. 13.2 Corporate Income Tax Act, private foundations can, under certain conditions, be tax-exempt on their foreign-sourced investment income.

### III. Tax treatment of donors

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

Tax deduction.

#### 2. Tax treatment of individual donors

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

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

According to Art. 4a.1 of the Income Tax Code/*Einkommensteuergesetz (EStG)*, individual donors can deduct donations to favoured purposes according to Art. 4a.2. EStG (such as science, education in science and research or arts), or those made to special institutions according to Art. 4a.3 – 6 EStG, up to 10% of taxable income. Some organisations are explicitly mentioned in Art. 4a.4/5 EStG as qualifying organisations, such as the Austrian National Library, the Diplomatic Academy, and others. Donations in these cases are also deductible only up to 10% of taxable income. Donations to other legal entities (including foundations) need a recognition by the tax revenue department and are then registered in a special list according to Art. 4a.7.1 EStG.

Assets provided to a foundation (see Art. 4b EStG), mainly engaged in the favoured purposes according to Art. 4a EStG, which is regarded as non-profit, benevolent or religious according to Arts. 34 f. of the federal tax code are also deductible up to an amount of €500,000 within 5 years (Art. 4b.1.5).

The resident or foreign-based foundation (EU and EEA) receiving such tax effective donations/legacies has to be included in a list kept by the fiscal authorities in Vienna. The organisation that wishes to be included in the list has to fulfil the following requirements according to Art. 4a.8.1 EStG, which need to be confirmed by an auditor (in case of fundraising organisations, additional requirements will have to be met):

- The entity has to serve solely one of the three favoured purposes listed above
- For a period of at least three years
- Only ancillary economic activities may be undertaken
- The administration costs do not extend 10% of the donated sum

Deductions can be made as special expenses (Art. 18.1.7 Income Tax Code) or business expenses (Art. 4a and 4b Income Tax Code).

#### 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?

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

Same as for individual donors (see above).

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

Until August 2008 posthumous donations to foreign, non-resident public-benefit foundations were taxed at a regular tax rate according to the Gift and Inheritance Tax Act.

The Foundation Receipt Tax Act/*Stiftungseingangsteuergesetz* (see Art. 1.6) provides that donations to foreign public-benefit foundations, which are registered in EU/EEA Member States are exempted from this tax if the foreign public-benefit foundations can prove their public-benefit purpose by annual activity reports and annual accounts (otherwise taxed at a flat rate of 2.5%).

With regards to donations/legacies to “comparable” organisations based in another EU country or EEA country; the resident or foreign-based foundation (EU and EEA) receiving such tax effective donations/legacies has to be included in a list kept by the fiscal authorities in Vienna. The organisation that wishes to be included in the list has to fulfil the following requirements according to Art. 4a.8.1 EStG, which need to be confirmed by an auditor (in case of fundraising organisations, additional requirements will have to be met):

- The entity has to serve solely one of the three favoured purposes listed above
- For a period of at least three years
- Only ancillary economic activities may be undertaken
- The administration costs do not extend 10% of the donated sum

**5. Other frameworks such as percentage law systems, whereby the donating taxpayer may assign part of the tax due to a public-benefit organisation?**

No.

**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)?**

**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?**

**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?

## IV. Tax treatment of beneficiaries

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

When a private foundation under PSG gives grants, a capital gains tax of 27,5% (Art. 27a.1.2 EStG) is levied on the beneficiaries, on both individuals and legal entities.

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

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

The Gift and Inheritance Tax Act (*Erbschafts- und Vermögenssteuergesetz* BGBl 141/155) was abolished by the Constitutional Court in 2007 because of an infringement of the Constitutional principle of equal treatment. As of August 2008 lifetime and posthumous donations are subject to the donations reporting Act (*Schenkungsmitteilgesetz* BGBl 85/2008). Generally speaking no special tax on donations now exists, donations will be included in the general regulation of income tax, and therefore the recipients are obliged under the new law to report donations to the fiscal authority.

Foundations now are subject to the Foundation Receipt Tax Act/*Stiftungseingangsteuergesetz*. The Act provides that donations to national foundations are generally taxed at a flat rate of 2.5%. If real property is the subject of the donation there exists an additional flat rate of 3.5%. Donations to foreign foundations are generally taxed at the same rate if (i) the foreign foundations are comparable to national foundations, (ii) all documents concerning the foundation's organisation and assets/asset administration are disclosed to the tax revenue department, (iii) the beneficiaries are disclosed to the tax authorities, (iv) the foundation is registered in a company register or a similar public register and (v) between Austria and the states of registration of the foreign foundations there exists full administrative and enforcement assistance. Otherwise donations to foreign foundations are taxed at a flat rate of 25%.



## VI. Trends and developments

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

No changes have yet been made, although a broad discussion on the topic is now beginning.

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 Financial Market Money Laundering Act (*Finanzmarkt-Geldwäschegesetz – FM-GwG*) went into force in 2017. To ensure that money laundering and terrorist financing are prevented, Art. 5 requires credit and financial institutions to identify the customer (natural persons and legal entities, e.g. foundations) and verify the customer's identity on the basis of documents, data or information obtained from a reliable and independent source in certain cases: (a) When establishing a business relationship; (b) when carrying out occasional transactions amounting to €15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked; (c) when there is a suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold; or (d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

3. **Does the national law consider foundations as obliged entities as defined by the Anti-Money Laundering Directive?**
4. **Does the national law define/specify who is considered as a Beneficial Owner (BO) of a foundation?**

**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 Beneficial Owner Register Act (Wirtschaftliche Eigentümer Registergesetz – WiEReG) went into force in 2018. According to Arts. 1.2.12 and 15, it applies to public-benefit foundations as well as private foundations. Beneficial owners are (i) the founder, (ii) the beneficiaries, (iii) the members of the board as well as (iv) any other natural person that exercises control over the foundation. The register is kept by a register office at the ministry of finance.

Additionally, according to tax law regulations the foundations must submit to the tax authority the names of beneficiaries and the amount of the donations (Art. 5 PSG).

The foundation has the obligation to identify the beneficial owners (Art. 3 WiEReG) and has to submit the name, date and place of birth, nationality and residence (Art. 5 WiEReG) to the register. There is a corresponding obligation of the beneficial owner to provide the necessary information and documents (Art. 4 WiEReG).

**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?**

From 1 January 2009 it is possible that funds donated to foundations with public benefit can be deducted from the tax of individuals.

## VII. Further information

### Useful contacts

**Susanne Kalss**, Vienna University of Economics and Business, Institute Business Law,  
Welthandelsplatz 1, 1020 Wien, Austria, General Phone: +43/1/31336-4647  
E-mail: [susanne.kalss@wu.ac.at](mailto:susanne.kalss@wu.ac.at)

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### Selected law texts online

All law texts can be downloaded from the [RIS website](#).

## VIII. About

### About Philea

Our vision is for philanthropy to use its full potential to co-shape and support a pluralistic, just and resilient society that centres people and planet. To achieve this, our mission is to enable, encourage and empower the philanthropic community to build a better today and tomorrow.

We nurture a diverse and inclusive ecosystem of foundations, philanthropic organisations and networks in over 30 countries that work for the common good. With individual and national-level infrastructure organisations as members, we unite over 7,500 public-benefit foundations that seek to improve life for people and communities in Europe and around the world.

We galvanise collective action and amplify the voice of European philanthropy. Together we:

- **Co-create knowledge and learn** from effective practices
- **Collaborate** around current and emerging issues
- **Promote enabling environments** for doing good

In all we do, we are committed to enhancing trust, collaboration, transparency, innovation, inclusion and diversity.

[philea.eu](https://philea.eu)

### Policy and advocacy at Philea

Philea champions the interests of its members vis-à-vis the EU and multilateral organisations. Through [our policy and advocacy work](#), we strive towards an enabling operating environment for European philanthropy by monitoring and analysing policy and regulatory trends at national, European, and international level, and engaging around this agenda with policymakers and other stakeholders. We position philanthropy as a key actor on societal issues and facilitate strategic engagement and collaboration opportunities, including public-private partnerships.

### About this project

This country profile is part of a [larger analysis project](#), ongoing since 2002, which includes regularly updated profiles on the legal and fiscal landscape for philanthropy in some 40 countries across the wider Europe; and a comparative overview of the profiles compiled in our “Comparative Highlights of Foundation Laws”.

### Legal Affairs Committee

Philea’s [Legal Affairs Committee](#) consists of legal and public affairs experts from Philea members, composed of both national associations and foundations, across Europe. The members of the LAC advise on Philea’s policy and advocacy work.



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For further information, please contact:

Philea, Philanthropy House  
Rue Royale 94, 1000 Brussels, Belgium  
T +32 2 512 89 38 – [info@philea.eu](mailto:info@philea.eu) – [www.philea.eu](http://www.philea.eu)