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Legal Environment for Philanthropy in Europe

Sweden

COUNTRY PROFILE

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Contents

- I. Legal framework for foundations 3
- II. Tax treatment of foundations..... 12
- III. Tax treatment of donors of foundations..... 19
- IV. Tax treatment of beneficiaries 21
- V. Gift and inheritance tax 22
- VI. Trends and developments 23
- VII. Further information 25
 - Useful contacts..... 25
 - Selected bibliography 25
 - Selected law texts online 25
- VIII. About 26
 - Philanthropy Advocacy 26
 - Donors and Foundations Networks in Europe (Dafne) 26
 - European Foundation Centre (EFC)..... 26

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?**

The main regulation is the Foundation Act¹ that came into force on 1 January 1996. It covers endowed grantmaking foundations, operating foundations, fundraising foundations, and collective agreement foundations. Pension foundations are governed by another law² and, together with collective agreement foundations, will not be considered further in this text.

The Foundation Act is a civil law legislation and according to it all foundations are autonomous organisations with legal personality which cannot be owned and controlled by another organisation. In the law, it is clearly stated that a foundation exists only when: (1) an asset or property (2) has been set aside from the donor(s) (3) to be administrated separately and permanently (4) with the aim to serve a specific purpose. The principal rule is that foundations, unless otherwise stated in the founding documents, are to be managed in perpetuity, but there is the possibility to create spend-down foundations.

There are foundations with banking origin which are created when savings banks are converted into limited companies. This conversion is handled by a separate law³ and the newly created foundations are then considered as endowed grantmaking foundations under the Foundation Law.

Swedish law also recognizes non-profit associations but there is no specific civil law for non-profit organisations. The majority of philanthropic organisations in Sweden are non-profit associations and the majority of fundraising from the public is done through fundraising associations.

- 2. What purposes can foundations legally pursue?⁴**

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

Foundations can pursue any legal purpose that the founder has specified. Only purposes defined as public benefit will however be tax exempt.

- 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?**

One or more founders (individuals and/or legal entities) can establish a foundation. Essential elements for setting up a foundation are the deed of the foundation and the transfer of property in accordance with the deed. The deed must in general be in writing and signed by the founder. It must describe the purpose of the foundation and the use of the assets. The assets must be handed over to at least one individual or the administrator of the foundation who has promised to manage the assets in accordance with the wishes of the founder. The assets need to be sufficient to pursue the stated purpose for a period of at least five or six years.

A foundation receives legal capacity as soon as it is founded. The foundation must be given a name containing the word "stiftelse".

¹ Stiftelselag (1994:1220).

² Lag (1967:531) om tryggnade av pensionsutfästelse m.m.

³ Sparbankslag (1987:619)

⁴ 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.

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

In the process of establishment, no state approval is needed: A foundation receives legal capacity as soon as it is founded.

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)

All foundations must register in a foundation register. The foundation register is kept by the county administration boards (regional authorities) and is also available in a national database. The registration is, however, not a prerequisite for the foundation to obtain legal personality.

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

The register contains a copy of the original founding document, any changes in the founding document, the purpose of the foundation, contact information of the foundation, name and contact information of the board members, and the amount of capital the foundation has. Most of this information is available on the public webpage of the county administrative board, and the public can also request full information from the county administrative board.

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:

There is no minimum capital requirement for founding a foundation, but it must be possible to promote the purpose, if not immediately, then in the foreseeable future.

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

The principal rule is that foundations, unless otherwise stated in the founding documents, are to be managed in perpetuity but there is the possibility to create spend-down foundations.

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

- a) Is it mandatory to have a:
- Supervisory board
 - Governing board

Two different forms of foundation management or administration exist according to the Foundation Act: foundations under their “own management”⁵ and “attached management”⁶. In the case of “own management” one or several individuals form a board administer and represent the foundation. The board shall appoint a chair and decisions are taken by simple majority if the statutes do not stipulate otherwise. In the case of “attached management”, a legal entity manages the foundation. This legal entity is the administrator of the foundation and acts through its governing body.

According to the Foundation Act, the board decides in all matters concerning the foundation, and there are no rules about supervisory boards.

- 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?

A board member may not be underage or in bankruptcy and otherwise not be able to legally act. There is no minimum/maximum number of board members specified in the Foundation Act but the board may not consist solely of the founder or founders. The board can appoint and dismiss members of the board unless the statutes describe a different order. An assignment as a member of a board/administrator terminates if the member informs the supervisory authority and the person who has appointed them, if this person can be reached.

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

According to the Foundation Act the board of the foundation represents the foundation and ensures that: The wishes of the founder, the statutes, and the law are respected; the assets are well invested; and the accounting is done according to the law. According to Chapter 2 Art. 6 in the Foundation Act, loans, and loan guarantees to, among others, the founder or the management of the foundation may not be granted. Board members and employees may receive reasonable remuneration unless otherwise stated in the deed of the foundation. The board or the administrator must appoint someone with a residence in Sweden to be the recipient of information on behalf of the foundation in case there is no official representative of the foundation registered in Sweden.

- 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 must not be the sole member of the board. The founder has no possibility to solely make decisions on behalf of the foundation.

The founder may however, on behalf of the foundation, sue a board member in cases where the board member has in the discharge of his/her duties, either intentionally or negligently damaged the foundation. The founder can also appear in court to apply for the dismissal of a board member for negligence.

- 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 main rule is that the board or the administrator of a foundation may not change the rules of a foundation unless the Kammarkollegiet⁷ (a special public board) agrees if the change concerns the purpose of the foundation, rules on investment, form of management, regulations regarding appointment of board members, decision-making, remuneration, rules for accounts and audit, and the right to sue for damages. A change of the statutes is in this case allowed only if the specific regulation has become useless or incompatible with the wishes of the founder or for other special reasons.

⁵ Egen förvaltning

⁶ Anknuten förvaltning

⁷ The Legal, Financial and Administrative Services Agency

Changes on other points may be made if the county administrative board agrees.

If the founder has stated that the board should have the right to change the statutes, this is possible except for the purpose which may never be changed unless the Kammarkollegiet agrees.

The government has the authority to change the rules of a foundation created by the state, except for the purpose.

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

A beneficiary has no more access to information than the general public through the documents held by the supervisory authority.

A prospective beneficiary may, on behalf of the foundation, sue a board member in cases where the board member has in the discharge of his/her duties, either intentionally or negligently damaged the foundation. The beneficiary can also appear in court to apply for the dismissal of a board member for negligence.

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?

There are rules regarding conflicts of interest in the Foundation Act. Briefly, these imply that anyone who is a member of a foundation board must not enter into agreement with the foundation, or be involved in an agreement between the foundation and a third party, if the board member has substantial interest in the question concerned, which may conflict with the interest of the foundation. A similar provision regarding conflicts of interest exists for foundations with attached management.

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

The Board may delegate its decision-making to an employee, provided that no foundation decree/statutes prohibit this delegation. The Board may also invite an employee to attend its meetings, provided that this would be in line with the foundation decree/statutes. Such an invited employee may not, however, participate in the decision-making.

9. What is the liability of the foundation and its organs? What is the general standard of diligence for board members? (e. g. duty of obedience, duty of care/prudence, duty of loyalty)? In what type of rule are these criteria established: fiscal, administrative, civil, commercial? Is there a solid case law, if any, regarding the duty of due diligence? Does your country differentiate between voluntary (unpaid) and paid board members? Who is allowed to bring a complaint about breaches of such duties: the other members of the board, the founder/s, the public authorities? If a complaint is brought, which authority has competence in such cases: administrative, tax authority, only the judiciary power (attorney general) or beneficiaries/general public?

The assets of the foundation are liable for the debts of the foundation. Board members, administrators and auditors can be held liable for damages if they have through wilful or negligent performance caused the foundation or different third parties economic damages. They can also be held criminally liable according to the Criminal Code if they have committed crimes.

There is no provision in the Foundation Act concerning the liability of a managing director or other officials. An executive director and other officials are however liable, under tort law for pure economic loss through crime. In other cases, liability may arise for any errors or omissions in service pursuant to Chapter 4. 1 § Damages Act.

There is no general standard of diligence for board members stated in the Foundation Act. The Foundation Act does not differentiate between voluntary and paid board members.

But if a board member causes damage to a foundation when fulfilling her/his duties, the issue of having received a fee could be relevant for measuring the actual damage.

Board members, the founder, beneficiaries, and the supervisory authority, among others, have the right to sue.

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 board or the managing director of the foundation represents the foundation.

The board of a foundation can authorise someone else to represent the foundation and sign in its name. Such authorisation must be recorded in the register of foundations. The Foundation Act does not provide for rules regarding the managing director, but there are employees with the title managing director with the power to decide on current affairs in the day-to-day activities of foundations, in particular in larger operating foundations.

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

Foundations may engage in business activities. But this must be in line with the purpose for which the foundation was established. (foundations may nevertheless own real estate).

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

No, there is no specific framework for this

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?

A foundation may have a dominant influence over a public company only if it is in conformity with the foundation's decree/statutes. A foundation's subsidiary company, which may be assumed to be unlisted, is taxed separately.

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?

According to the Foundation Act a foundation must invest its assets in an acceptable manner. The rule means that a foundation may not engage in speculative investments. There is, however, no legal ban on investment in certain asset classes. The founder can provide rules on how the assets should be invested: This approach would overrule the above provision for investing in an acceptable manner.

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)

It is possible that a foundation is considered to pursue a public-benefit purpose if the foundation, according to the foundation statutes, shall lend money at a low return rate. But at the present time it is not certain that this will enable the foundation to keep its tax-exempt status since it is not clear if this would be seen as fulfilling the purpose of the foundation.

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

No. The same rules apply as for other foundations as long as it can be considered to be fulfilling a non-profit purpose.

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

The main rule is that the board or administrator of a foundation may not change the rules of a foundation unless the Kammarkollegiet (a special public board) agrees if the change concerns the purpose of the foundation, rules on investment, form of management, regulations regarding appointment of board members, decision-making, remuneration, rules for accounts and audit, and the right to sue for damages. A change of the statutes is in this case allowed only if the specific regulation has become useless or incompatible with the wishes of the founder or for other special reasons.

Changes on other points may be made if the county administrative board agrees.

If the founder has stated that the board should have the right to change the statutes, this is possible except for the purpose, which may never be changed unless the Kammarkollegiet agrees.

The government has the authority to change the rules of a foundation created by the state, with the exception of their purposes.

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)

Foundations - such as foundations with assets, valued at fair value, of over SEK 1.5 million (~ €145,000), foundations that conduct business, and foundations set up by the state or municipality - will for each financial year prepare an annual report including an annual statutory administration report (activity report), income statement, balance sheet and notes. The administration report shall in general terms describe how the purpose has been promoted during the past year.

Smaller foundations must make an annual summary of the accounts.

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)?

Foundations - such as foundations with assets of over 1,500,000 Swedish Crowns (~ €145,000), foundations that conduct business, and foundations set up by the state or municipality - must send their annual report to the county administrative board every year, if they have full supervision.

All foundations must submit an annual tax declaration to the tax office.

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

The county administrative board makes checks concerning the annual report, and the tax authorities makes checks concerning the tax declaration.

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

Yes.

A foundation's annual report should normally be submitted to the county administrative board. Those who want to have access to the filed financial statements may ask for them. If the foundation is not required to submit its annual accounts to the county administrative board, the person seeking access to accounts may make a direct request to the foundation. The statement of accounts of smaller foundations need only be submitted to the county administrative board upon formal request of the

authority. Everyone can ask the authority to do such a formal request. Media and the public are always able to get access to a foundation's annual report or a summary.

A foundation's tax declaration is not public.

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

All foundations must have at least one auditor.

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

If there is no regulation on this in the statutes, the board or the administrator of a foundation appoints the auditor. As for the qualifications required of auditors, the Foundation Act states that no person may be appointed as auditor unless he or she has the knowledge and experience of accounting and financial matters that are needed to successfully audit a foundation of this kind and with the respective assets.

If a foundation is obliged to prepare an annual report, the Foundation Act states that at least one auditor must be either an authorized public accountant or an approved public accountant.

If the foundation exceeds more than one of the three following conditions, the foundation must always have an authorised public accountant: The number of employees is more than 50; the total assets are more than SEK 40 million (~ €3.8 million); or the turnover is more than SEK 80 million (~ €7.6 million).

The auditor must ensure that general auditing standards are followed. The auditor should, for example, check whether the board or the administrator has invested and used the assets of the foundation in accordance with the statutes and the purpose of the foundation. The yearly audit report is delivered to the board or administrator of the foundation; the audit report is sent to the county administrative board if the foundation is obliged to send its annual report to that authority.

If the foundation is not required to submit its annual report to the county administrative board, the person seeking access to the auditor's report must ask the foundation itself for the information.

19. Supervision: Which authority, what measures?

The supervisory authorities are the county administrative boards appointed by the national government. The authority has the power to act if the governing body or the auditor has not acted in line with the deed/statutes or the law. The authority has the mandate to oversee the foundation (e.g. check documents, participate in board meetings, and make inspections). It may act in certain cases (e.g. sue for damages and appoint board members) and give advice.

The authority may apply to the court for the dismissal of a board member who has neglected his duty or caused mismanagement. If such an application is lodged at the court, the authority may discharge members of the board for the period until the court has made its decision.

In addition, the county administrative board may appoint an appropriate auditor in case the foundation has failed to do so.

Some foundations fall only under limited supervision, if the founder has decided that the foundation should be under limited supervision in the deed of the foundation (if the foundation is a parent foundation or is engaged in economic activities, the founder's will is invalid). In case of limited supervision, the county administrative boards have limited power.

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

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

- b) Does the supervisory body review reports?
- Yes
- No
- c) Are foundations subject to inspection?
- Yes
- No
- d) Is approval from the authority required for certain decisions of the governing board?
- Yes, formal approval is needed
- Yes, needs just to be informed
- No

If yes, please specify which type of decisions:

- e) Is it mandatory to have a state supervisory official on the governing board?
- Yes
- No
- Can a government official be appointed to the governing board by a state authority, if so please mention:
- f) What enforcement measures are in place (including compliance measures and sanctions for non-compliance) concerning registrations, governance, reporting, and public-benefit status?

The county administrative board may force members of a foundation's board or the administrator of the foundation to perform their duties in a proper manner.

20. When and how does a foundation dissolve?

A foundation can be declared bankrupt. In the event a foundation with economic activities is in a critical financial situation, the board or administrator must prepare a special profit and loss account. If the account shows that the assets are less than debts, a petition for liquidation should be filed with the appropriate court. Special regulations on the liquidation of foundations with economic activities are found in the Foundation Act.

The dissolution of small foundations (provided they do not have any debts) is foreseen if they have not been able to pursue their purposes for the last five years and were set up at least 20 years ago.

In case of dissolution, the assets must be spent on the same purpose the foundation pursued or used for a similar one.

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, although also see following question.

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)?

To be tax-exempt, the foundation must use approximately 80% of current income after deductions for costs for the purpose

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 main principle is that a foreign foundation is recognised as a legal entity, if it is recognised as a legal entity under the law of the country where the board is located or, if the law of the country requires that the foundation is registered to obtain legal personality, the law of the country of registration.

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?

A Swedish foundation must be based in Sweden. Provided that there are no restrictions in the statutes, the foundation can provide grants to foreign citizens and institutions as well as conduct activities anywhere in the world.

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

No.

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

The Foundation Act does not contain any specific rules on this.

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

Fulfilling the non-distribution constraint is a requirement for all Swedish foundations – not only a requirement to gain tax-exempt status. If a foundation has a public-benefit purpose and uses its income mainly to pursue this purpose, the foundation can receive tax exemptions.

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?)

A foundation that wants to be exempt from income tax on interest, dividends and capital gains must seek such relief in its tax declaration which is sent to the 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.

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.

No there is no definition.

The foundation shall promote one or more non-profit purposes. The tax law lists these non-profit purposes, which are meant to promote:

- Sports
- Culture
- Environmental protection
- Care for children and young people
- Political activity
- Religious activities
- Healthcare
- Social assistance activities
- Sweden's defence and crisis preparedness in collaboration with the authorities
- Education
- Scientific research
- Or another equivalent activity

This enumeration is exemplary, which means that a foundation can also have other purposes and be exempt from taxation, provided that the purpose is considered public benefit.

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

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

disadvantaged persons				
Amateur sports	X			
Infrastructure support for public-benefit purpose organisations		X ⁸		
Party political activity	X			
Advocacy	X			
Advancement of religion	X			
<i>Other – please list other purposes accepted in tax law for tax privileges in your country</i>				

8. Support of “the public at large”

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

No, but if the benefit is limited to a small group of people, e.g. family foundations, no tax exemption will be granted.

- 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?

9. Non-distribution constraint

- a) Does a foundation with public-benefit status for tax purposes generally have to follow a “non-distribution constraint” which forbids any financial support of the foundation board, staff, etc.?

Yes.

- 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?

It should normally not be dissolved as long as it has any assets. The assets have to stay in the public-benefit sphere. The assets cannot revert to private ownership.

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**?

Remuneration is allowed in civil law. No general limits in the law but the remuneration must be reasonable. The tax law does not have any regulation about this question.

- 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)

Not really, but a postcard would be allowed.

⁸ Supporting the infrastructure of another non-profit organisation with grants (and that this falls under the purpose of the foundation) would give tax privileges. It is however unclear if performing infrastructure functions for another non-profit organisation (for instance helping with accounting or IT-services) would render tax privileges.

- 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”:

There is no regulation on this in the legislation. But if a foundation seems to spend more than what is reasonable for administration the audit and the county administrative board must react. Also, the tax authority must react if the foundation claims tax exemptions. Fundraising foundations are subject to special provisions.

- 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 this is in the statutes of the foundation.

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, but a foundation cannot be set up for less than 5 or 6 years.

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)?

Civil law: No. But if the founder has decided that the foundation must spend a certain amount of the income the board must follow that regulation.

Tax law: Yes. A foundation must use approximately 80% of its income during a period of at least five years on the pursuit of its public-benefit purpose if it wishes to retain its favourable tax status.

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.

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?

Yes.

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)?

No.

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

Foundations that fulfil the criteria of tax-exempt status do not pay taxes on interest, dividends and capital gains.

a) Grants and donations

Contributions/grants to a tax-exempt foundation are tax free. Gifts are received free of tax.

b) Investment income (asset administration)

Interest from fixed rate bonds – not taxed

Equities - not taxed

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

c) Economic activities (related/unrelated) - taxable

Income derived from business activities is taxable.

If the organisation is an association there is no taxation. According to the civil law a foundation is not allowed to have economic activity for the sole purpose of raising its income. But if the foundation according to the statutes is running a hospital there will be no taxation. Income from running a museum or an opera according to the statutes will on the other hand be taxed.

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)

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

Taxable.

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

A foundation may have a dominant influence over a public company only if it is in conformity with the foundation's decree/statutes. A foundation's subsidiary company, which may be assumed to be unlisted, is taxed separately. Dividends paid by the subsidiary company to the foundation are tax free.

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

Capital gains are subject to tax unless the foundation is tax exempt. If the foundation is liable to pay tax, they pay according to the 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?

Foundations pay VAT according to the kind of activity in which they engage.

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

No.

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

A tax-exempt foundation is tax exempt regarding profits related to disposal/transfer of assets.

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

Foundations that are subject to limited tax liability under the general income tax rules also do not pay property tax as long as their property is predominantly used in their non-profit activities.

Foundations that pay fees, salaries or benefits that are to be taxed as service income for the recipient are covered by the same rules as other employers, i.e. social security contributions must be paid, and preliminary tax must be withheld.

Board fees can not normally be invoiced but taxed as income from employment.

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. Public-benefit foundations are exempt from taxation of income of capital (dividends, interest and capital gains) according to the Swedish Income Tax Act. These rules apply to all foundations, Swedish or foreign, if their activities are considered public benefit.

However, foreign legal persons are not taxable for capital income in Sweden anyway. They are only taxable for income from business (permanent establishment) and real estate. The latter income is not exempt even for charitable foundations (Swedish or foreign).

Withholding tax is levied on dividends from Swedish corporations. Foreign charitable foundations could be refunded withholding tax either according to provisions in Double Taxation Treaties or according to case law of the European Court of Justice.

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?

Yes.

23. Does your country apply withholding tax to the income from local investments held by domestic and/or foreign-based foundations? If so, can domestic or foreign-based foundations reclaim all or part of the withholding tax under domestic law?

Yes.

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?

The tax reduction applies to gifts between SEK 2,000 (~ €193) and 6,000 (~ €580) per year. To be entitled to the deduction, you must donate at least SEK 200 (~ €19) at each occasion. The highest possible deduction is SEK 1,500 (0.25 x 6,000) (~ €144).

The organisation to which you donate the grants must be approved as a gift recipient by the Swedish Tax Agency and the gift given to scientific research or social work.

In addition, companies can deduct some donations as business expenditures (usually money donations) if they are related to the business.

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?

See above.

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

See above.

3. Tax treatment of corporate donors

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

Companies are not allowed to deduct if the company donates a gift to a non-profit organisation.

A limited company, can, in advance, before the Annual General Meeting, donate the dividend that the shareholding will entitle the donor to. Then the donor does not have to pay any income tax on the dividend.

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

See above.

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

No.

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?

No such frameworks.

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)?

An organisation which is approved by the tax authorities must inform the tax authorities about all donations they receive and from which persons. So, the donor does not need to provide anything to the tax authority. But a donor has a right to be anonymous and in that case the donor must declare the gift on their income tax return form.

- 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?**

Foreign applicants can also be approved as a recipient of a gift domiciled in a state within the European Economic Area, or with which Sweden has entered into a tax agreement that contains an article on the exchange of information or an agreement on the exchange of information in tax matters.

- 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 tax incentives when donations are done via specific tools.

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?**

The individual receiving a grant from a tax-exempt foundation is also exempt from tax on the grant.

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?**

A corporation receiving a grant from a tax-free foundation is liable for taxes on that grant.

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

No.

V. Gift and inheritance tax

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

No.

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?**

See above.

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

See above.

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. At least 50% of the estate must go to the direct heir(s).

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

Same as for Swedish foundations.

VI. Trends and developments

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

The treatment of Swedish and foreign public-benefit foundations is the same (except for withholding taxes). In considering if activities of a foundation are of public benefit or not the Swedish Tax Agency has argued that for some activities the public benefit must take effect in Sweden. This position has been repealed by the Supreme Administrative Court, and thus foreign foundations could expect to be judged in the same way as Swedish foundations. In the light of these circumstances the Stauffer case has not triggered any actions in Sweden.

- 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

Since 2003 there has been a law in Sweden on penalties for terrorist offenses. It contains provisions for the implementation of the European Union framework decision on combating terrorism. Furthermore, there has been since 2002, a law on the punishment for the financing of particular serious crimes in certain cases. This Act contains provisions for the implementation of the international Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly in 1999.

Since 2010 the Swedish Foundations Act has required all foundations to register. One reason behind this requirement was that the international organisation, the FATF (Financial Action Task Force) working on the combating of money laundering and terrorism had expressed that Sweden should consider extending the requirement for registration.

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

No.

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

Yes, the board of the foundation is considered as the beneficial owner (in Swedish, verklig huvudman) and in the case of attached administration it is the representative of the legal person that has the attached administration that is considered as the beneficial owner.⁹

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 Swedish Companies Registration Office serves as a BO register.

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?

There is no law regarding fundraising, but there are rules within the Foundations Act that govern fundraising foundations.¹⁰ The main stipulations are that a fundraising foundation must use at least three quarters of the collected funds for its stipulated purpose over a rolling period of three years and that it will be dissolved if it has lacked assets for a continuous period of two years.

⁹ Lagen (2017:631) om registrering av verklig huvudman.

¹⁰ Stiftelselag (1994:1220), kapitel 11.

VII. Further information

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Selected law texts online

- [Foundation Act/Stiftelselag \(1994:1220\)](#)
- [Income Tax Act/Inkomstskattelag \(1999:1229\)](#)

VIII.About

Philanthropy Advocacy

The Dafne and EFC joint advocacy project “Philanthropy Advocacy” acts as a monitoring, legal analysis and policy engagement hub for European philanthropy. Its main objective is to shape the national, European and international legislative environment by implementing the European advocacy roadmap for a Single Market for Philanthropy.

www.philanthropyadvocacy.eu

Donors and Foundations Networks in Europe (Dafne)

Dafne brings together 30 national associations from 28 countries across Europe, representing over 10,000 public-benefit foundations, big and small, who want to make a difference in society. We have created an alliance for collaboration across philanthropy networks in Europe to address big philanthropy questions of our time in a coordinated and effective manner. We lead, strengthen and build the field for the common good in Europe. We are involved in four key areas: advocacy, peer exchange, communications and research. Our work is needs-based and future-oriented. We value ideas over hierarchy and believe in a truly collaborative approach.

www.dafne-online.eu

European Foundation Centre (EFC)

As a leading platform for philanthropy in Europe, the EFC works to strengthen the sector and make the case for institutional philanthropy as a formidable means of effecting change. We believe institutional philanthropy has a unique, crucial and timely role to play in meeting the critical challenges societies face. Working closely with our members, a dynamic network of strategically-minded philanthropic organisations from more than 30 countries, we:

- Foster peer-learning by surfacing the expertise and experience within the sector
- Enhance collaboration by connecting people for exchange and joint action
- Advocate for favourable policy and regulatory environments for philanthropy
- Build a solid evidence base through knowledge and intelligence
- Raise the visibility of philanthropy’s value and impact

www.efc.be

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



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