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Foundations in Europe from a tax perspective – observations and trends

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Comparative Highlights of Foundation Laws

The Operating Environment
for Foundations in Europe





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The information used in this publication comes from the country profiles drafted by national experts within the legal mapping project by the Dafne-EFC Philanthropy Advocacy Initiative, which aims to provide an overview of the legal and fiscal operating environments for foundations in countries across Europe and beyond. Full versions of these country profiles are available on the Philanthropy Advocacy website (<https://www.philanthropyadvocacy.eu/legal-environment-for-philanthropy-in-europe/>). The experts bear full responsibility for the correctness and accuracy of the information in the final country profiles upon which this publication is based.

Foundations in Europe from a tax perspective – Observations and trends

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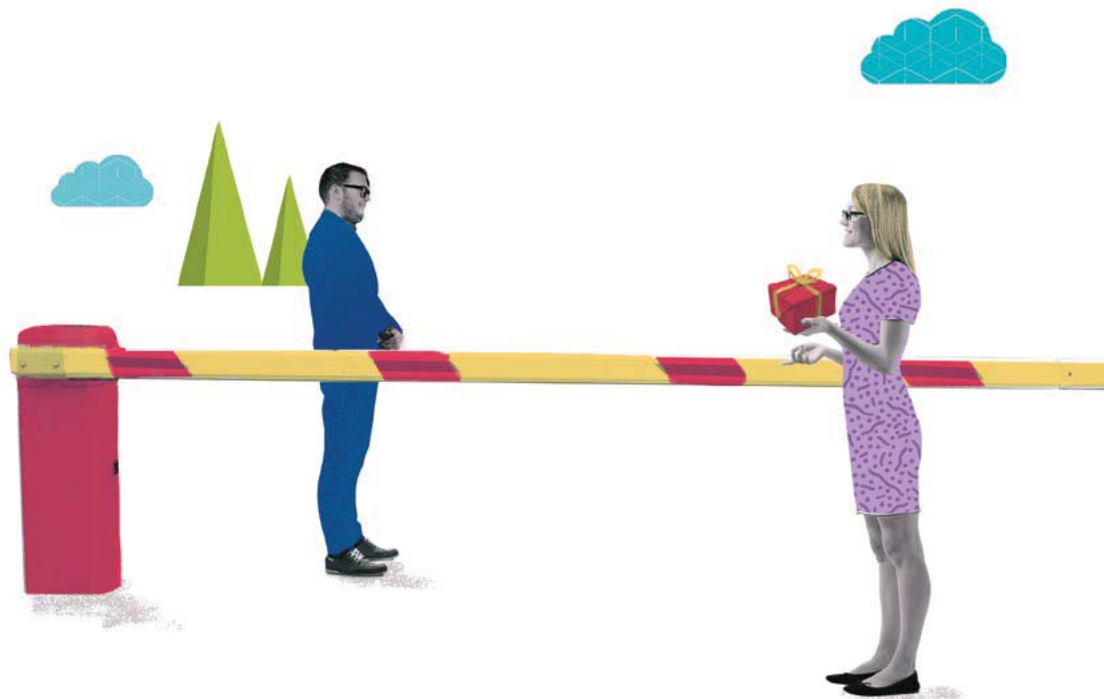
In the last few years, we have witnessed an increased scientific interest in the comparative studies of tax frameworks for not-for-profit entities. In November 2020, the OECD issued a report on “Taxation and Philanthropy”, a first large-scale comparative study in this domain that reviews tax regimes in 40 OECD member and participating countries.¹ A significant part of the present study by the Dafne-EFC Philanthropy Advocacy Initiative focuses on taxation, and the considerations below highlight the major trends emerging from this survey.²

Two principal trends concerning the general tax law framework applicable to foundations in Europe are revealed: First, all countries grant tax concessions for philanthropic foundations; and second, nearly all countries have tax incentives or similar subsidies to encourage donations by individual and

corporate donors. This continuous state support for the philanthropic sector persists regardless of some emerging criticisms of tax support for private philanthropy, coming principally from North American scholars.³ Whether such government support through tax concessions will remain or increase is to be seen. For instance, Switzerland is not likely to increase its existing tax deductions for giving in its upcoming foundation law reform.⁴

Behind these general trends, we can observe multiple differences among legal mechanisms governing tax-exempt status and tax incentives for donors. For instance, even though all jurisdictions grant tax exemptions for charitable foundations based on the general requirement to operate for public benefit, and they do not tax the “philanthropic” income, the practices related to the taxation of commercial income of such entities vary greatly, with the countries often adopting a case-by-case approach.⁵ Tax incentives for donors, as well as their extent, also diverge. Even though the tax deduction is clearly the most common instrument in

“All countries grant tax concessions for philanthropic foundations; and... nearly all countries have tax incentives or similar subsidies to encourage donations by individual and corporate donors.”



Europe, certain states also use tax credits, allocation mechanisms (“percentage giving”), and matching systems. Certain jurisdictions, such as Italy, offer a choice of tax incentives to donors (e.g. tax deduction or credit). Another trend is that tax incentives are nearly universally granted for both individual and corporate donors. Nonetheless, the type of incentives and/or their extent might differ for individuals and corporations. For instance, Lithuania does not have tax incentives for individual donors (allocation mechanisms, offered in Lithuania for individual donors, are not considered as such); however, it offers generous tax incentives for corporate philanthropy.

In a cross-border context, we can also distinguish two principal trends: First, a foundation’s activities abroad do not generally put at risk its tax-exempt status or its ability to receive tax-deductible donations; and second, almost all countries are at least in formal compliance with the ECJ case law, indicating that they grant equivalent tax concessions to donors giving both domestically and within the EU. Surprisingly, however, certain countries still indicate in the survey that they do not apply equal tax treatment to giving within the EU (e.g. Portugal and Spain) or to activities of

comparable EU-based philanthropic entities operating in their respective jurisdictions (e.g. Latvia and Lithuania). Such positions are not in line with the ECJ case law.

Another interesting legal rule and/or practice revealed by this study is that a number of countries surveyed allow support and giving by tax-exempt foundations to beneficiaries that are for-profit organisations (such as, for instance, a small green start-up). Even though such a practice is by far not uniform in Europe, it might indicate that a more fundamental paradigm shift could be underway from the classical understanding of philanthropy as an opposing activity to business towards the concept of social entrepreneurship.

Finally, one may not overlook a very important trend emerging in the philanthropic sector recently,⁶ which is the increasing prevalence of large philanthropic foundations.⁷ The importance of this momentum for tax systems cannot be ignored, as it places greater focus on the degree of influence of large donors on the use of taxpayer funds.⁸ Empirical research and data on the evolution of this trend in recent years would be of a great interest for both academics and policymakers working in the field of taxation.

1. OECD (2020), Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, Paris. (see also Private Philanthropy for Development, OECD Publishing, Paris, 2018.) <https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm>

2. For the commentary of the OECD findings, see for instance Lideikyte Huber G. and Peter Henry, The OECD Report on Taxation and Philanthropy: Main Findings and Policy Options for Switzerland, in: Expert Focus February/2021, p. 108-112.

3. E.g. Reich, R., Just Giving: Why Philanthropy is Failing Democracy and How it Can do Better, Princeton University Press, Princeton, 2019.

4. Bill, Strengthening the attractiveness of Switzerland for foundations, Modifications to the Swiss Civil Code, FF 2021 486 (FR: Code civil. Renforcer l’attractivité de la Suisse pour les fondations. Projet), accessed 31.05.2021.

5. The OECD 2020 Report extensively analyses this question, see p. 57.

6. This observation does not derive from Comparative Highlights study.

7. OECD 2020, p. 10.

8. Ibid.