

5 MAY 2020

## **PHILANTHROPY ADVOCACY (PA) LEGAL MAPPING PROJECT**

### **QUESTIONNAIRE**

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## **Country Profile Template 2020: Principality of Liechtenstein**

### **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 recognize other types of philanthropic organisations?**

The foundation is legally defined in Art. 552 § 1 PGR (*Personen- und Gesellschaftsrecht* - Persons and Companies Act): "A foundation is a legally and economically independent special-purpose fund which is formed as a legal entity (juristic person) through the unilateral declaration of will of the founder".

Similar definitions are contained in the case law of the Liechtenstein Supreme Court (*Oberster Gerichtshof (OGH)*), OGH 01.02.2019, 03 CG 2012.236, LES 2019, 36; OGH 29.01.1990, 2 C 264/87-29, LES 1991, 91; OGH 01.07.1996, 06 C 410/91-20, LES 1998, 97).

There are two types of foundations:

- Public-benefit foundations, which have to be entered into the Public Register (Art. 552 § 14 PGR) and whose activity – according to the declaration of establishment – is entirely or predominantly (at least 51%) intended to serve public-benefit purposes pursuant to Art. 107(4a) PGR in the fields of charity, religion, science, culture, sport or ecology.
- Private-benefit foundations, which do not need to be entered into the Public Register, but the notification of formation of which has to be deposited with the authority.

Both types of foundations have legal personality (OGH 07.09.2006, 04 CG.2004.252, LES 2007, 302).

The Liechtenstein jurisdiction also recognises charitable trusts as another type of philanthropic organisation.

**2. What purposes can foundations legally pursue?<sup>1</sup>**

- only public benefit
- both public and private benefit

**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?**

The foundation is formed through a declaration of establishment which has to be made in written form. An authentication of the founders' signatures is required.

The declaration is a unilateral legal instrument, which has to be interpreted in the same way as a testament. The crucial factor for interpretation is the will of the testator and, in the case of a foundation, the will of the founder (OGH 01.02.2019, 03 CG 2012.236, LES 2019, 36; OGH 10.12.2008, *Staatsgerichtshof (StGH)* 2008/56, GE 2009, 372).

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<sup>1</sup> From this question on the questionnaire will focus only on public benefit foundations, see also definition in the Glossary

Public-benefit foundations and private-benefit foundations carrying on business run along commercial lines on the basis of special law must be entered into the Public Register, in order to acquire the right of legal personality.

Private-benefit foundations may be entered into the Public Register, but there is no legal obligation and acquire legal personality upon formation.

**4. Is State approval required?** (approval by a State Supervisory Authority with/without discretion)

No.

- approval by a state authority with discretion
- approval by a state authority without discretion
- approval by a court,
- notarisation by a notary public

**5. Do foundations have to register?**

For public-benefit foundations and private-benefit foundations carrying on business run along commercial lines on the basis of special law, registration in the Public Register is mandatory. Private-benefit foundations do not have to register, but the foundation board has to deposit within thirty days following the formation a notification of the formation at the Office of Land and Public Registration.

**a) If foundations have to 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 foundations/charity one)

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

Pursuant to Art. 552 § 19 PGR, the entry shall contain the following information:

1. name or corporate name of the foundation;
2. domicile of the foundation;

3. purpose of the foundation;
4. date of formation of the foundation;
5. duration of the foundation, if this is limited;
6. organisation and representation, stating the last name, first name, date of birth, nationality and place of residence or registered office, or the corporate name and domicile of the members of the foundation board as well as the form of the signatory's power;
7. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or the corporate name and domicile of the audit authority;
8. the last name, first name, date of birth, nationality and place of residence or registered office of the legal attorney, or corporate name and domicile of the representative.

**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: CHF 30,000; or € 30,000; or US \$ 30,000

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

Liechtenstein foundation law does not contain any provisions governing the raising and maintenance of capital in order to protect creditors. The "freeze on distributions" in § 37(2), introduced in the course of the total revision of Liechtenstein foundation law in 2008, is the only provision that ensures the protection of creditors. This provision permits payments to beneficiaries if this does not diminish the claims of the foundation's creditors.

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

**a) Is it mandatory to have a**

- supervisory board
- governing board

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

The board (*Stiftungsrat*, foundation council) must be composed of at least two members (Art. 552 § 24(2) PGR). Under Art. 552 § 24(1) PGR, it is responsible for fulfilling the purpose of the foundation. Both natural persons and legal entities can be members of the foundation board (Art. 552 § 24(2) PGR). Regulations concerning the appointment or dismissal of the foundation board need to be included in the foundation deed, which is prepared by the founder (OGH 07.05.2010, 10 Hg.2008.5, LES 2010, 311). Unless otherwise provided in the foundation deed, the appointment of the foundation board is effective for three years. There are no limitations on the reappointment of foundation board members (Art. 552 § 24 PGR).

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

The members of the foundation board have to fulfil the purpose of the foundation and have to manage the assets (asset management) in compliance with the founder's intention, in conformity with the purpose of the foundation and in accordance with the principles of good management (Art. 552 § 25 PGR). Additionally, the foundation board has to maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business and movement of the foundation assets (Art. 552 § 26 PGR; OGH 04.05.2005, 01 CG.2003.32, LES 2006, 191). The founder may establish special rights for the foundation board, such as the right to amend the foundation documents (Art. 552 § 32 PGR). In this case, the board is also able to amend the provisions regarding the appointment of beneficiaries (OGH 06.03.2008, 1 CG.2006.71, LES 2008, 279; StGH 10.12.2008, StGH 2008/056, GE 2010, 489; OGH 05.11.2009, 10 CG.2005.300, LES 2010, 144).

**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?**

If the founder is a natural person, he/she can, in the foundation deed, reserve for him-/herself the right to revoke the foundation or to amend the declaration of establishment (Art. 552 § 30 PGR). These rights may not be assigned or bequeathed (OGH 01.07.1996, 06 C 410/91-20, LES 1998, 97), but they can be exercised by a representative (StGH 01.07.2011, StGH 2011/008, GE 2012, 188).

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

The founder may establish special rights for the foundation board, such as the right to amend the foundation documents (Art. 552 § 32 PGR). In this case, the board is also able to amend the provisions regarding the appointment of beneficiaries (OGH 06.03.2008, 1 CG.2006.71, LES 2008, 279; OGH 05.11.2009, 10 CG.2005.300, LES 2010, 144). However, it is the founder alone as a natural person who can, in the foundation deed, reserve for him-/herself the right to amend the statutes, including the purpose of the foundation (Art. 552 § 30 PGR).

An amendment to the purpose of the foundation by the foundation council shall only be allowed if the purpose of the foundation has become unachievable, impermissible or irrational or if circumstances have changed to the extent that the purpose has acquired a quite different significance or effect, so that the foundation is estranged from the intention of the founder (Art. 552 § 31(1)). Therefore, the amendment must comply with the presumed intention of the founder and the power to amend must be expressly reserved to the foundation board of the foundation in the foundation deed (Art. 552 § 31(2)).

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

Generally, a beneficiary as third party is entitled to inspect the foundation deed, the supplementary foundation deed and any other regulations insofar as his/her rights are concerned.

Under Art. 552 § 9 PGR, a beneficiary is entitled to inspect the foundation documents insofar as his/her rights are concerned (OGH 05.07.2007, 06 CG.2004.93, LES 2008, 95). In addition, the beneficiary is entitled to the disclosure of information, reports and accounts insofar as his/her rights are concerned.

Depending on the type of foundation purpose concerned, the right of information is limited to certain categories of beneficiaries, namely the entitled beneficiaries and the prospective beneficiaries (OGH 06.05.2003, 04 CG 2001.492-29, LES 2004, 67).

The beneficiaries do not have these rights if the founder has reserved for him-/herself the right to revoke the foundation and he/she is the ultimate beneficiary (Art. 552 § 10 PGR). If the founder has established a controlling body for the foundation, the beneficiaries may only demand disclosure of information concerning the purpose and organisation of the foundation and concerning their own rights vis-à-vis the foundation (Art. 552 § 11 PGR).

The beneficiaries also do not have access to information in respect of public-benefit and other foundations that are subject to the supervision of the Foundation Supervisory Authority.

**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?**

According to § 1009 *Allgemeines Bürgerliches Gesetzbuch (ABGB)* – Civil Code – any sort self-dealing is prohibited and is considered to be a fundamental breach of the fiduciary duties.

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

The foundation documents may transfer some decision-making power to the directors or officers.

**9. 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?**

Pursuant to Art. 182 (2) PGR, the foundation board is under a duty to run the foundation with diligence and is personally liable for the management of the foundation and its representation. In accordance with the “Business Judgement Rule”, the foundation board acts in conformity with its obligations if, within the scope of the foundation deed, it acts on the basis of appropriate information, free of conflicts of interest and in good faith that its decisions are in the best interest of maintaining the assets to be managed (OGH 08.01.2004, 10 HG 2002.58-39, LES 2005, 174).

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

Whenever members of the foundation board act without remuneration, the liability for minor negligence may be excluded in the declaration of establishment, unless the creditors of the foundation are adversely affected as a result (Art. 552 § 24(6) PGR).

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

Responsibility for breaches of such duties by members of the board can, in principle, only be claimed by the foundation itself. A beneficiary may only do so if he/she is a directly injured party and thus actively legitimised (OGH 03.11.2005, 1 CG.2003.209, LES 2006, 357).

**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 foundation board and its representatives have the power to represent the foundation (Art. 552 § 24 PGR; OGH 07.01.2009, 01 CG.2006.303, LES 2009, 202).

**11. Are purpose related/unrelated economic activities allowed? If so, is there other type of limitation on economic activities (related/unrelated)?**

Economic activities are allowed if they directly serve the achievement of the foundation's public-benefit purpose or whenever there is a special statutory basis. Insofar as the orderly investment and management of the foundation assets require, the setting-up of a commercial operation is permissible, even for private-benefit foundations (Art. 552 § 1 PGR).

**12. Is there any legal/fiscal framework for grant-makers 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 that kind of legal entities?**

In Liechtenstein, there are no corporate law barriers to donations by a third party to a foundation. Where donations are made, the criminal law provisions on money laundering must be observed.



**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 is generally permitted to hold a company in Liechtenstein unless it is a self-purpose foundation, which only retains the profits and does not distribute them. In addition to holding shares, the holding foundation is characterised by the fact that it also has the power to influence corporate policy. This can be demonstrated by majority shareholding, voting trust agreements or organisational management power.

**14. Are there any rules/limitations in civil and/or in 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 to mission related investments?**

Generally speaking, the foundation board has to manage the foundation assets in compliance with the founder's intention and in accordance with the principles of good management (Art. 552 § 25 PGR). The founder can establish specific and binding asset management criteria in the foundation's documents. There are no further limitations

**15. Are foundations legally allowed to allocate grant funds towards furthering their public benefit purpose/programmes which (can) also generate income – impact investing? (recoverable grants; low interest loans; equities)**

Yes. However, the consequence of the allocation of grant funds might be that the foundation loses its tax privileges. As mentioned previously, a foundation may pursue any legal purpose.

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

No, there are not such limitations as long as the purpose of the foundation is not defined as an otherwise forbidden or unmoral activity by law.

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

The founder can amend the statutes/the foundation purpose, if he/she is a natural person, and if he/she has reserved this right for him-/herself in the foundation deed.

An amendment to the foundation's purpose by the foundation board or another executive body shall only be allowed if the purpose has become unachievable, impermissible or irrational or if circumstances have changed to the extent that the purpose has acquired a quite different significance or effect, so that the foundation is disconnected from the intention of the founder (OGH 07.09.2018, 08 CG. 2015.438, LES 2018, 270/1; OGH 03.12.2010, 10 Hg 2009.247, LES 2011, 21).

The amendment must comply with the presumed intention of the founder and the power to amend must be expressly reserved to the foundation board or to another executive body of the foundation in the foundation deed (Art. 552 § 31 PGR).

An amendment to other contents of the foundation deed or the supplementary foundation deed, such as in particular the organisation of the foundation, is permissible by the foundation board or another executive body if and insofar as the power of amendment is expressly reserved in the foundation deed to the foundation board or to another executive body of the foundation. The foundation board shall, safeguarding the purpose of the foundation, exercise the right to amend if there is a substantially justified reason to do so (Art. 552 § 32 PGR).

#### **18. What are requirements with regard to reporting, accountability, auditing?**

Foundations carrying on business run along commercial lines are subject to general accounting rules. In the case of all other foundations, the foundation board shall, in respect of the management and appropriation of the foundation assets and taking into consideration the principles of orderly book-keeping, maintain appropriate records of the financial circumstances of the foundation and keep documentary evidence presenting a comprehensible account of the course of business and movement of the foundation assets. In addition, the foundation board shall maintain a schedule of assets showing the asset position and the asset investments (Art. 552 § 26).

##### **a) What type(s) of report must be produced?**

- annual financial report/ financial accounts
- annual activity report
- public benefit/activity report,
- tax report/tax return,
- other reports e.g. on 1% schemes,

- reports on governance changes (e.g. new board members)
- report on conflict of interest (self-dealing and conflict of interest breach cases)

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

In principle, a qualified and independent auditor must be appointed by the Princely Regional Court to every charitable foundation subject to supervision in accordance with Art. 552 § 27 PGR. The auditor must verify whether the foundation's assets are being managed and used in accordance with its purposes on an annual basis. Once the audit has been carried out, the auditors must submit an annual report to the foundation board and the Foundation Supervisory Authority.

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

It is only in the case of public-benefit foundations that the Supervisory Authority and tax authority check if the foundation's activities are in line with the purpose and the organisation of the foundation as defined in the foundation documents.

**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)**

n/a

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

See above.

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

n/a

**19. Supervision (which authority – what measures?)**

**a) Does the supervisory authority comprise of: (multiple answers possible)**

- a public administrative body,
- a public independent body,

- a combination of a governmental body and a court, or
- a court
- a public administrative body and an independent body
- a tax authority
- other

**b) Does the supervisory body review reports?**

Under Art. 552 § 29 PGR, the role of supervision is assigned primarily to the Foundation Supervisory Authority, which is a public administrative body located within the Office of Land and Public Registration.

Only public-benefit foundations (as well as private-benefit foundations which are subject to supervision pursuant to a provision in the foundation deed) are subject to the supervision of the Foundation Supervisory Authority.

The Foundation Supervisory Authority ensures ex officio that foundation assets are being managed in accordance with the foundation's purpose. Thus, it is entitled to demand information from the foundation and, through the audit authority, to inspect the books and documents of the foundation. In addition, it may obtain information from other administrative authorities.

Through special non contentious civil proceedings, the Foundation Supervisory Authority may apply to the court for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

- yes
- No

**c) Are foundations subject to inspection?**

See above.

- 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
- or 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?**

As mentioned in the previous responses, the Foundation Supervisory Authority monitors – only public-benefit foundations (as well as private-benefit foundations which are subject to supervision pursuant to a provision in the foundation deed) – whether the management of the assets is in line with the purposes of the foundation. Therefore, the Authority is entitled to request information and, through the audit authority, to inspect the books and documents of the foundation. In addition, it may obtain information from other administrative authorities.

Through special non contentious civil proceedings, the Foundation Supervisory Authority may furthermore apply to the court for the required orders, such as the control and dismissal of the executive bodies of the foundation, carrying out of special audits or cancellation of resolutions of executive bodies of the foundation.

**20. When and how does a foundation dissolve?**

Pursuant to Art. 552 § 39 PGR, the foundation must be dissolved if bankruptcy proceedings have been initiated in respect of the foundation assets. Furthermore, it must also be dissolved if a resolution rejecting the initiation of bankruptcy proceedings due to the probable insufficiency of assets to cover the costs of the bankruptcy proceedings has achieved legal force. In addition, there is a need to dissolve the foundation if there is a specific court order or if the foundation board has adopted a legally valid

resolution to that effect (see also OGH 13.06.2001, 10 Hg 2001.00025, LES 2001, 241). The foundation board shall adopt a resolution on dissolution as soon as it has received a legally admissible revocation by the founder. The assets will then be returned to the founder, unless the statutes provide that another person (e.g. another public-benefit foundation) should receive the assets. The assets will also return to the founder when the purpose of the foundation has been achieved or is no longer achievable (OGH 07.03.2002, 10 Hg 6/2001-22, LES 2002, 324), the duration envisaged in the foundation deed has expired or other grounds for dissolution are stated in the foundation deed. Furthermore, if there are no beneficiaries or if the assets do not revert to the founder, the proceeds of liquidation shall go to the Principality of Liechtenstein, which shall use the assets in accordance with the previous purpose of the foundation as far as possible (Art. 129 (2) PGR).

**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?**

Special statutory regulations concerning “administration costs” do not exist in tax law. Unreasonably high administration costs will certainly exclude private or public-benefit foundations from tax exemption. For further information, see point 10c) in section II.

**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 you accumulate these expenses over a period of time (and if so, what kind of authorisation do you require to do so)?**

No.

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

Pursuant to Art. 232 PGR, a foundation will be recognised if it was incorporated correctly in its country of origin (incorporation theory). As long as the foundation does not move its statutory seat and convert into a Liechtenstein foundation, no registration is required.

In addition to the Liechtenstein foundation, the trust has an equally long legal tradition in the Principality of Liechtenstein. As the first continental European legal system in Europe, Liechtenstein introduced

substantive trust law with certain special features to emulate common law. Furthermore, Liechtenstein acceded to the Hague Convention in 2006.

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

Activities abroad are allowed without any limitations.

**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 foundation (in the EU) and cross border mergers?**

Liechtenstein follows the incorporation theory. In addition, the recent case law of the European Court of Justice allows cross-border mergers of companies (Polbud). The freedom of establishment and the European concept of a company includes foundations. Liechtenstein shares this legal interpretation.

## **II. Tax treatment of the foundation**

**1. What are the requirements to receive tax exemptions**

- pursuing public benefit purposes
- non-distribution constraint
- being resident in the country
- other

There are two types of foundations which enjoy tax privileges because they follow non-profit purposes:

Under Art. 4(2) of the Tax Act, foundations, like all legal persons, are also exempt from all direct taxes (corporate income tax, real estate capital gains tax, formation tax) by the tax authorities upon application, if they exclusively and irrevocably pursue public-benefit purposes as defined in Art. 107(4a) PGR without the intention of making a profit. Foundations may conduct business operations on a small scale without losing their tax exemption. However, the tax exemption will be removed if a net corporate income

exceeding CHF 300,000 (approximately €245,000) is generated by economic business operations maintained by such foundations. This threshold was introduced to maintain neutrality in terms of competition with economically active and entities, which are ordinarily taxed. The tax exemption for public-benefit foundations shall not automatically be excluded by the fact that the foundation allocates part of its resources, labour or assets for the use of another likewise tax-exempt person for tax-privileged purposes. In the same way, the tax exemption will not be lost if the foundation assigns resources in whole or in part to a provision, to the extent necessary to fulfil the tax-privileged purposes set out in its statutes on a sustained basis. Furthermore, according to a decree by the Tax Administration, the foundation must be registered in the Liechtenstein Registrar of Companies as a precondition for the tax exemption (decree from April 2011, 1.1).

Under Art. 45 of the Tax Act, foundations which serve public-benefit purposes to the exclusion of any economic activity are exempt from corporate income tax, if

- they limit the distribution of their profits to the notional income (i.e. 4%) on the capital not received in the form of donations by third parties;
- their articles rule out the payment of emoluments and
- upon dissolution, their articles assign the assets remaining after repayment of the capital not received in the form of donations by third parties to similar purposes.

It must be noted that the first type concerns a general exemption from all federal taxes, whereas the second type is only exempt from corporate income tax.

## **2. What are reporting/proof requirements to claim tax exemptions? What does the foundation have to submit to the authorities (statutes, financial reports, activity reports, other?)**

The application for tax exemption on grounds of public-benefit purposes shall be submitted to the Fiscal Authority. Public-benefit foundations may submit the application for tax exemption to the Office of Land and Public Registration serving as the Foundation Supervisory Authority; the Office of Land and Public Registration shall forward the application to the Fiscal Authority.

Pursuant to Art. 4 of the Tax Ordinance, the Fiscal Authorities shall review, each year, whether the preconditions for tax exemption continue to be met. Therefore, the following documents shall be submitted to the Fiscal Authority each year:



- In the case of public-benefit foundations with an audit authority appointed pursuant to article 552 § 27 PGR, the report or confirmation by the audit authority pursuant to article 552 § 27(4) PGR and a confirmation by the audit authority concerning compliance with the preconditions for tax exemption must be filed. If these documents are not submitted, or if a review shows that the legal person or the special asset dedication no longer meets the requirements for tax exemption, then the legal person or special asset dedication shall be excluded from tax exemption.
- Foundations which are not subject to proper accounting rules under the PGR and the financial consequences of whose business activity can be presented simply and clearly without proper bookkeeping shall provide itemisations of assets and liabilities as well as of income and expenses. For the purpose of determining accrual results, expenses and income shall be itemised on an accrual basis.
- If the foundation's business activity cannot be presented simply and clearly without proper bookkeeping, it shall be required to keep proper books of account in order to determine the taxable net corporate income. The accounting shall be in accordance with the general accounting rules (article 1045 et seqq. PGR; Art. 21 of the Tax Ordinance and decree by the Tax Administration).

The necessary documentations have to be filed with the tax authority within 9 months from the closing date of the financial year at the latest. A change of purpose must be disclosed to the Tax Administration (decree by the Tax Administration, 1.1.1.c and 2.2.)

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

Liechtenstein tax law does not contain such a requirement. It is a rare case that foundations receive public funds. Nevertheless, if a public-benefit foundation receives such public funds, they have to be used in accordance with the purpose of the foundation and in accordance with the use of the funds agreed with the donor. The donors themselves often require specific reporting and documentation to verify the usage of the funds. However, this is based on individual agreements between the donor and the foundation and is not regulated by law.

In contrast, auditors reviewing legal persons and trusts shall audit whether funds are being used in accordance with the purpose of the foundation. In the case of non-profit foundations and institutions, auditors will document their findings in a report pursuant to Art. 552 § 27(4) PGR. The auditors' report

and confirmation have to be submitted to the Tax Administration. Instead of the confirmation, the audited financial statements can also be submitted.

If there is no requirement for the foundation to be audited and did not choose to do so voluntarily, a review of the use of the funds to fulfil the purpose of the foundation is done by the Tax Administration. Therefore, foundations have to submit annual financial statements.

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

There is no such obligation for public-benefit foundations. However, in order to prove compliance with the tax regime, it may be necessary for tax-exempt foundations to disclose the details of beneficiaries.

**5. Is there a statutory definition in the civil law (foundation law, trust law) of your country what a public benefit purpose (charitable purpose) is? If yes, please give us the definition. If so, is the determining definition that subsequently links to tax benefits?**

The general provision of Art. 107(4a) PGR refers to non-profit making (public-benefit) or charitable purposes. According to this provision, a foundation is charitable if the fulfilment of its purposes is of benefit to the general public. In particular, there is deemed to be a benefit to the general public if the activity serves the public good in a charitable, religious, humanitarian, scientific, cultural, moral, sporting or ecological sense, even if only a specific category of persons benefits from the activity.

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

A very rough definition is given in Art. 4 of the Federal Tax Law: The foundation must exclusively and irrevocably pursue public-benefit purposes without the intention of making a profit. Moreover, there is a reference in this provision to Art. 107(4a) PGR. As a consequence, the public-benefit purpose for tax matters is linked to the civil law in this respect. In contrast to this provision, Art. 45 of the Tax Act includes no reference to the civil law.

Therefore, one can argue that the exemption provided in Art. 45 of the Tax Act is not linked to the definition of public benefit set out in the PGR.

In addition, the connection between the PGR and the Tax Act in terms of public-benefit purposes should be viewed critically, as the two legal spheres concerned follow completely different goals. Whereas tax law tends to use a rather narrow interpretation of public benefit in order to restrict the tax exemption, a public-benefit foundation requires additional surveillance under civil law.

**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			
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’ foundation generally have to benefit “the public at large”?**

No, it is stated in Art. 107(4a) that even if only a specific category of persons benefits from the activity, the foundation is charitable.

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

No. The foundation is no longer charitable if specific persons are preselected as beneficiaries based on a familial affiliation, legal affiliation or a membership in an association.

## 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. Pursuant to Art. 45(1) of the Tax Act, dividends may be paid to board members, but they are limited to the notional income (4%) on the capital which is not received in the form of donations by third parties.

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

For a foundation to benefit from tax exemption, provision must be made in case of dissolution that the foundation’s remaining assets will be used for public-benefit purposes. For foundations which are exempt from corporate income tax under Art. 45 of the Tax Act, this requirement is explicitly stated in the law. The remaining property must not fall back to persons who have made donations to the foundation or to third persons (decree of the Tax Administration, 1.1.1.f).

## 10. “Altruistic” Element

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**?

Yes, remunerations to board members can be paid without losing the tax exemption. In terms of tax, however, the arm’s length principle has to be observed. If the remunerations exceed an adequate salary, these payments are qualified as distributions and can result in losing the tax exemption (see decree of Tax Administration, 1.1.1).

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)

In this respect, a distinction has to be drawn between foundations under Art. 4(2) and under Art 45 of the Tax Act. Benefits to the founder are generally not allowed under Art. 4, while dividends can be paid to the founder or his/her family up to a certain extent under Art. 45.

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” do not exist in tax law. There is no maximum amount placed on administration costs. Unreasonably high administration costs will certainly exclude private or public-benefit foundations from tax exemption. However, “operating expenses” is a term known in tax law . These expenses are tax deductible. All of the costs listed above are classified as operating expenses.

#### 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, his spouse and descendants.	X				
The founder retains a beneficial reversionary interest in the capital of a	X				

property or other asset for his own continuing use.					
The gift is of only 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 her/his family) as tenant.	X				
A foundation distributes a (small) part of its income to the founder or his 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, his 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 its own continuing use.					X
The gift is of only 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 her/his family) as tenant.	X				
A foundation distributes a (small) part of its income to the founder or his family.					X

## 12. Distributions and Timely Disbursement

a) Are foundations allowed to spend down their endowment?



Yes.

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. There is no minimum length of time a foundation must exist. A foundation exists until its purpose has been fulfilled.

c) Does the **civil law** and/or the **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 so, 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 as being 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?)?

Public-benefit foundations have to use a certain amount of their income in accordance with the purpose of the foundation. It has to follow its intended purpose. However, there is no regulation concerning the time horizon or amount of these expenditures.

d) Does the **civil law** and/or the **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 accept the following activities 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 accept the following activities 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?**

Yes. Foundations operating mainly abroad do not lose their tax-exempt status. Non-profit activity in Liechtenstein is not required under tax law.

**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)?**

Foundations can usually only assign resources to another likewise tax-exempt person for tax-privileged purposes. Nevertheless, it is possible to assign resources to persons that are subject to tax if this is in accordance with the purpose of the foundation or if it supports charitable purposes (see the table in point 7) or the public interest.

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

With regards to on-going taxation, Liechtenstein tax law differentiates between revocable and irrevocable foundations.

Revocable foundations: For tax purposes, revocable foundations are not considered as tax subjects. The Liechtenstein legislator considers them to be fiscally transparent. Upon revocation, the foundation's assets revert back to the founder. However, the transparent taxation of the foundation also takes place if the foundation is never actually revoked by the founder. Regardless of the civil law perspective, the assets will be attributed to and taxed in the hands of the founder. However, the foundation's governing bodies have the option of choosing an independent taxation of the foundation's assets. In this case, the foundation's assets are subject to wealth tax. However, the assets of the resident founder have to be pooled together with the assets of the foundation in order to determine the tax rate. A priori, foreign

founders are not subject to Liechtenstein wealth tax except if they own a permanent establishment or real estate in Liechtenstein, thus, the independent taxation option is irrelevant in this case.

Irrevocable foundations: In contrast, irrevocable foundations are considered as tax subjects based on their domicile in Liechtenstein and are, therefore, subject to corporate income tax. However, special tax regimes exist for non-economically active foundations, fiscally qualified as so-called private assets structures ("*Privatvermögensstrukturen*"; PVS). A PVS is not allowed to perform any economic activity. Its purpose is to acquire, hold, administrate and sell financial instruments according to Art. 4g VVG (*Vermögensverwaltungsgesetz* - Asset Management Act) as well as cash and bank accounts. Participations may only be held if it can be proved that the shareholders or beneficiaries have no influence on the management of the company. The founders of a PVS must be individuals who administrate their own assets, or foundations acting in the interest of individuals. If a foundation is a PVS, the foundation is not subject to ordinary income taxation and will only be charged the minimum corporate income tax of CHF 1,800 (approximately €975), payable annually in advance.

Conversely, economically active Liechtenstein foundations cannot be considered as private asset structures and will, therefore, be subject to a corporate income tax of 12.5% on the taxable net corporate income. For a regularly taxed foundation, the effective tax rate, dependent upon the equity return, is substantially reduced by a notional interest deduction of 4% of the foundation's average equity. Thus, financing with equity becomes fiscally equivalent to financing with debt, so that the choice regarding the form of financing can be made exclusively on the basis of business criteria. If the foundation is financed by equity, the result will be that only interest yields over 4% will be taxable due to the notional interest deduction.

Furthermore, the taxable basis for the purposes of corporate income tax is reduced by a favourable holding regime. Consequently, dividends and capital gains deriving from shares in domestic and foreign entities are fully tax-exempt in Liechtenstein. It also follows that a depreciation of participation allows for fiscal write-downs and value adjustments. Likewise, on a unilateral level, income deriving from foreign permanent establishments and foreign real estate is excluded. With regards to income from intellectual property rights, 80% of the positive income shall be considered as a commercially justified expense.

a) Grants and donations

Maximum of tax exception: 10% of the taxable income

- b) Investment income (asset administration)
- Interest from fixed rate bonds
  - Equities
  - Income from leasing of a property that belongs to the foundation -> subject to tax for domestic leasing, tax exemption for foreign leasing
- c) Economic activities (related/unrelated) → not tax exempt
- 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 a hospital/museum run by the foundation
  - Income from selling T-shirts (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)?

See lit. b.

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

No.

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

In Liechtenstein, there is only a separate capital gains tax for domestic real estate. Public-benefit foundations which are tax-privileged pursuant to Art. 4(2) are exempt from this tax too. All other foundations have to subject their capital gains derived from the sale of domestic real estate to the real estate capital gains tax, which has progressive rates from 0-21% (Art. 35 seq. of the Tax Act). There are no special rules for foundations in this respect.

**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.

Non-profit organisations that achieve annual revenues of up to CHF 150,000 (approximately €125,000) are exempted from the subjective obligation to pay taxes (Art. 10(2)(c) of the VAT Act). In addition, certain revenues of non-profit organisations are also exempted from the objective obligation to pay taxes (Art. 21(2), (12), (13), (17) and (27) of the VAT Act). However, it is possible for a public-benefit foundation to waive this exemption voluntarily and opt to be taxed instead of being exempt (see decree of the Tax Administration, 3). For the definition of a tax exempted organisation, Art. 3(k) of the VAT Act refers to the exemption from the direct taxes.

Donations are so-called non-revenues which are not subject to value-added tax at the recipient's level (Art. 18(2)(a) and (c) of the VAT Act).

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

No, as there is no special regulation for foundations as regards VAT.

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

To establish a foundation in Liechtenstein, only the payment of a formation tax ("*Gründungsabgabe*") is required. The taxable basis is the capital contribution statutorily imposed on foundations. However, the contribution of assets to the foundation's reserves is not part of the tax basis. Subsequent contributions on behalf of the founder or third-party donations will not subject the foundation to the formation tax for as long as they do not substantially modify the original capital contribution. The original capital contribution as well as further donations from the founder or from third persons are not regarded as income for corporate income tax purposes.

According to the new tax law, the rate of the formation tax imposed on foundations is 0.2% of the statutorily capital contribution, but a minimum of CHF 200 (approximately €165). Additionally, foundations benefit from a general exemption limiting taxation to capital of CHF 1,000,000 (approximately €815,000). Therefore, a foundation established with the minimum capital contribution of

CHF 30,000 (approximately €24,500) will be charged the minimum amount of CHF 200 (approximately €165).

The transfer of assets into the foundation does not, in general, trigger any further tax consequences for a foreign founder, except if these assets constitute a Liechtenstein permanent establishment or real estate. In conclusion, no tax consequences will arise in Liechtenstein if only movable assets are transferred to the foundation. If a resident founder transfers movable assets, a Liechtenstein permanent establishment or Liechtenstein real estate to the foundation, a dedication tax ("*Widmungssteuer*") of 2.5% will be levied on the transferred assets. The tax is generally based on the wealth-tax value of the contribution. In the case of a real estate transfer, the lower tax assessment value will be taken into account rather than the fair market value.

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

In Liechtenstein, there is no separate real property tax. Real estate is part of the taxable basis of the general net wealth tax.

**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 local based public benefit foundations, please refer to above but indicate which documents need to be provided and translated:

Pursuant to Art. 16(3)(h) of the Tax Act, where foreign foundations with domicile in another member country of the European Economic Area or in Switzerland are exempt from tax liability in light of

exclusively and irrevocably public-benefit purposes in the country of domicile, they meet the conditions for an application for tax exemption under Art. 4(2) of the Tax Act, i.e. Liechtenstein accepts the tax regime and the definition of public-benefit purpose in the domicile country of the foundation.

- 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

They must present the same documents as a foundation domiciled in Liechtenstein.

**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. Liechtenstein has double taxation agreements with 23 different countries, namely: Andorra, Austria, Bahrain, Czech Republic, Georgia, Germany, Guernsey, Hong Kong, Hungary, Iceland, Italy, Jersey, Lithuania, Luxembourg, Malta, Monaco, Netherlands, San Marino, Singapore, Switzerland, United Arab Emirates, United Kingdom, Uruguay.

**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?**

Liechtenstein only applies withholding tax to salaries, wages and supervisory board compensation. Depended on the double tax treaty of the foreign country, foundations can reclaim all or part of the withholding tax.

### **III. Tax treatment of donors of public benefit foundations**

**1. 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?

Individuals can deduct voluntary monetary payments to tax-exempt foundations which pursue public-benefit purposes in accordance with Art. 4(2) of the Tax Act. The deductible amount is limited to 10% of the taxable income prior to the donations (Art. 16(3)(h) of the Tax Act). For donations to foundations under Art. 45 of the Tax Act, no provision for deductibility is contained in the Tax Act.

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

Monetary Payments

**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?

For corporate donors, Art. 47(3)(h) of the Tax Act lays down the same rules and thresholds as for individual donors – see above.

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

Monetary Payments

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

Donations to non-resident public-benefit foundations can be deducted in the same way as donations to resident foundations, if the foreign foundation is domiciled in the EEA or in Switzerland and is exempt from tax liability in light of exclusively and irrevocably public-benefit purposes in the country of domicile (Art. 16(3)(h) of the Tax Act). Donations to foundations located outside of the EEA/Switzerland are not deductible.

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

n/a

**6. What are the requirements that the donor must fulfil/ information they must provide in order to claim tax benefits?**

What information do donors have to provide to their tax authority in order 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 e.g. that income was actually spent for public benefit purposes?)?



Tax deductible donations by individuals exceeding a total amount of CHF 300 (approximately €245) must be substantiated with receipts (Art. 16(3)(h) of the Tax Act). For legal entities as donors, no such threshold exists (i.e. they have to prove all their donations by receipts).

**7. Are there any different or additional requirements to be fulfilled when a donor is giving to a foreign-based foundation?**

What information do donors to foreign-based organisations have to provide in order receive tax incentives for their donation (e.g. Statutes (translation required)? Annual financial report (translation required)? Documents providing evidence for certain tax law requirements e.g. that income was actually spent for public benefit purposes?)?

No, there are no additional requirements when the foreign-based foundation is located in the EU or in Switzerland, as mentioned in point 4. However, the amount and the purpose of the donations should be verifiable and documented.

**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
- sms
- crowdfunding
- 

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

There are no differences to standard donations.

## **IV. Tax treatment of the beneficiary (receiving a grant or other benefit from a foundation)**

### **1. Individuals**

With regard to distributions, a distinction is made between revocable and irrevocable foundations:

Revocable foundations: Since the assets of a foundation are attributed to its founder, distributions by a revocable foundation are fiscally considered as direct contributions on behalf of the founder to the beneficiaries. As a result of the elimination of the inheritance and gift tax in the 2011 Liechtenstein tax reform, these distributions are no longer subject to such tax. Moreover, distributions made to an individual are not considered as taxable income. As a result, there are no tax consequences for contributions within revocable foundations in Liechtenstein.

Irrevocable foundations: If the value of a beneficiary's privileges within an irrevocable foundation can be determined, the beneficial interest will only be subject to wealth tax in cases where the beneficiary is subject to unlimited tax liability. If the value of the beneficiary's privileges cannot be determined or if the beneficiary is a legal entity or a foreigner, then the beneficial interest will not be subject to wealth tax.

Distributions from irrevocable foundations made to Liechtenstein residents are subject to personal income tax, unless the foundation's assets are subject to wealth tax. Frequently, however, the beneficiary of the foundation does not have its domicile or habitual abode in Liechtenstein and is, therefore, not subject to taxation. In such a case, the taxation of the distribution will be dependent on the beneficiary's resident state. In Liechtenstein, no source taxation is levied on distribution. This applies even if the distributing foundation holds a permanent establishment or real estate in Liechtenstein.

**2. Legal entities** Is there any legal/fiscal framework for beneficiaries conducting economic activities so that they can be eligible to foundations funding? Is there any limitations in the economic activities of the beneficiaries?

Revocable foundations: Since the assets of a foundation are attributed to its founder, distributions by a revocable foundation are fiscally considered as direct contributions on behalf of the founder to the beneficiaries. The tax treatment of the distribution at the level of the beneficiary depends on certain things: If the founder is a shareholder of the recipient and the grant is given *causa societatis*, the payment is treated as a capital contribution and is, therefore, not subject to corporate income tax. However, the contribution may trigger formation tax in Liechtenstein. If the payment is not given *causa societatis*, the distributions are subject to corporate income tax of 12.5% at the level of the beneficiary if it has its domicile or effective place of management in Liechtenstein. Distributions to non-resident legal entities are not subject to corporate income tax nor to withholding taxes in Liechtenstein.

Irrevocable foundations: Distributions from irrevocable foundations to legal entities are subject to corporate income tax if the recipient has its domicile or effective place of management in Liechtenstein. The holding privilege cannot be applied to grants from foundations. As a consequence, the distributions are subject to corporate income tax of 12.5%. Distributions to non-resident legal entities are not subject to corporate income tax nor to withholding taxes.

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

N/A.

## **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)?**

In Liechtenstein, there is no gift or inheritance tax. Inheritance and donations have to be reported in some cases, but are tax exempt.

**2. What are the tax rates? Is there a preferential system for PBO's? Which PBO's qualify? Is there a difference according to the region or the legal status of the PBO?**

There is no inheritance or gift tax.

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

No, as there is no inheritance or gift tax.

**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?**

There is forced heirship in Liechtenstein. Any assets that a founder of a foundation donates to the foundation in the time period of two years before his death are covered by this law. The legal heir(s) may request half of the legal inheritance share from the foundation. In order to be able to fulfil the claim

of a potential forced heirship, the foundation, therefore, has to keep assets in the amount of this legal inheritance share and cannot give all the assets to third parties.

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

There is no inheritance or gift tax. Instead, if assets subject to the Liechtenstein wealth tax are withdrawn from the Liechtenstein wealth tax by a transfer to another legal person, the transmitter has to pay dedication tax (Art. 13). The dedication tax amounts to 3.5% of the transferred assets plus a municipal surcharge.

## 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 the [Persche](#), [Stauffer](#), [Missionswerk](#) or other relevant ECJ judgments, or are changes being discussed? With regard to the free movement of trust structures, [Panayi Trust](#), [Olsen and Others](#) ?

Due to the liberal design of foundation law and incorporation theory in Liechtenstein, there is no need to adapt this legislation or discuss such measures. Rather, this most recent confirmatory case law confirms the legal view in Liechtenstein.

**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 from to recommendations of the Financial Action Task Force)? Has it for example become more difficult to:

- set up a public benefit foundation
- transfer funds across border (rejected)
- transfer of funds across border (more difficult)
- open a new bank account
- maintain a bank account
- fund certain activities

- fund certain regions/countries
- fund certain organisations (please explain what is the reason - foreign funding restriction?)
- do reporting to authorities/deal with administration
- other: In Liechtenstein, there is a zero-tolerance policy as far as money laundering and financing of terrorism is concerned. The legislature has taken various steps in this regard. As a member of the European Economic Area, Liechtenstein has fully implemented the 4rd EU Money Laundering Directive (2015/849) and Commission Directive 2015/847.

**3. Does the national law consider foundations as obliged entities in the meaning of the Anti-Money Laundering Directive?**

Yes.

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

Yes.

**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?**

Yes.

**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?**

No estimation possible.

- 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 watch dog/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 are no specific laws that regulate fundraising.

### ***Useful contacts***

Please add names and contact details of persons who may be contacted for queries regarding the information in this profile or for further details of the legal and fiscal environment for foundations in your country.

### ***Selected bibliography***

Please list here any books/articles which provide further information on the any of the topics discussed in the profile. Links to online articles/resources are also appreciated

### ***Selected law texts online***

Please list here the links to relevant national laws where these are available online

### ***Useful contacts***

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Annual conferences on Foundation and Trust Law in Liechtenstein.

Annual conference on foundation law in Liechtenstein: [www.uni.li/stiftungsrechtstag](http://www.uni.li/stiftungsrechtstag)

Annual conference on trust law in Liechtenstein:

<https://www.uni.li/de/weiterbildung/themen/recht/tagungen/liechtenstein-trust-conference>

Executive education in the field of Foundation and Trust Law in Liechtenstein and the neighbouring states.

Executive Master of Laws (LL.M.) in Company, Foundation and Trust Law:

[www.uni.li/llm-gesellschaftsrecht](http://www.uni.li/llm-gesellschaftsrecht)



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