

# TAX LEGISLATION RELATED TO FOUNDATIONS AND ASSOCIATIONS IN TURKEY AND PUBLIC BENEFIT STATUS

CURRENT SITUATION  
AND RECOMMENDATIONS

**TAX LEGISLATION RELATED TO  
FOUNDATIONS AND ASSOCIATIONS IN  
TURKEY AND PUBLIC BENEFIT STATUS  
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RECOMMENDATIONS**

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— **TAX LEGISLATION** —

— **RELATED TO** —

— **FOUNDATIONS AND** —

— **ASSOCIATIONS** —

— **IN TURKEY AND** —

— **PUBLIC BENEFIT** —

— **STATUS** —

CURRENT SITUATION AND  
RECOMMENDATIONS

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**ABOUT US**

Third Sector Foundation of Turkey (TUSEV) was established in 1993 by Turkey's leading foundations and associations with the objective of strengthening the legal, fiscal and operational infrastructure of civil society organizations.

For over two decades, TUSEV has been working to create a more enabling environment for civil society. With a growing network of more than 100 members, TUSEV is committed to providing solutions to common and emerging problems of civil society.

With the vision of a stronger civil society in Turkey, TUSEV works under four main program areas and undertakes activities that aim to;

- Establish an enabling and supportive legal and fiscal framework for CSOs,
- Encourage strategic and effective philanthropy and giving,
- Facilitate dialogue and cooperation between the public sector, private sector and civil society,
- Promote the recognition of Turkish civil society abroad and encourage collaborations at the international level,
- Create resources and raise awareness through research on civil society.

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# PREFACE



Since 1993, Third Sector Foundation of Turkey (TUSEV), has been working to improve the legal, fiscal and operational infrastructure of civil society organizations (CSO). With our vision of a stronger civil society in Turkey, our foremost aim is to find solutions to the common problems of CSOs and develop a more enabling environment.

As we celebrate our 25<sup>th</sup> anniversary, we believe that, our projects, reports and advocacy actions for a more enabling environment for civil society, is a great contribution for all our stakeholders in civil society, especially TUSEV members.

Our research and reports on civil society in Turkey state the increasing need for financial resources which is also crucial to ensure the sustainability of CSOs. To strengthen civil society and giving in Turkey, it is important to have an enabling fiscal legislation that promotes giving, ensures equal terms on advantages and exemptions for CSOs which also minimizes their tax liabilities regarding public benefit activities. We believe that, while fiscal legislation cannot guarantee the financial sustainability of CSOs alone, it has a positive effect on the development and strengthening of civil society and philanthropy.

Our report, titled “Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations” examines the situation of the financial legislation applied to foundations and associations in Turkey; and offers recommendations for improvement. In the first part of the report, we presented a detailed evaluation on tax legislation and its implementation in Turkey. In the second part we examined the Tax Exemption (for foundations) and Public Benefit (for associations) statuses. In both sections we presented our recommendations to improve the fiscal

legislation concerning CSOs and aims to create a more enabling fiscal environment.

We believe that this report will serve as a useful resource for both civil society organizations and public institutions to get a detailed account on the subject and to identify the areas that needs improvements.

We would like to thank the authors of the report, TUSEV’s Financial Advisor Hayati Şahin and TUSEV’s Secretary General Başak Ersen for their dedicated work and contributions to the field. TUSEV will continue to work for a stronger civil society, share its knowledge and experience with its stakeholders.

**Deniz Ataç**  
**Chair**

# INTRODUCTION

The Law on Associations, which entered into force in 2004, and the Law on Foundations, which entered into force in 2008, mitigated the difficulties experienced by foundations and associations for many years that stemmed from the legislation; and facilitated administrative matters. With these laws, the work and transactions of associations and foundations became easier to execute; Department of Associations (DoA) was established, General Directorate of Foundations (GDoF) brought a more modern organizational structure, both as a supervisory audit authority and a guide for the sector. Council of Foundations<sup>1</sup>, which was established as a new body, was also an important example of a more participatory management approach.

Unfortunately, the gains from the laws on foundations and associations were not followed by improvements in fiscal legislation, which bears great importance in terms of establishment and sustainability of civil society organizations. It can be argued that there is a backward trend in terms of the fiscal legislation concerning civil society organizations.

With Law no. 903 enacted in 1967, it became possible to deduct donations with certain amounts from income and corporate tax bases. Income of foundations with tax exempt status granted by the Council of Ministers, earned through their assets, were excluded from tax, including participation income. Economic enterprises belonging to foundations and associations with education, health and social purposes and economic enterprises belonging to tax exempt foundations and associations were exempted from corporate tax.

<sup>1</sup> For the establishment of Council of Foundations and its duties see Law on Foundations No. 5737, Article 41-42

However, after 1980s, the legislation was gradually amended in a more restrictive way. Some examples of such amendments are outlined below:

- In 1982, exemptions for the participation incomes of foundations with Tax Exemption Status and associations with Public Benefit Status were abolished.
- In 1992, tax exemption for the economic enterprises belonging to foundations with Tax Exemption Status and associations with Public Benefit Status was abolished.
- In 1993, income from the assets of foundations and associations began to be taxed through withholding tax.
- In 1999, Corporate Tax exemption of economic enterprises belonging to foundations and associations with education, health and social purposes was abolished.
- In 2006, withholding on the income of foundations and associations from interest was abolished, however it was reinstated in 2009.

Foundations and associations have been kept exempt from Corporate Tax. Additionally, Tax Exemption<sup>2,5</sup> Statutes that brings some special tax exemptions and exceptions, were granted to a limited number of organizations by the Council of Ministers to support activities for Public Benefit. In the current situation, Tax Exemption Status for foundations and Public Benefit Status for associations, allows donors to deduct their donations with or without certain limits from their tax bases. It is observed that these limited advantages do not necessarily support the growth of the sector.

2 Law No. 4962 on Amendments to Certain Laws and Law on Granting Tax Exemption to Foundations, Article 20.

3 Law on Associations No. 5253, Article 27

Foundations and associations with or without tax exemption are subject to taxes for the income generated from their assets in the same manner.

While foundations and associations are not subject to Corporate Tax, their economic enterprises are subject to tax. In general terms, foundations and associations may receive rent from their real estates, dividends from participation shares and stocks, and interest from bonds, Turkish Lira (TL) and foreign currency investments. Such income is subject to withholding tax. Foundations and associations apply withholding tax for the income from the dividends received from their enterprises. Also, there is no exemption from any Value Added Tax (VAT).

The existing tax system makes it difficult for foundations and associations to operate and grow; discourages establishment of new organizations and slows the growth of the sector, even hindering it.

This report consists of two parts;

1. The first part outlines the current situation of the fiscal and tax regulations and makes recommendations for improvement especially for foundations with Tax Exemption and associations with Public Benefit Statutes.
2. The second part outlines the general situation regarding Tax Exemption and Public Benefit Statutes and makes recommendations for a more efficient implementation.

**I. FISCAL AND  
TAX REGULATIONS  
FOR THE  
FOUNDATIONS  
AND  
ASSOCIATIONS  
IN TURKEY**

## 1. TAXATION OF FOUNDATIONS AND ASSOCIATIONS

### 1.1 STATUS OF FOUNDATIONS AND ASSOCIATIONS WITH REGARDS TO CORPORATE TAX AND INCOME TAX

The taxation of foundations and associations is largely the same as the taxation of real persons. Foundations and associations that are not subject to Corporate Tax, do not pay Corporate Tax for the income they earn from the operation of their assets; for example, conversion of their cash assets to securities and renting their real estate. However, if such income requires tax withholding as per Income Tax Law, according to the 96<sup>th</sup> and provisional 67<sup>th</sup> article of the Income Tax Law, they shall withhold Income Tax. Since foundations and associations do not submit Corporate Tax Return, they do not pay additional Income Tax; and they do not pay taxes on income with zero withholding tax rate.

### 1.2 TAXATION OF FOUNDATIONS AND ASSOCIATIONS ESTABLISHED BY SPECIAL LAWS

The existing tax system applied to foundation and association revenues is generally the same for foundations and associations with or without Tax Exemption and Public Benefit Statutes. However, taxation differs for foundations or associations established by special laws. Foundations and associations established under special laws are listed below:

- Türk Silahlı Kuvvetlerini Güçlendirme Vakfı (Turkish Armed Forces Foundation)
- Türkiye Kızılay Derneği (Turkish Red Crescent Association)
- Türk Hava Kurumu (Turkish Aeronautical Association)
- Sosyal Hizmetler ve Çocuk Esirgeme Kurumu (Social Services and the Child Protection Agency)
- Türkiye Yardım Sevenleri Derneği (Turkish Philanthropists Association)
- Resmi Darülaceze Kurumları (Official Solidarity Institutions)
- Darüşşafaka Cemiyeti (Darüşşafaka Society)

- Yeşilay Derneği (Green Crescent Association)
- Türkiye Emekli Subaylar Derneği (Turkish Retired Officers Association)
- Türkiye Emekli Astsubaylar Derneği (Turkish Retired Non-Commissioned Officers Association)
- Türkiye Harp Malulü Gazileri Şehit ve Yetimleri Derneği (Turkey Disabled Soldiers, Martyrs, Orphans and Widows Association)
- Türkiye Muharip Gaziler Derneği (Turkey War Veterans Association)
- Türkiye Teknoloji Geliştirme Vakfı (Technology Development Foundation of Turkey)
- Yunus Emre Vakfı (Yunus Emre Foundation)
- Türkiye Maarif Vakfı (Turkish Education Foundation)
- Türkiye Şehit Yakınları ve Gaziler Dayanışma Vakfı (Turkish Solidarity Foundation for Martyrs' Families and Disabled Soldiers)

All foundations and associations that are established by special laws have tax exemptions. Whether or not the donations and aids made to these foundations and associations are subject to any kind of limitation is stated in the law of establishment of some of these organizations. For those that are not stated, general rates determined by the Corporate Tax and Income Tax Laws shall be applied.

### 1.3 INCOME TAX RATES APPLIED TO INCOME OF FOUNDATIONS AND ASSOCIATIONS

Income from the assets of foundations and associations and the withholding tax rates applied to them are shown in Table 1. Since these taxes are final taxes for aforementioned income, foundations and associations do not submit Income Tax Return for these incomes. Foundations and associations are obliged to pay these taxes even if they have Tax Exemption or Public Benefit Statutes.

Table 1 shows the procedure for taxation of the earnings of foundations and associations (except for Social Assistance and Solidarity Foundations) in detail. As can be seen in the table, tax exemption does not make a difference in terms of the Income Tax.

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Foreign foundations and associations may also open branches or representative offices; establish foundations or associations in Turkey.

However, foreign foundations and associations do not have any tax exemptions.

**TABLE 1. TAXATION OF INCOMES OF FOUNDATIONS AND ASSOCIATIONS**

INCOMES OF FOUNDATIONS AND ASSOCIATIONS	FOUNDATIONS WITH TAX EXEMPTION STATUS AND ASSOCIATIONS WITH PUBLIC BENEFIT STATUS GRANTED BY THE COUNCIL OF MINISTERS DECISION	OTHER FOUNDATIONS AND ASSOCIATIONS
Income generated by economic enterprises of foundations and associations	No exemptions (Exempt from Corporate Tax only if the economic enterprise is a hospital where tuberculosis, leprosy and trachoma are treated)	
Income generated by economic enterprise and transferred to the foundation or association	15% Income Tax is deducted from the income to be transferred	
Funds, donations and aids made for the establishment of the organization	Exempt from income tax, not subject to tax withholding	
Dividends	15%	
Dividends from participation stock	15%	
Group A Investment Fund Income	10%	
Group B Investment Fund Income	10%	
State Bonds Interest	10%	
Treasury Bonds Interest	10%	
Income from Venture Capital Investment Funds, Real Estate Investment Funds and Real Estate Investment Trusts	10%	
Income from Securities issued by Mass Housing, Public Partnership and Privatization Administrations	10%	
Private Sector Bond interests	10%	
Deposit Interests	15%	
Foreign currency accounts (Banks, Private Financial Institution)	15%	
Dividends paid by Participation Banks - private financial institutions	15%	
Repo (repurchase agreement) income	15%	
Rental income, if the tenant is a legal person (company)	20%	
Rental income, if the tenant is a real person	No withholding tax and not declared	
Capital gains from real estate sale	Not subject to tax, if buying and selling activities do not require to form an economic enterprise	
Income from buying and selling of State Bonds and Treasury Bonds	15%	
Income from buying and selling of stocks, participation shares and bonds	There is an exception depending on the holding period and whether if the affiliate is publicly held	

#### 1.4 OTHER TAXES LEVIED ON TRANSACTIONS AND ASSETS OF FOUNDATIONS AND ASSOCIATIONS

Table 2 outlines the taxes levied on the transactions and assets of foundations and associations.

As shown in the table, in cases where foundations have Tax Exemption and associations have Public Benefit Statuses; there will be exemptions from

Land and Cadastre Duties when buying real estate, Real Estate Tax Exemptions from real estate used for their own purposes and exemption from Inheritance and Gift Tax for donations and aids received.

Generally, purchasing of goods or services made by foundations and associations with tax exemptions is not exempt from Value Added Tax (VAT).

**TABLE 2. OTHER TAXES LEVIED ON TRANSACTIONS AND ASSETS OF FOUNDATIONS AND ASSOCIATIONS**

OTHER TAXES	FOUNDATIONS WITH TAX EXEMPTION STATUS AND ASSOCIATIONS WITH PUBLIC BENEFIT STATUS GRANTED BY THE COUNCIL OF MINISTERS DECISION	OTHER FOUNDATIONS AND ASSOCIATIONS
Value Added Tax (for purchasing of goods and services)	Generally no exemptions, exemptions as per VAT law article 17 regarding educational, cultural and social purposes	No exemptions
Special Consumption Tax (when procuring certain goods)	No exemptions	No exemptions
Special Communications Tax	No exemptions	No exemptions
Stamp Tax	No exemptions for foundations Exemption for associations holding Public Benefit Status Lease contracts for real estates that associations and foundations rent for residential purposes, are not subject to stamp tax.	No exemptions
Duties (legal, notary and tax duties)	No exemptions	No exemptions
Land and Cadastre Duties	Exemption	No exemptions
Banking and Insurance Transactions Tax	No exemptions	No exemptions
Municipality Taxes and Duties	No exemptions	No exemptions
Motor Vehicles Tax	No exemptions	No exemptions
Property Tax	There is an exception, provided that the property is not rented and only used for the purposes of the foundations and associations	No exemptions
Inheritance and Gift Tax - for donations to foundations	Exemption	Exemption

However, the following deliveries listed in paragraphs 1 and 2 of the Article 17 of the Value Added Tax Law, which regulates Cultural and Social and Educational Exemptions, are exempt from VAT and VAT is not paid for these transactions.

According to the exemptions defined by the Article:

- Deliveries and services of foundations with Tax Exemption Status and associations with Public Benefit Status regarding expanding, encouraging and improving science and technology, fine arts and agriculture,
- Deliveries and services of activities related to culture and education through running and managing theatre, concert halls, libraries, exhibition halls, conference halls and sport facilities. Deliveries and services in line with their purpose of establishment, performed by running and managing hospitals, convalescent homes, clinics, dispensaries, preventoria, sanatoria, human blood and organ banks, monuments, botanic and zoological gardens, veterinary bacteriological, serological and similar laboratories, dormitories for students and orphanages, homes for elderly and disabled, food homes for the poor, almshouses, and deliveries and services between aforementioned institutions which perform health care services in order to diagnose and treat and any goods delivered, or services provided free of charge to such institutions,
- Delivery of food, cleaning, clothing and heating materials donated to associations and foundations engaged in food banking for the benefit of the poor, within the framework of procedures and principles set forth by the Ministry of Finance

are exempt from Value Added Tax.

## **2. DONATIONS AND AIDS**

### **2.1 INCOME TAX LAW REGULATIONS REGARDING DONATIONS AND AIDS FROM REAL PERSONS**

There are tax exemptions for donations made by real persons to foundations and associations holding Tax Exemption and Public Benefit Statuses. However, it is not possible for income earners who cannot issue income tax return to deduct their donations and thus, benefit from tax exemptions. Detailed information on the subject is addressed in Section 2.2 of the report. There are no tax exemptions for donations made to foundations and associations without Tax Exemption and Public Benefit Statuses.

According to Income Tax Law, donations and aids made by real persons to organizations in the following four groups can be deducted as expenses:

- Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages,
- Associations with Public Benefit Status, foundations with Tax Exemption Status,
- Institutions and organizations involved in scientific research activities,
- Associations and foundations engaged in Food Banking for the benefit of the poor,

The amount of donations that can be deductible as expenses may be limited to 5% of a given year's income (10% in priority regions for development) or may be deducted as a whole; depending on the purposes of the donation and aid as well as the organization making the donation. In this case, the upper limit is limited by the income stated. If loss is declared, there would be no deduction.

Donations and aids may be cash or in kind. If they are in kind, the cost value or registered value of



goods or rights that constitutes the donations or aid shall be taken into account; if this value is not available, the value that shall be determined by valuation commissions as per the Tax Procedural Law shall be taken as the basis.

According to Article 89 of Income Tax Law, regulations regarding donations made by real persons (10% deduction in priority regions for development) are outlined in the table below:

**TABLE 3. REGULATIONS ON DONATIONS BY REAL PERSONS**

ORGANIZATION THAT CAN RECIEVE DONATIONS	LAW NO-ARTICLE NO	THE STATUS OF THE ORGANIZATION THAT RECEIVED DONATION	TYPE OF DONATION	DONATION LIMIT RELATED TO TAX BASE
Donations made to Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages	193 -89/4	Public	Cash and In Kind	5%
Donations made to associations holding Public Benefit Status and foundations that are holding Tax Exemption Status	193 -89/4	Private	Cash and In Kind	5%
Donations made to Public Administrations with General or Special Budgets, Special Provincial Administrations, Municipalities and Villages, to build and donate schools, healthcare facilities, dormitories, almshouses, care and rehabilitation centers, or for the building of such facilities or for maintaining the activities of existing facilities	193 -89/5	Public	Cash and In Kind	Unlimited
Donations made by giving food, cleaning, clothing or heating materials to foundations and associations engaged in Food Banking for the benefit of the poor	193 -89/6	Private	In Kind	Unlimited
Expenditures made by Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages, associations with public benefit status, foundations with tax exemption status, and institutions and organizations involved in scientific research activities, or expenditures made in specific areas that are supported or deemed eligible to receive support by the Ministry of Culture and Tourism such as culture, art, archeology, history, literature, preservation of cultural assets etc. and donations and aids made for these purposes	193 -89/7	Public, Private	Cash and In Kind	Unlimited
Donations made with receipt to universities, high technology institutes and foundations established with the purpose of sparing four-thirds of their income to support the activities and maintenance of state universities and actively operating for this purpose, which are granted tax exemption by the Council of Ministers	2547 -56/1/b	Public, Private	Cash and In Kind	Unlimited

## **2.2 NONDEDUCTIBILITY OF DONATIONS DUE TO INABILITY OF REAL PERSONS TO SUBMIT INCOME TAX RETURNS**

Both real and legal persons may deduct their donations and aids made to foundations holding Tax Exemption Status and associations holding Public Benefit Status during the year; provided that they declare such donations and aids on income tax return. In Turkey, income tax is essentially levied on tax return. However, with the introduction of tax withholding system in the recent years, cases where Income Tax Return is submitted for some items of income have become quite limited. Those whose income consists solely of wage or interest taxed with withholding tax cannot submit income tax return and deduct their donations.

Income from securities such as interest and dividend, are subject to a fixed tax rate of (15%) with withholding method, not with progressive tax rates from 15% to 35% as in wages. As a result these incomes are not included in annual tax returns; taxation through withholding becomes final taxation. In cases where withholding tax is the final taxation, tax return cannot be issued, and donations cannot be deducted. For example, real persons whose income is constituted solely of income from securities and/or wages, cannot deduct their donations and aids from their tax base as they cannot submit tax return.

## **2.3 CORPORATE TAX LAW REGULATIONS REGARDING DONATIONS AND AIDS OF LEGAL PERSONS**

There are tax exemptions for donations and aids given by legal persons to foundations and associations holding Tax Exemption and Public Benefit Statuses. There is no exemption for donations and aids made to other foundations and associations.

Donations and aids are regulated by Article 10 of the Corporate Tax Law. Regulation is parallel to that of Income Tax. Organizations that may receive donations and aids are specified below:

- Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages,
- Associations with Public Benefit Status, foundations with Tax Exemption Status,
- Institutions and organizations involved in scientific research activities,
- Associations and foundations engaged in Food Banking for the benefit of the poor

The amount of donations and aids that can be deductible as expenses may be limited to 5% of a given year's income (10% in priority regions for development) or may be deducted as a whole; depending on the purposes of the donation and aid as well as the organization receiving the donation and aid. In this case, the upper limit is equal to the income stated. If loss is declared, there would be no deduction. In case of loss, it is also not possible to deduct the donation from the income of following year.

Donations and aids may be cash or in kind. If they are in kind, the cost value or registered value of goods or rights that constitutes the donations or aid shall be taken into account. If this value is not available, the value that shall be determined by valuation commissions as per the Tax Procedural Law shall be taken as the basis.

Regulations on the donations of legal persons within the framework of Corporate Tax Law are outlined in the table below:

TABLE 4. DONATIONS MADE BY LEGAL PERSONS AS PER THE CORPORATE TAX LAW

ORGANIZATION THAT CAN BE DONATED TO	LAW NO-ARTICLE NO	THE STATUS OF THE ORGANIZATION THAT RECEIVED DONATION	TYPE OF DONATION	DONATION LIMIT RELATED TO TAX BASE
Donations made to Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages	5520 10/1-c	Public	Cash and In Kind	5%
Donations made to associations holding Public Benefit Status and foundations that are holding Tax Exemption Status	5520 10/1-c	Private	Cash and In Kind	5%
Donations made to organizations involved in scientific research and development	5520 10/1-c	Public, Private	Cash and In Kind	5%
Donations made to Public Administrations with General and Special Budgets, Donations made to Special Provincial Administrations, Municipalities and Villages, to build and donate schools, healthcare facilities, dormitories, almshouses, care and rehabilitation centers, or for the building of such facilities or for maintaining the activities of existing facilities	5520 10/1-c	Public	Cash and In Kind	Unlimited
Donations made by giving food, cleaning, clothing or heating materials to foundations and associations engaged in Food Banking for the benefit of the poor	193/40-10	Private	In Kind	Unlimited
Donations made to Public Administrations with General and Special Budgets, Special Provincial Administrations, Municipalities and Villages, associations with public benefit status, foundations with tax exemption status, and institutions and organizations involved in scientific research activities, or expenditures made in specific areas that are supported or deemed eligible to receive support by the Ministry of Culture and Tourism such as culture, art, archeology, history, literature, preservation of cultural assets etc.	5520 10/1-d/1-10	Public, Private	Cash and In Kind	Unlimited

#### 2.4 REGULATIONS ON DONATIONS IN LEGISLATIONS OTHER THAN INCOME AND CORPORATE TAX LAW

Deduction of donations made by real and legal persons from Income and Corporate Taxes is regulated with other laws other than these two laws. These regulations, which are not limited to a certain period, are permanent regulations for donations as long as there is no amendment.

The following table outlines the organizations that are determined by laws other than Tax Laws (Income and Corporate Tax Laws), which real and legal persons may donate to, and the rates and amounts of these donations that can be deducted from Income and Corporate Taxes:<sup>4</sup>

**TABLE 5. ORGANIZATIONS THAT REAL AND LEGAL PERSONS MAY DONATE TO ACCORDING TO LAWS OTHER THAN TAX LAWS, AND THE RATES THAT CAN BE DEDUCTED FROM INCOME AND CORPORATE TAX**

ORGANIZATION THAT CAN BE DONATED TO	LAW NO-ARTICLE NO	THE STATUS OF THE ORGANIZATION THAT RECEIVED DONATION	TYPE OF DONATION	DONATION LIMIT RELATED TO TAX BASE
Public Charities for Natural Disaster Victims, Pension Funds and Other Organizations, National and Local Assistance Committees	7269/44, 45	Public	Only Cash	Unlimited
Social Services and the Child Protection Agency and Organizations	2828/20/b	Public	Only Cash	Unlimited
Universities and High Technology Institutes	2547/56	Private, Public	Only Cash	Unlimited
Primary Education Institutions	222/76	Private, Public	Only Cash	Unlimited
The Scientific and Technological Research Council of Turkey (TÜBİTAK)	278/13	Public	Only Cash	Unlimited
Atatürk Supreme Council for Culture, Language, and History	2876/101	Public	Cash and In Kind	Unlimited
Social Assistance and Solidarity Promotion Funds or Social Assistance and Solidarity Foundations	3294/9	Public	Cash and In Kind	Unlimited
Expenses Made Within the Framework of the National Afforestation and Erosion Control Mobilization Law	4122/12	Public	Cash and In Kind	Unlimited
Donations made according to Law on Primary Education	222/76/g	Public	Cash and In Kind	Unlimited
Gulhane Military Medical Academy	2955/46-b	Public	Only Cash	Unlimited

4 Mehmet Maç- Tarık Jamali. "Veraset, Hibe ve Ölüm". p. 478-482. (Updated by Hayati Şahin.)

### 3. RECOMMENDATIONS

#### 3.1 Separate financial reporting standards should be adopted for not for profit organizations.

- Special accounting standards should be developed and put into effect for foundations and associations.
- Necessary arrangements should be made to share audited financial statements of foundations and associations with Tax Exemption and Public Benefit Statuses with the public in the framework of transparency and accountability principles.

#### 3.2 It should be made possible for real persons and especially salary earners who do not submit tax returns for their income that is taxed via withholding tax, to deduct their donations from tax base.

- Obstacles hindering salaried employees to donate should be removed; payroll giving should be allowed to be deducted from tax base with statements made to employers and through the employers to donate to foundations with Tax Exemption and associations holding Public Benefit Statuses.

#### 3.3 The amount of donations deductible from tax made by Real and Legal Persons should be increased.

- The amount of donations that can be deductible as expenses may be limited to 5% of a given year's income (10% in priority regions for development) or may be deducted as a whole; depending on the purposes of the donation and aid as well as the organization receiving the donation. In this case the upper limit is limited by the income stated. This percentage should be increased to 10% (can be 20% in priority regions for development) as in many EU countries.
- Donations of legal persons are limited to 5% of the entity's tax base. This percentage should be

increased to 10% (can be 20% in priority regions for development).

- In the current situation, there would be no deduction if loss is declared. Donations that cannot be deducted in a given year due to loss, should be carried over the next five years as in the offsetting of losses.

#### 3.4 Donation limitations should be made equal between foundations and associations operating in similar fields, and State institutions and foundations and associations related to the State

- Although donations made to public institutions and associations and foundations related to the state can generally be deducted from the tax base, there is a 5% limit on donations and aids to associations and foundations operating in similar areas. This practice creates an unequal situation in favor of institutions, foundations and associations related to the State and hinders the development of the civil society sector. This inequality should be eliminated, and similar tax exemptions and exceptions should be provided equally to all foundations and associations.

#### 3.5 Regulations on the economic enterprises of foundations and associations are very restrictive in the Corporate Tax Law. Recommendations for economic enterprises are outlined below:

##### 3.5.1 Economic Enterprises of Foundations with Tax Exemption Status and associations with Public Benefit Status should be evaluated according to whether their activities are appropriate for foundation and association purposes, not according to profit and loss objectives.

- Some activities of foundations with Tax Exemption Status and associations with Public Benefit Status to fulfill their purposes require establishment of economic enterprises; however, these enterprises usually do not make profit, and

they are often unable to continue their operations without the financial support of the related foundations and associations.

For this reason, economic enterprises shall be divided into two categories as stated below:

- Economic enterprises established by the foundation or association to meet their public benefit purposes and operate accordingly, and
- Economic enterprises operating in areas outside the scope of the objectives to generate income for the foundation or association.

#### **3.5.2 Economic enterprises established by foundations and associations to fulfill their public benefit objectives should be exempt from Corporate Tax.**

- Economic enterprises of associations and foundations operating to fulfill their public benefit objectives should be exempt from Corporate Tax whether they are for profit or not for profit. This practice will not only create an added value by supporting foundations and associations' activities for the public benefit, but also prevent the creation of unfair competition at the same time and will not constitute an obstacle for other legal persons.

#### **3.5.3 Conditions related to income-generating activities of foundations and associations being considered as economic enterprises should be redefined and should be related to the amount of income, not the frequency of the activity.**

#### **3.5.4 Establishment of a temporary economic enterprise should be made possible to be limited to a short time or duration of a project.**

#### **3.5.5 Since the economic enterprise is not a legal entity, assets paid by the economic enterprise, such as real estate and vehicles are registered under foundation or association; however, their usage is given to the economic enterprise. It should also be possible for economic enterprises to acquire assets that require title deeds and licenses.**

#### **3.5.6 The activities of foundations and associations such as yard sales, meal organizations, balls, excursions, concerts and similar activities should not be regarded as an economic activity.**

- Income-generating activities such as yard sales, meal organizations, balls, excursions and concerts which are organized by foundations and associations more than once a year should not be regarded as an economic activity which requires establishment of an economic enterprise if the following conditions are fulfilled:
  - Working of volunteers in activities,
  - Selling of goods or services obtained through donations,
  - Unit financial value of goods or services sold not being high,
  - Not providing any other financial benefit other than generating income for the activities of the foundation or association.

#### **3.5.7 It should be taken into account that economic enterprises established by foundations and associations to fulfill their purposes belong to such foundations and associations; and the relations between them should not be regarded as relations between third parties.**

- In the event that economic enterprises suffer losses, the payments made to the economic enterprise to meet this loss should be regarded as expenditure towards the purpose made by the foundation and the association. These payments must not fall within the scope of transfer pricing, and should not be subject to interest and VAT.

#### **3.5.8 The remaining profit after Corporate Tax made by profit-making economic enterprises should not be subject to Income Tax withholding after being transferred to the foundation or association.**

- Profits transferred from the economic enterprises to the association or foundation to be used in association or foundation for their

activities should not be subject to the same taxation as profit distributed to real persons as a result of capital shares in corporations.

**3.6 Foundations with Tax Exemption Status and associations holding Public Benefit Status should be exempt from Value Added Tax.**

- Associations with Public Benefit Status and foundations with Tax Exemption Status should be exempt from Value Added Tax; and any goods or services delivery to these organizations should also be exempt from Value Added Tax.

**3.7 Foundations with Tax Exemption Status and associations holding Public Benefit Status should be exempt from Property Tax.**

- Buildings used by foundations with Tax Exemption Status and associations with Public Benefit Status in the areas of education, health, culture, art, scientific research and development should be exempt from Property Tax, provided that they are allocated to purposes written in their by-laws and regulations and not rented.

**3.8 Foundations with Tax Exemption Status and associations holding Public Benefit Status should be exempt from Stamp Tax.**

- Foundations with Tax Exemption status and associations with Public Benefit Status aiming to be active in the areas of education, health, culture, art, scientific research and development; should be exempt from Stamp Tax regarding documents issued during establishment, and all further documents issued related to their activities.

**3.9 Foundations with Tax Exemption Status and associations with Public Benefit Status should be exempt from Notary Fees.**

- Establishment procedures of foundations and associations as well as donations made to these foundations and associations should be exempt from Notary Fees.

**3.10 Foundations with Tax Exemption Status and associations with Public Benefit Status should be exempt from Motor Vehicles Tax.**

- Motor vehicles owned or to be owned by foundations with Tax Exemption Status and associations with Public Benefit Status, foundations and associations aiming to be active in the areas of education, health, culture, art, scientific research and development should be exempt from Motor Vehicles Tax.

**3.11 Foundations with Tax Exemption Status and associations with Public Benefit Status should be exempt from Special Consumption Taxes.**

- Foundations with Tax Exemption status and associations with Public Benefit Status aiming to be active in the areas of education, health, culture, art, scientific research and development should be exempt from Special Consumption Tax in their vehicle purchases.

**3.12 Foundations with Tax Exemption Status submit the Tax Exemption Certification Report to the Ministry of Finance prepared annually by Certified Public Accountants (CPA). In this report, CPA states their opinion as to whether the audited foundation fulfills the conditions of Tax Exemption and whether the tax exemption status of the foundation should continue. Associations with Public Benefit Status do not have such obligation. It is also necessary to consider making CPA Tax Exemption Certification Report a requirement for associations that hold a Public Benefit Status.**

**II. TAX EXEMPTION**

**STATUS FOR**

**FOUNDATIONS**

**AND PUBLIC**

**BENEFIT**

**STATUS FOR**

**ASSOCIATIONS**



## 1. OVERVIEW

The most important means of benefiting from tax exemptions or exceptions for civil society organizations (CSOs) is to hold the status of Public Benefit Association or Tax-Exempt Foundation.

A review of the exemptions provided by these statuses and of the application and evaluation processes will have positive results in terms of ensuring the financial sustainability of CSOs and improving institutional and individual giving. As mentioned in detail in the first part of the report, real and legal persons may deduct donations from their tax bases within certain limits, provided that these donations are made to associations and foundations with the statuses of Public Benefit and Tax Exemption. Tax deduction rate applied to real and legal persons in their donations to associations with Public Benefit Status and foundations with Tax Exemption Status is 5% (10% in priority regions for development).<sup>5</sup>

According to data compiled in February 2018, only 267 out of 5083 new foundations in Turkey (5.3%) have Tax Exemption Status.<sup>6</sup> For associations, Public Benefit Status is only granted to 390 out of 111.987 existing associations around Turkey (0.35%).<sup>7</sup>

<sup>5</sup> *Legal and Tax Regulations Guideline for Individual and Institutional Donors*. TÜSEV. Access date: May 16<sup>th</sup>, 2017 [https://www.tusev.org.tr/usrfiles/files/vergiselkonularrehberi\\_web\\_29\\_08\\_13.pdf](https://www.tusev.org.tr/usrfiles/files/vergiselkonularrehberi_web_29_08_13.pdf)

<sup>6</sup> *List of Tax Exempt Foundations*. Revenue Administration. Access date: Feb. 6<sup>th</sup>, 2018 <http://www.gib.gov.tr/yardim-ve-kaynaklar/yararli-bilgiler/vergi-muafiyeti-taninan-vakiflarin-listesi>

<sup>7</sup> *List of Public Benefit Associations*. Department of Associations. Access date: Feb. 6<sup>th</sup>, 2018. <https://www.dernekler.gov.tr/Anasayfalinkler/kamu-yararına-calisan-dernekler.aspx>

Practices regarding these Statuses were criticized for the first time by the European Commission, in their 2014 Progress Report of Turkey, due to “public benefit and tax exemption status being granted to a limited number of CSOs with ambiguous criteria applied by the Council of Ministers”.<sup>8</sup>

Providing a more favorable environment for civil society organizations will encourage institutions and individuals acting on a voluntary basis and contribute to the development of a sense of responsibility in society.

In this part of the report, our recommendations regarding public benefit;

- Legal regulations and the definition of public benefit,
- Requirements for Public Benefit and Tax Exemption Statuses
- Decision-making authorities and evaluation process

are presented separately for each of these sections, comparing with international examples.

<sup>8</sup> *2014 Progress Report of Turkey*. European Commission. Access date: Jan. 18<sup>th</sup>, 2017 [https://www.ab.gov.tr/files/ilerlemeRaporlariTR/2014\\_ilerleme\\_raporu\\_tr.pdf](https://www.ab.gov.tr/files/ilerlemeRaporlariTR/2014_ilerleme_raporu_tr.pdf)

## 2. LEGAL REGULATIONS AND THE DEFINITION OF PUBLIC BENEFIT

Public Benefit and Tax Exemption Statuses are matters of financial regulation. Provided that they meet the criteria outlined in legislation, these statuses granted to foundations and associations give exemption and exceptions to civil society organizations. These statuses and related tax exemptions and exceptions are applied as an incentive policy to support the development of civil society organizations and to enable them to be more effective in their activity areas.<sup>9</sup> Whether the CSOs have these statuses or not, is one of the determining factors for public support.<sup>10</sup>

According to the legislation in Turkey, the evaluation is based on the scope of activities of associations and foundations, and a distinction is made between foundations and associations that are offering public services and that are not. According to the report issued by State Supervisory Board on public benefit association status, “Public benefit within the context of civil society is defined as applications and financing that provide the reputation and privilege that the state recognizes for those who fulfill certain conditions in order to determine the service areas and forms of civil society organizations

and to ensure institutionalization of these institutions.”<sup>11</sup> Another thing that stands out in the regulations related to public benefit status of associations and foundations in Turkey is the differences in requirements for having this status. The most prominent of these differences is related to the content of the public benefit concept. There are two separate definitions of public benefit for associations and foundations. The use of the same concept with different contents according to organizational types poses a problem in terms of the consistency of “public benefit” as a concept and of the legislation.

**TABLE 6. LEGISLATION ON PUBLIC BENEFIT AND TAX EXEMPTION IN TURKEY**

Which legal framework regulates the Public Benefit Status for associations?	<ul style="list-style-type: none"> <li>• Law on Associations</li> <li>• Regulation on Associations Article 49</li> </ul>
Which legal framework regulates Tax Exemption Status for foundations?	<ul style="list-style-type: none"> <li>• Law No. 4962 on Amendments to Certain Laws and Law on Granting Tax Exemption to Foundations</li> <li>• General Communiqué on the Recognition of Tax Exemptions to Foundations (Serial No: 1,2 and 3)</li> </ul>

9 *Comparative Public Benefit Report on Associations and Foundations*. TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 [https://tusev.org.tr/usrfiles/files/kamu\\_yarari\\_raporu.pdf](https://tusev.org.tr/usrfiles/files/kamu_yarari_raporu.pdf)

10 *Active Participation in Civil Society: International Standards, Obstacles in National Legislation and Proposals*. TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 <https://www.tusev.org.tr/usrfiles/images/MevzuatRapor.15.09.15.pdf>

11 *Research and Review Report: Analysis of Public Benefit Association Status and Evaluation of Work and Transactions Carried Out Related to Public Benefit Associations*. State Supervisory Board. Access date: January 18, 2017. <https://www.tccb.gov.tr/assets/dosya/ddk32.pdf>

### 3. REQUIREMENTS FOR OBTAINING PUBLIC BENEFIT AND TAX EXEMPTION STATUS

According to the Law on Associations, associations are regarded as public benefit associations when their purposes and activities that they carry out for these purposes are of a quality and measure to provide beneficial results to the society; and of a quality that will contribute to social development and solve issues and needs at local and national levels, beyond the needs of their members. As the accepted definition of public benefit regarding associations is not clear, public officials authorized to decide on this status have been given broad discretionary powers. This ambiguous definition may be insufficient to guide the administration, and it carries the risk of involving subjective practices. It is necessary to make a definition that is linked to clear and objective criteria and that does not include a restriction purpose.<sup>12</sup>

The report issued by the State Supervisory Board on Public Benefit Association Status in Turkey points to, “the lack of clarity in our legislation regarding which purposes and activities constitute the concept of public benefit and also a lack of definition of public benefit that allows the establishment of an effective state-civil society cooperation and the limits of state-civil society relations.<sup>13</sup>

12 *Active Participation in Civil Society: International Standards, Obstacles in National Legislation and Proposals*. TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 <https://www.tusev.org.tr/usrfiles/images/MevzuatRapor.15.09.15.pdf>

13 *Research and Review Report: Analysis of Public Benefit Association Status and Evaluation of Work and Transactions Carried Out Related to Public Benefit Associations*. State Supervisory Board. Access date: Jan.18, 2017. <https://www.tccb.gov.tr/assets/dosya/ddk32.pdf>

According to the Law No. 4962, it is necessary for the foundations to be active in the fields of health, social welfare, education, scientific research and development, culture and environmental protection and afforestation to qualify for tax exemption and these activities should be open to the public and should have an impact to decrease the public service burden of the state. In the case of foundations, scope of activities stated in the regulation in question; for example, many areas considered public benefit internationally, such as:

- Prevention of other discriminatory activities determined by race, ethnicity, religion or law
- Supporting amateur sports and athletes
- Helping refugees
- Civil rights or human rights
- Consumer protection
- Democracy

have not been included in the scope.<sup>14</sup>

14 *Active Participation in Civil Society: International Standards, Obstacles in National Legislation, Recommendations*. TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 <https://www.tusev.org.tr/usrfiles/images/MevzuatRapor.15.09.15.pdf>

TABLE 7. ACTIVITIES DEFINED AS PUBLIC BENEFIT: INTERNATIONAL EXAMPLES

<p><i>Many countries state the list of activities that are considered as public benefit, with general expressions or clear provisions.</i></p> <p><i>However, there are also countries where there are no restrictions on the fields of activity in terms of public benefit.</i></p>	<p><b><i>In Austria, Bulgaria, Ireland and Netherlands organizations that support amateur sports activities cannot qualify for public benefit status.</i></b></p>	<p><b>Countries that do not recognize civil rights and human rights-related activities as public benefit: <i>Bulgaria, Malta, Ireland, Turkey and Montenegro</i></b></p>
	<p><b>Countries that do not recognize activities regarding elimination of all forms of discrimination as public benefit: <i>Bulgaria, Malta, Sweden, Albania, Montenegro and Turkey</i></b></p>	<p><b>Countries where there are no restrictions on the field of activity: <i>Denmark, Estonia, Finland, Greece, Hungary, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain, England, Norway and Russia</i></b></p>

In Turkey, there are also geographical limitations to obtain Tax Exemption Status.<sup>15</sup> Foundations wishing to acquire this status need to conduct activities for public benefit throughout the country.

In a large country like Turkey, carrying out activities across the country may bring undue liabilities and it may not always be possible and necessary to do so. For example, the acquisition of public benefit status by an environmental organization that participated in the cleaning activity of a polluted river or a humanitarian not-for-profit organization established after an earthquake in a specific city or region is hindered due to these limitations.

15 *Comparative Highlights of Foundation Laws 2015 Report on Legal and Tax Regulations Imposed on Foundations in Europe*. 2015. European Foundation Centre. <http://efc.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2015.html>

There is no European Union (EU) country with similar requirements. In EU examples, the scope and definition of public benefit is determined by focusing on the rights holders. In the UK, those eligible for assistance are required to constitute a group large enough to be a considerable segment of the public or society. In Poland, the target of public benefit activities is either all segments of the society or groups consisting of individuals having difficulties in life and financial problems who are related to the other segment of the society.<sup>16</sup>

16 *Comparative Public Benefit Report on Associations and Foundations* TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 [https://tusev.org.tr/usrfiles/files/kamu\\_yarari\\_raporu.pdf](https://tusev.org.tr/usrfiles/files/kamu_yarari_raporu.pdf)

**TABLE 8. REQUIREMENTS FOR PUBLIC BENEFIT STATUS OF ASSOCIATIONS AND TAX EXEMPTION STATUS OF FOUNDATIONS IN TURKEY**

	REQUIREMENTS FOR “PUBLIC BENEFIT STATUS” OF ASSOCIATIONS <sup>17</sup>	REQUIREMENTS FOR “TAX EXEMPTION STATUS” OF FOUNDATIONS <sup>18</sup>
Duration of operations	Operating for at least 1 year	Being active for at least 1 year  Foundation whose assets and income exceed the double the amount of limits valid for the year of application, may have been operating for minimum 6 months instead of one year
Financial liabilities	Making buying and selling transactions exceeding 133,491 TL within the past one year, which is the amount determined for 2018, in accordance with the conditions of competition  Spending at least half of the annual income for this purpose  Having assets and annual income at a level to realize the purpose stated in the charter	(For 2018) For foundations operating for at least 1 year, having 1.133.000TL worth of income-generating assets and at least 103.000TL of annual income  For foundations with operating for the past 6 months,  Having at least 2.266.000TL worth of income-generating assets and at least 206.000TL of annual income  When determining the annual income; aids made from the budgets of administrations with general and special budgets and donations are not taken into account
Objective	Purposes and activities carried out to be of quality that will contribute to social development and solve issues and needs at local and national levels, beyond the needs of their members	To have at least one or more of the following activities; health, social assistance, education, scientific research and development, culture and environmental protection and afforestation, as their scope of activity  Such activities of the foundation to apply for tax exemption to be open to public and at a level to decrease the public service burden of the state
Geographical area		Foundations aiming to serve a specific region or a certain group of people are not granted tax exemption

17 *Public Benefit Association Status*, Department of Associations. Access date: Feb 6, 2018. <https://www.dernekler.gov.tr/tr/AnasayfaLinkler/sss/kamu-yararına-calisan-dernek.aspx>

18 *Annotations for Foundations to Apply for Tax Exemption*. Revenue Administration Access date: Feb. 6<sup>th</sup>, 2018 <http://www.gib.gov.tr/node/237/pdf>

#### 4. DECISION-MAKING AUTHORITIES AND EVALUATION PROCESS

The question of “who evaluates, who decides” whether an organization will be granted public benefit status is of critical importance for organizations working for the benefit of the public and the entire sector. Decision-making authority has been authorized to grant public benefit status and remove it when necessary; in some countries they are also responsible for the supervision and support of public benefit organizations. The decision-making authority, by giving the public benefit status to the organizations, subject them to regulations requiring some sort of provision, such as government incentives (usually tax exemptions) and accountability obligations.<sup>19</sup>

The State Supervisory Board highlighted the ambiguity of the definition of public benefit concept in Turkey and stated, “It has been found that the public benefit status is not granted in an objective framework because there are differences between ministries in terms of regulation and the criteria determining the status are based on limited material measures.”<sup>20</sup>

With the recent amendments made to the legislation, the President is the decision-making body to grant public benefit status to an association or tax-exempt status to a foundation. Although the complementary regulations have not been introduced yet, no major changes in the implementation is expected.

If the implementation related to the regulations will not change, the first opinion on whether an association has public benefit or not will continue to be given by the Governor’s Office. Opinion from the Governor’s Office will be sent to the Ministry of Interior and the, President will decide whether the association will be granted Public Benefit status. Regarding foundations, the first evaluation of tax exemption application is made by the Ministry of Finance. Afterwards, Foundations are granted tax exemption by the President.

The process is long, time consuming, and cumbersome for both associations, foundations and public institutions and is considered to be highly political which also results in a limited number of organizations being granted this status.

As can be seen from Table 9, the authority to determine public benefit status in the EU countries is given to tax authorities, courts, ministries, various political authorities independent commissions. As outlined in the table each model has advantages and disadvantages.

19 Comparative Public Benefit Report on Associations and Foundations TÜSEV. Access date: Jan. 17th, 2017 [https://tusev.org.tr/usrfiles/files/kamu\\_yarari\\_raporu.pdf](https://tusev.org.tr/usrfiles/files/kamu_yarari_raporu.pdf)  
20 Research and Review Report: Analysis of Public Benefit Association Status and Evaluation of Work and Transactions Carried Out Related to Public Benefit Associations. State Supervisory Board. Access date: Jan.18, 2017. <http://www.tccb.gov.tr/assets/dosya/ddk32.pdf>

TABLE 9. AUTHORITIES THAT DETERMINE PUBLIC BENEFIT STATUS: COUNTRY EXAMPLES<sup>21</sup>

AUTHORITY THAT DETERMINE PUBLIC BENEFIT STATUS	ADVANTAGES	DISADVANTAGES	COUNTRY EXAMPLES
Tax authorities	<ul style="list-style-type: none"> <li>• Administrative conveniences</li> </ul>	<ul style="list-style-type: none"> <li>• Risks of evaluating with limited expertise approach by tax experts</li> <li>• Conflicts of interest arising from giving the duty of granting public benefit status, which brings forward tax exemption, to an authority responsible for increasing tax income</li> </ul>	<ul style="list-style-type: none"> <li>• Germany</li> <li>• Albania</li> <li>• Denmark</li> <li>• Finland</li> <li>• The Netherlands</li> <li>• Ireland</li> <li>• Sweden</li> <li>• Italy</li> <li>• Portugal</li> <li>• Greece</li> </ul>
Relevant Ministry	<ul style="list-style-type: none"> <li>• Consistency of the decisions</li> <li>• Formation of specialized departments</li> </ul>	<ul style="list-style-type: none"> <li>• The risk of taking decisions on a subjective basis or being political</li> <li>• The risk of making assessments with a limited expertise approach</li> </ul>	<ul style="list-style-type: none"> <li>• Bulgaria<sup>22</sup></li> <li>• Romania<sup>23</sup></li> </ul>
Courts	<ul style="list-style-type: none"> <li>• Being able to apply for such statuses when applying for legal entity</li> <li>• Possibility to apply anywhere in the country</li> </ul>	<ul style="list-style-type: none"> <li>• Long periods of validation and/or registration during periods of busy workload</li> <li>• The risk of inadequacy of the courts in evaluations requiring expertise in public benefit</li> <li>• The risk of diminishing the consistency of decisions if decision-making authority is given to courts instead of a central decision-making mechanism</li> </ul>	<ul style="list-style-type: none"> <li>• Czech Republic</li> <li>• France<sup>24</sup></li> <li>• Greece<sup>25</sup></li> <li>• Hungary</li> <li>• Poland</li> </ul>

21 Compiled from the following sources:

*A Comparative Overview Public Benefit Status* in Europe European Center for Not-for-Profit Law. Access date: Jan 19<sup>th</sup>, 2017 [http://www.civiljogok.hu/sites/default/files/comparative\\_overview\\_public\\_benefit\\_status.pdf](http://www.civiljogok.hu/sites/default/files/comparative_overview_public_benefit_status.pdf)

*Comparative Public Benefit Report on Associations and Foundations* TÜSEV. Access date: Jan. 17<sup>th</sup>, 2017 [http://tusev.org.tr/usrfiles/files/kamu\\_yarari\\_raporu.pdf](http://tusev.org.tr/usrfiles/files/kamu_yarari_raporu.pdf)

22 In Bulgaria, courts are only responsible for registering Non-profit Organizations. The Ministry of Justice carries out the necessary procedures for the acquisition of the public benefit status.

23 In Romania, authority to decide on public benefit status is given to different ministries.

24 In France, the Council of State (Conseil d'Etat) is the highest Administrative Court and is the decision-making authority that gives public benefit status to associations and foundations.

25 Any organization that is not-for-profit in Greece can apply to courts at the same time for both legal entity and public benefit status.

TABLE 9. AUTHORITIES THAT DETERMINE PUBLIC BENEFIT STATUS: COUNTRY EXAMPLES (CONTINUED)

AUTHORITY THAT DETERMINE PUBLIC BENEFIT STATUS	ADVANTAGES	DISADVANTAGES	COUNTRY EXAMPLES
Decreases from Council of Ministers or Government		<ul style="list-style-type: none"> <li>• Risks of taking political decisions</li> <li>• Risks of non-transparent decision-making processes</li> </ul>	<ul style="list-style-type: none"> <li>• Belgium<sup>26</sup></li> <li>• Luxembourg<sup>27</sup></li> <li>• Turkey<sup>28</sup></li> </ul>
Independent Commissions	<ul style="list-style-type: none"> <li>• Making unbiased decisions from political intervention</li> <li>• Consistency in the decisions taken by the expert staff in the Commission</li> </ul>	<ul style="list-style-type: none"> <li>• High cost of establishing and maintaining the commission</li> <li>• The need to form a central body</li> </ul>	<ul style="list-style-type: none"> <li>• United Kingdom and Wales</li> <li>• Moldova</li> </ul>
Joint working model of Public Benefit Commission and Public institutions	<ul style="list-style-type: none"> <li>• The opportunity for civil society and public representatives to come together in the work of the public sector commission to establish a common strategy for the financial capacity of civil society</li> <li>• Regular communication and exchanges of information with CSO representatives or experts with representatives of public institutions</li> </ul>	<ul style="list-style-type: none"> <li>• The conflicts of interest that may arise during the election process of the members who are on commission on behalf of CSOs</li> <li>• The risk of not considering the Commission opinion when trust in civil society is low and civil society-public cooperation mechanisms are not established</li> </ul>	<ul style="list-style-type: none"> <li>• Latvia (tax authority consults public benefit commission)</li> <li>• Poland (courts take into account the decision of public benefit commission)</li> <li>• Estonia (government consults public benefit commission)</li> </ul>

26 In some countries, public benefit status is granted through government decrees. For example, organizations in Belgium that are engaged in cultural activities are granted public benefit status by Royal Decree.

27 In Luxembourg, the public benefit status is granted by a Grand Duchy Decree after the application to the Ministry of Justice.

28 In Turkey, the public benefit status is granted by the President.



## 5. RECOMMENDATIONS:

5.1. By providing an inclusive definition for civil society organizations working for public benefit; the differences between foundations and associations should be eliminated. These statuses should be given to all organizations that meet certain requirements.

5.2. The areas of activity that are entitled to receive the Public Benefit Status should not be narrow and limited as it is currently, instead they should be kept as wide and flexible as possible, considering the future needs. A more inclusive arrangement which defines the discretionary power of the administration should be made, by taking into account obligations of the state to be a social state governed by the rule of law, Constitutional rights and liberties as well as human rights conventions to which it is a party. To prevent a restrictive approach, it would be appropriate to add an expression such as “any other activity carried out to support or promote public benefit” or the like. It should be understood that the “public benefit” statement here does not fulfill the requirements for public benefit status, but rather activities that are for the benefit of public.

5.3. Public Benefit Status should be granted by an independent authority that is easy to access by any organization, rather than by a political authority like the President, which is difficult to access.

5.3.1 There should be a single authority to decide to reduce bureaucracy and differences in practice, which should be the same for all associations and foundations.

5.3.2 Designated authorities to apply, should preferably be an autonomous body or a board consisting of independent experts within relevant ministries. Evaluation by this board and conclusion of the applications should be scheduled.

5.3.3 If an independent body or a board cannot be formed, it would be positive for relevant ministries to at least consult with an independent advisory board and decide by taking their opinion into account.

5.3.4 Application and evaluation methods of the Ministry of Science, Industry and Technology for granting Design Center Status can be applied in a similar fashion to Tax Exemption Status. Currently, Ministry receives the application in a report format, having two university lecturers from different universities assess the applicant separately on site; applicants meeting the defined criteria is then invited to a panel consisting of an industry representative, two lecturers from different universities and a ministry official, to present their case and have their application evaluated; and the status is granted on the same day by this board of four members. Those who are rejected have the right to appeal, and appeals are examined and answered in a certain way.





