

Cross border legal and tax issues for foundations

***Ana Sastre Campo
Programme and Policy Officer
Fundación ONCE***

Existing barriers hamper foundations cross-border work

- ▶ Foundations are increasingly active across borders.
- ▶ Administrative and legal burdens often hamper the international work of foundations.

Administratives and legal burdens

- ▲ Set up a branch(es) in a foreign country?
costly, time consuming and inefficient !!
- ▲ Day to day activity in a foreign country: a challenge!
How to transfer funds?. How to manage and control
operations? *How to prove public benefit nature of
operations abroad?!!*

Recognition of legal personality

- ▲ A foundation's legal personality is normally accepted in a foreign country.
- ▲ Special recognition is required to operate in: Austria, Cyprus, Estonia and Italy.
- ▲ Special recognition is required for special tax regime in the operating country.

Difficulties: transfer of the head office

Most countries prohibit foundations to move their head office to a foreign country

Tax exempt status

- ▲ Foundations that operate abroad might risk to lose their tax exempt status in their country of residence.
- ▲ Discrimination of non-resident foundations as regards income tax treatment in the operating country.
- ▲ Non-refundable withholding tax on cross-border investment.

Tax discrimination

- ▲ Gift- and inheritance tax discrimination
- ▲ No tax incentives for donations abroad

Way forward

The European Foundation Centre (EFC) has developed the following key documents:

- Model Law to influence the national law to a more cross-border friendly environment for foundations
- Recommendations for a European Foundation Statute to enable foundations and funders to operate across-borders more easily.

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