Spain

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**QUICK FACTS**

**Legal forms of philanthropic organizations included in the law:** Association, Foundation

All foundations are public benefit organizations. Private – not public benefit – foundations do not exist as a legal form in Spain.

**Five main social issues addressed by these organizations:** Higher Education, Arts and Culture, Basic Needs, Housing and Economic Development, International Causes

**Average time established by law to register a philanthropic organization:** 61-90 days

Registration varies considerably depending on the type of organization. For associations, according to Article 30.1 AA, registration may take a maximum of 90 days. For foundations, according to Article 29.3 Royal Decree 1611/2007 of 7 December registration could be a maximum of 180 days. For associations to be recognized as public benefit organizations, they may wait a maximum of 180 days, according to Article 3.9 of Royal Decree 1740/2003, of 19 December. Registration for associations is voluntary.

**Average cost for registering a philanthropic organization:** US $34-$300

This does not include the initial endowment for foundations, which is EUR €30,000 (US $36,000), according to Article 12 of the Foundations Act, n. 50/2002, of 26 December, but only administrative and notarial costs.

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, State Government

It depends on the geographical area where the organization mainly operates. Spain is a decentralized country; regions (Comunidades Autónomas) have their own registries and, in some cases, their own laws on foundations or associations that always comply with the basic regulation approved by the National Congress (Cortes Generales).
Philanthropic Environment Scores:

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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 4.0

Freedom of association is granted in the Constitution, Article 22. There are different requirements between the incorporation of foundations and associations. According to Article 8 of the Foundations Act (Ley de Fundaciones, 50/2002, December 26), both legal and natural persons, public or private, can form a foundation. In order to obtain legal personality, foundations must be registered in the national registry (Registro de Fundaciones de Competencia Estatal) under the Ministry of Justice, or under the corresponding regional registry. Only foundations registered in these registries can use the denomination of “foundation.” Some of the requirements for the constitution of a foundation include the certificate of denomination, statutes, and the endowment of €30,000 (US $36,000) (Article 12).

The Associations Organic Act 1/2002, of March 22, regulates the incorporation of associations. The law does not include political parties, trade unions, business organizations, faith-based organizations, sports federations, or consumer and user associations, which are regulated by special laws. The law does not include cooperatives, partnership contracts, mutual societies, or other groups with economic interests. Associations are established by the agreement of three or more legally constituted natural or legal persons, public or private (Article 5-1). The agreement must include the approval of the bylaws, and must be formalized by means of a founding act through a public or private document. After obtaining legal personality, registration in the National Registry of Associations, which is under the Ministry of Interior, is required to obtain full capacity to act (Article 10).

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

We have considered differences between associations and foundations when scoring. Associations must operate based on what is established in their own bylaws, provided they are not in contradiction with the guidelines provided in the Associations Act. Article 11 of the law requires that associations have a general assembly and an internal body in charge of representing the interests of the association. When the internal functioning procedures are not included in their bylaws, associations must follow the guidelines in Article 12 of the Associations Act. Foundations are also free to operate and establish their internal structure and functioning procedures. However, Articles 14 and 15 of the Foundations Act establish that they must have a Board of Trustees with a minimum of three members who shall elect the President among them, if it is not, otherwise, established in the bylaws.
POs are completely free to communicate through media channels and have no limitations. However, foundations are somewhat inhibited in their internal governance by supervising authorities, as some procedures require their approval, such as reforms of bylaws (Article 29) or some other management decisions (Articles 21 and 22 of the Foundations Act, 2002).

**Question 3: To what extent is there government discretion in shutting down POs?**

Score: 5.0

Philanthropic organizations can be voluntarily dissolved by its members, by causes determined in article 39 of the Civil Code. Alternatively, POs can be forced to dissolve by a court decision under certain circumstances. Although dissolution requires an administrative procedure and, therefore, some bureaucracy, legal regulations exist and are clear.

In principle, Articles 22 and 34 of the Constitution recognize that associations and foundations will only be involuntarily dissolved if there exists a judicial sentence. Specifically, foundations will be dissolved under the following circumstances: A) the term for which it was established expires; B) the foundational purpose has been fulfilled; C) it is impossible to carry out the founding purpose; D) in case of a merger; E) any other cause foreseen in the bylaws; or F) any other cause established in the laws (Article 31 of the Foundations Act). In the cases contemplated in paragraphs B), C) and E) the dissolution requires the agreement of the Board of Trustees ratified by the Protectorate of Foundations. If there is no agreement of the Board of Trustees, or if the dissolution is not ratified by the Protectorate, the termination of the foundation will require a reasoned judicial decision, which may be requested by the Protectorate or by the Board of Trustees. In the case of paragraph F) a reasoned judicial decision will be required (Article 32).

Article 17 of the Associations Act regulates the dissolution of associations. Associations can be dissolved by the causes provided for in the bylaws or by the will of the members expressed in a General Assembly. Causes for involuntary termination are those included in article 39 of the Civil Code, such as an expiration of their legal term, fulfilment of the purpose for which they were created, or an inability to fulfill its purposes, and a final judicial sentence.

**II. Domestic Tax and Fiscal Issues**

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Score: 4.0

Individuals and corporations have access to tax incentives (credits) when donating to public benefit associations or foundations, other specific PO, such as Spanish Red Cross, National Organization for Blind People and Caritas, Public (Federal or State) Universities, or Sport Federations. Foundations established by churches and that have an agreement with the Spanish Government also qualify for tax deductions. Donations to the Catholic Church and to other churches or religious entities that have an agreement with the Spanish Government are also deductible. Individuals
receive 75 percent deduction for donations up to EUR €150 (US $180) per year, 30 percent deduction for an amount/value exceeding EUR €150 (US $180), or 35 percent for the amount/value exceeding EUR €150 (US $180) if it is a regular donation (at least the same amount/value during 3 years donated to the same PO). Corporations receive a 35 percent deduction of the amount/value of donations and a 40 percent deduction for regular donations.

These percentages could be increased in 5 points depending on the activities of PO, according to the State Budget Annual Law. Regions are able to establish additional tax incentives for individuals, and some of them do. However, there is a ceiling of 10 percent of annual taxable base for individuals and corporations; the amount/value of the donation cannot exceed the 10 percent of the annual income, any exceeding amounts/values cannot be deducted. Corporations can deduct the excess in the next 10 years, but not individuals. Donations to non-public benefit associations are deductible for individuals at 10 percent of the amount/value (Act 49/2002, of 23 December, on tax status of nonprofit organizations and the fiscal incentives to philanthropy, Articles 19 and 20).

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Score: 4.0

Few types of organizations receive tax benefits. Two ranges do exist: i) public benefit associations and foundations, as well as organizations mentioned above in question 4; and ii) non-public benefit associations that serve only to their members or for other reasons have not been recognized as public benefit organizations, which, in some cases, is voluntarily. Social enterprises or cooperatives, for example, are not considered as nonprofit organizations.

Public benefit associations and foundations have to comply with some requirements, but tax incentives are automatically applied, providing their compliance and without prejudice to the inspection powers of tax authorities (Article 3 Act 49/2002).

Tax benefits apply to the following taxes: conveyance tax and stamp duty; economic activities tax; and corporation tax (Article 6, art. 7 and art. 15 Act 49/2002). Some of the income is taxable at 10 percent; for example, economic activities not related to the purpose of the organization (Article.10 Act 49/2002).

Regarding value added tax (VAT), POs can benefit from some exemptions independently of their public benefit status, if they provide educational, cultural, social, sport, or health services. Nevertheless, exemption from VAT is not necessarily a benefit, insofar as it limits the deduction of VAT when the CSO acquires goods and services (VAT Act n. 37/1992, of 28 December).

Donors giving donations to tax-exempt POs are eligible to receive tax deductions. Donations are, in all cases, tax-exempt for POs, except if they are used to fund economic activities that are not exempt. Donors do not pay taxes for donations and they receive deductions in the terms mentioned above. Non-public benefit associations receive a lower range of exemptions and some of their incomes are taxed;(for example, all economic activities, related or not related to the purpose of the organization are taxed at 25 percent. As mentioned above, only individuals receive deductions, and at 10 percent (Article 68.3, a, Act 35/2006 of 28 November).
III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

**Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?**

Score: 4.0

Spain has been compelled by the European Commission to adapt its internal legislation to Persche and Stauffer cases (less red tape and non-discriminatory tax treatment for donors and philanthropic organizations throughout the European Member States), since cross-border, donations are not eligible for tax incentives as domestic donations are. At the same time, some foreign-based foundations have received unequal tax treatment regarding capital gains obtained in Spain, compared to Spanish POs that are exempt. However, some improvements have been introduced in particular cases by court decisions.

Aside from the existing tax limitations, there are no other restrictions to send cross-border charitable donations, provided they meet the Anti Money Laundering and Financing of Terrorism legislation. This legislation does not prohibit cross-border flows of money, but establishes some due diligence procedure for POs. There are no limitations on the types of activities that can be supported, if they are legal and related to the purposes of the PO, according to its bylaws. Some restrictions could arise when sending donations to individuals or entities located in certain prohibited countries.

**Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?**

Score: 5.0

Donations from abroad are treated as domestic donations. The costs incurred are financial ones imposed by the banks, similar to the costs of transferring donations abroad. As mentioned above, according to the AMLFT legislation, POs should comply with some requirements in order to identify donors and to assure that the origin of the funds is not illegal. The process will be more complex depending on the originating jurisdiction of donations.
IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

In the last few decades, after the restoration of democracy in 1976, the philanthropic sector in Spain has grown considerably into a new framework of relationships between the State and the philanthropic sector. This framework is characterized by “progressive secularization, a new favorable legal and tax environment open to all NPOs, and the emergence of civil society in terms of a growing number of both nonprofits and individual and corporate donors” (Rey-Garcia and Alvarez-Gonzalez, 2015).

According to the statistics of the Ministry of Interior (Anuario Estadistico, 2015), in 2015 there were 46,620 associations in Spain, almost double the amount of existing associations in 2004. Rubio and Sosvilla (2016) estimate that in 2014 there were 14,120 registered active foundations in Spain, 71 percent of which were created by natural persons. Furthermore, the survey of the Third Social Sector Yearbook “Anuario del Tercer Sector Social” (2015), shows that more than half of the organizations in the sector are 20 or more years old, and one in five has between 15 and 19 years of experience, showing the strength the sector.

In recent years, the participation of civil society has increased and POs are recognized as representatives in the public policy decision-making process. According to the Third Social Sector Yearbook, 40 percent of participating organizations said that they had been consulted in the three last years to participate in developing public policies, and 39 percent think that their recommendations were well considered. However, there is still some public distrust toward private initiatives in areas of general interest. An example can be found in the recent donation by Amancio Ortega (founder of ZARA) of EUR €320 million (US $384 million) to the Public Health System. It has been criticized by some sectors.

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 4.0

In general, the government promotes access to public funds for nonprofit private initiatives, but, in the recent years, there have been several cuts. The government promotes funding to activities of public interest, but does not promote the value of philanthropy in and of itself.
V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Historically, the philanthropic tradition of Spain is founded on the organization and values of the Catholic Church. However, Spain still lacks a giving tradition. In the Civic Engagement Index, which measures donations, volunteering, and helping others, Spain is ranked 32 out of 70. The reason for this, as explained by Majeska (2011), is the strong role that the State and the Church have in providing social services and healthcare, as well as support in areas such as education, social assistance, humanitarian aid, youth development, art and culture, preservation of historical monuments, and parks.

Currently, the average of individual donations to philanthropic organizations in Spain is EUR €180 (US $220) per year. The greatest amount of donations to foundations – 70 percent – comes from companies, and 30 percent comes from individuals. According to a recent survey, the majority of the population relies on philanthropic organizations, but most desire more transparency within the philanthropic sector. Results of the 2015 Third Social Sector Yearbook show that 69 percent of the surveyed organizations think that they are well perceived and trusted by the population, and 53 percent think that the public knows their work.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

Philanthropy in Spain has not yet reached sufficient maturity. However, different stakeholders are aware of the need to further develop the sector, and different initiatives have been promoted from different public and private sectors to strengthen the philanthropic sector in Spain.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The reform of tax incentives for individuals and corporate donors;
- Public cuts that that have highlighted the importance of private initiatives for public benefit;
- Recent reactions, positive and negative, to one of the largest donations ever recorded (Amancio Ortega donation); and
- Enactment of the law to regulate the entities of the Third Sector of Social Action, which reinforces their capacity as interlocutors with the General State Administration regarding
social public policies and defines the promotion measures that the public powers can adopt to their benefit (43/2015, October 9).

**Future development trends in the philanthropic landscape**

1. Improving the perception of philanthropists;
2. Measuring the impact of philanthropy;
3. Rediscovering the importance of capacity building for philanthropy;
4. Scaling philanthropic projects; and
5. Relations between “traditional” philanthropy and social entrepreneurship.

**Three key recommendations to improve the environment for philanthropy**

- Long-term regulatory measures;
- Raise awareness about the importance of philanthropy for the maturity of the civil society; and
- Engage new generations of philanthropists.