



Funded by
the European Union

TÜSEV
Türkiye Üçüncü Sektör Vakfı
Third Sector Foundation of Türkiye

03

Public Benefit and Tax Exemption Statuses



Assoc. Prof. Özgün Akduran & Prof. Leyla Ateş

03

Public Benefit and Tax Exemption **Statuses**

Assoc. Prof. Özgün Akduran & Prof. Leyla Ateş

Public Benefit and Tax Exemption Statutes

TÜSEV Publications, September 2024

No 102

ISBN 978-625-94015-6-0

Project Team (In Alphabetical Order)

Duygu Dođan

Güneş Engin

Rana Kotan

Authors

Assoc. Prof. Özgün Akduran

Prof. Leyla Ateş

Translator

Tuğçe Özel

Edited by TÜSEV

Design

MYRA

Design: Didem Otar

Page Layout: Gülderen Rençber Erbaş

Print

Fotokitap Fotoğraf Ürünleri Paz.ve Tic.Ltd.Şti.

Certificate Number: 47448

© All rights reserved. This publication cannot be reproduced via any electronic or mechanical format or mechanism (recording, information storage, etc.) without the permission of TÜSEV.

The opinions expressed in the report belong to the authors and may not necessarily align with the views of TÜSEV as an organization.

This publication has been prepared with the financial support of the European Union. The content of this publication is the sole responsibility of TÜSEV and does not necessarily reflect the views of the European Union in any way.

TÜSEV

Bankalar Cad. No.2 Minerva Han

34420 Karaköy-İstanbul

T 0212 243 83 07 / F 0212 243 83 05

info@tusev.org.tr / www.tusev.org.tr

About us

Founded in 1993, the Third Sector Foundation of Türkiye (TÜSEV) aims to develop solutions to the common and current problems faced by civil society organizations (CSOs) in Türkiye. With over 30 years of experience and support primarily from our Board of Trustees, we continue our activities with the goals of:

- Creating an enabling and supportive legal and fiscal environment for CSOs,
- Promoting strategic and effective giving,
- Ensuring dialogue and cooperation between the public sector, private sector, and civil society,
- Promoting Turkish civil society internationally and establishing cooperation,
- Enhancing the reputation of civil society,
- Conducting research on civil society and increasing knowledge,

We continue our activities for a stronger, more participatory and reputable civil society in Türkiye.

Abbreviations

CAF	Charities Aid Foundation
DAFNE	Donors and Foundations Networks in Europe)
EFC	European Foundation Centre
ITL	Income Tax Law
IPA	Instrument for Pre-accession Assistance
VAT	Value Added Tax
CITL	Corporate Income Tax Law
OECD	Organisation of Economic Cooperation and Development)
CSO	Civil Society Organizations
STİGM	Directorate General for Relations with Civil Society
STGM	Association of Civil Society Development Center
TÜSEV	Third Sector Foundation of Türkiye

Table of Contents

Preface	6
Getting started	8
Introduction	12
I. Statuses of public benefit association and tax-exempt foundation and application requirements	20
1. Public benefit requirement	24
2. Duration	29
3. Financial liabilities	29
4. Worthy purpose	31
5. Manner of spending the income	35
6. Geographical area	39
7. Documents required	39
8. Department of application and decision-making authority	40
9. Bookkeeping	41
II. Status acquisition and application evaluation process for associations and foundations	42
III. Responsibilities required by the status, audits and loss of status in associations and foundations	46
IV. Benefits other than tax benefits provided by the statuses to CSOs	52
V. Problems encountered while benefiting from the advantages provided by statuses	54
VI. Recommendations for solution regarding statuses	58
Conclusion	64
References	67

Preface

As the Third Sector Foundation of Türkiye (TÜSEV), we have been working to improve the legal, financial and operational infrastructure of civil society since 1993. We aim to create solutions to the problems faced by civil society organizations (CSOs) and contribute to their operation in a more enabling environment, through the activities we carry out for the presence of a stronger, more participatory and reputable civil society in Türkiye. The activities which we started to carry out in October 2021 together with the Association of Civil Society Development Center (STGM) under TÜSEV's Civil Society Law Reform Program and which we conduct within the scope of the Monitoring Freedom of Association Project funded by the European Union Delegation to Türkiye, are aimed at raising awareness on the legal and financial legislation concerning CSOs, monitoring and improving the enabling environment for civil society, and strengthening the public-CSO cooperation.

The activities and research we conduct as TÜSEV indicate the importance of access to financial resources and financial sustainability for civil society to continue working effectively and for development of civic space. The main steps of the reforms to strengthen CSOs' capacities of securing resources include diversification of financial resources, elimination of obstacles to access to resources, and introduction of a structure that is more incentivizing for CSOs and donors in the financial and tax regulations concerning civil society.

We are glad to present our series of three publications, which we hope will guide both civil society organizations and the public sector by examining the tax regulations concerning CSOs in Türkiye under three main themes and suggesting steps for improvement. Our first publication, ***Tax Regulations Concerning Associations and Foundations***, aims to identify regulations and tax advantages that will support CSOs, by examining the impact created by the current tax regime on CSOs' financial sustainability. ***Taxation of Economic Enterprises of Associations and Foundations*** focuses on revealing the problems faced by CSOs' economic enterprises due to fiscal/tax regulations and suggesting recommendations to overcome these problems. The final publication in the series, which is titled ***Public Benefit and Tax Exemption Statutes***, examines the statuses of public benefit associations and tax-exempt foundations, and outlines steps that can be taken to ensure equal access of more CSOs to these statuses, to reduce tax liabilities on public benefit activities, and to encourage giving. These publications provide a comparative analysis of the situation in Türkiye in comparison with examples from other countries and include the results of the research on the Fiscal/Tax Framework concerning Civil Society in Türkiye partaken by more than 150 CSOs and experts.

As TÜSEV, we will continue to share our knowledge and experience with our stakeholders through the areas of interaction and communication we create and the information resources we produce, and we will continue our efforts for a stronger, more participatory and reputable civil society. We would like to extend our gratitude to Prof. Leyla Ateş and Assoc. Prof. Özgün Akduran, who authored the publications, as well as all the individuals, institutions and organizations who were involved in the preparation of the series and contributed their opinions.

Sincerely,

TÜSEV

Getting started

Enhancing civil society organizations' financial capacities is a public policy objective in Türkiye. This objective has often been stated in development plans, which constitute fundamental policy documents. The most recent Twelfth Development Plan (2024-2028) reiterates this objective and explicitly lists financial regulations to be introduced in the fiscal area in order to contribute to the financial sustainability of civil society organizations, among the measures to be taken for this purpose.¹ Carried out within the scope of the Monitoring Freedom of Association Project, which was implemented through the cooperation between the Third Sector Foundation of Türkiye (TÜSEV) and the Association of Civil Society Development Center (STGM) and funded by the European Union Delegation to Türkiye, our study aims to formulate legal design proposals regarding the financial reform regulations in question, by means of the research findings obtained through qualitative and quantitative research methods as well as comparative law methodology.

The financial system of civil society organizations, or "associations and foundations" as referred to in the tax legislation, should be addressed from three aspects. The first is the tax regulations concerning associations and foundations. Associations and foundations may be subject to various tax burdens due to the incomes they derive, expenditures they incur and assets they own, while they may also be exempted partially or wholly from some of these burdens through tax concessions. Furthermore, there are tax incentives granted by the state to income and corporate income taxpayers to support donations and aids to associations and foundations. The second aspect is regarding the treatment of economic enterprises of associations and foundations as separate corporate income tax subjects and their taxation accordingly. Thirdly, Turkish tax legislation distinguishes associations working for public benefit and foundations granted tax exemption by the President (hereinafter referred to as "associations and foundations with status") from other associations and foundations in various aspects and offers a more advantageous tax regime to the holders of these statuses. The acquisition of these statuses constitutes a separate legislative system. Our study addresses these three issues in separate publications.

The timing of the study is of particular importance, since income and corporate income tax laws contain temporary articles based on which associations and foundations are taxed. The Temporary Article 67 of the Income Tax Law, whose effective period has been extended for nearly 20 years to date through legislative amendments, will expire on December 31, 2025. The Temporary Article 2 of the Corporate Income Tax Law regarding economic enterprises of associations and foundations will also expire on the same date. It is expected that these effective periods will be re-extended or the

1 Twelfth Development Plan (2024-2028), para. 938, 938.6,
https://www.sbb.gov.tr/wp-content/uploads/2024/06/Twelfth-Development-Plan_2024-2028.pdf

temporary provisions will be introduced permanently.² Temporary articles are exceptional regulations that suspend the main rule in its entirety or in certain aspects.³ As the name suggests, they do not aim for continuity; therefore, they are not designed to create a sustainable regime. However, achieving the Twelfth Development Plan's goal of contributing to the financial sustainability of civil society organizations requires the establishment of a regime focused on civil society. For this reason, a permanent fiscal regime that takes the needs of associations and foundations into account should be developed. Our three publications aim to contribute to the design of such a regime.

The economics literature does not yet provide a clear answer regarding the tax regulations which would contribute most to the financial sustainability of civil society organizations. Little is known about whether donations and aids should be incentivized; whether associations and foundations should be exempt from taxes on income, wealth and expenditures, such as income tax, value added tax, stamp duty, fees, property tax, inheritance and transfer tax, or which of these they should be exempt from, and whether economic enterprises of associations and foundations should be subject to corporate income tax, or to what extent.⁴

On the other hand, considering these questions outside of an economics framework, we should note that volunteers who, despite the absence of a legal obligation to do so, support civil society for the production of public goods or services that the state or the market has partially or completely failed to provide, as well as the activities of such volunteers should be supported by the tax system.⁵ When the state waives tax revenues by providing tax incentives, it essentially means the collection of higher taxes from other sectors that it continues to tax. However, since the public goods and services produced by civil society benefit the whole society, this cost could be considered as a recompense for the sacrifice made by volunteers from their personal assets through donations.⁶ The relationship between civil society and social benefit was expressed as follows in our early development plans:

“According to today’s perception, the state is obliged not only to take measures related to sustenance and authority for ensuring the prosperity of its citizens to the possible extent, but also to prepare the background to realize its objective through economic and financial measures.

-
- 2 Erdoğan Sağlam, “Torba yasa ile stopaj oranlarına ilişkin yetki maddelerinde yapılması düşünülen değişiklikler” (“Amendments planned to be made in the authorization articles regarding withholding tax rates under the Omnibus Law”), 13 December 2023, <https://t24.com.tr/yazarlar/erdogan-saglam/torba-yasa-ile-stopaj-oranlarina-iliskin-yetki-maddelerinde-yapilmasi-dusunulen-degisiklikler.42677>
- 3 Fahri Bakırcı, *Yasalarda ve Yasa Maddelerinde Geçicilik (Temporariness in Laws and Articles of Laws)*, Meclis Bülteni, 2004, p. 41.
- 4 Richard Steinberg, in *The Routledge Handbook of Taxation and Philanthropy* (ed. Henry Peter & Giedre Lideikyte Huber), Routledge, New York, 2021, pp. 178-198 (hereinafter referred to as the “Routledge Handbook”).
- 5 Richard Steinberg, “Economic Theories of Nonprofit Organizations”, in *The Non-Profit Sector: A Research Handbook* (ed. Walter W. Powell & Richard Steinberg), 2. B., Yale University Press, London, 2006, pp. 117- 139.
- 6 Steinberg, *Routledge Handbook*, p. 193.

As a consequence of this obligation, separate chapters are created in the budget of each state to fulfill its public duty. This public duty is usually financed through taxes. The public services of the state have greatly increased and diversified in accordance with today's social state approach. In such countries, foundations represent an institution that aims to provide direct assistance to public services that the state can scarcely provide or cannot provide at all, through the will of individuals. In countries which have developed into foundation networks, various public services are supported by the old and well-established institution of foundation. This also provides commensurate savings from the budget for the state.”⁷

Furthermore, by reducing the tax burden on civil society and volunteers, tax administrations also make a public statement that donations are valuable and worthy of support.⁸ Indeed, extensive studies which have been published in recent years and which compare the tax regulations applicable to civil society organizations in various countries demonstrate that many tax administrations strongly make this statement.⁹ These studies can also help us identify common denominators across countries, understand where we stand, and serve as a reference for the design of new tax rules when the current system needs to be reformed.¹⁰ Therefore, these studies have been employed in all three of our publications where we assess the current state of the fiscal system for associations and foundations and list our recommendations for its reform.

Within the scope of the “The Fiscal/Tax Framework Concerning Civil Society in Türkiye” research (hereinafter, Fiscal/Tax Framework Research), a literature review, a survey involving civil society organizations, in-depth interviews with relevant stakeholders and focus group discussions have been carried out using a methodology that employs a combination of qualitative and quantitative tools. The research aimed to demonstrate the fiscal/tax framework affecting the financial structures of civil society organizations and to assess the impact of the current situation on the overall development of civil society. The research followed three main outlines. Accordingly, the first part of the research focused on the level of knowledge of civil society organizations regarding current fiscal/tax regulations and practices, their perceptions of tax obligations and advantages, their evaluations regarding the legislation and applications, and their suggestions for change. The second main block of the research was the review of fiscal/tax regulations in terms of the activities and sustainability of economic enterprises of civil society organizations. The third part of the research focused on the experiences of civil society organizations with status during the processes of application for such statuses as well as evaluation and supervision, the problems they encounter in benefiting from the advantages provided by the statuses, their perceptions of the statuses in general, and their suggestions for change. The research was conducted using a mixed methodology that employs a combination of quantitative and qualitative methods. In this context, between 17 October 2023 and 2 February 2024, a survey with 124 civil society organizations, in-depth interviews with 30 civil society organizations and 10 experts were conducted and a total of 5 focus groups were held, 4 of which brought together civil society organizations of different categories and scales, and 1 of which brought together financial advisors working with civil society organizations.

7 Prime Ministry State Planning Organization, Specialization Commission Report on Foundations, SPO Publication, Ankara, 1983, p. 14, <https://www.sbb.gov.tr/wp-content/uploads/2022/08/Vakif-Ozel-Ihtisas-Komisyonu-Raporu.pdf>

8 Steinberg, Routledge Handbook, p. 193.

9 See for example. Organization of Economic Cooperation and Development (OECD), Taxation and Philanthropy, OECD Publishing, Paris, 2020; Philanthropy Europe Association (Philea), Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe, Brussels, 2022; European Commission, Comparative Legal Analysis of Associations Laws and Regimes in the EU, Publications Office of the European Union, Luxembourg, 2022; Council on Foundations, Country Notes: Curated Resources for Making Grants Globally, 2024, <https://cof.org/country-notes>.

10 Philea, p. 9.

Legislators would take budgetary requirements into account while implementing our recommendations in respect of the legislation. Two points should be emphasized in this regard. First, in Türkiye, there is no publicly available statistical information that enables calculations relating to the current tax burden of associations and foundations and the burden to be imposed on the budget by possible tax advantages. This situation also makes it difficult for civil society to carry out strong advocacy activities in the financial area. The statements provided by a civil society organization's representative in our qualitative research point to this situation:

"(A)t the end of the day, the state runs on these taxes... How much is the VAT burden of the third sector... The amount of income that the (state) would be waiving and the relief it would provide CSOs in return; these are the items that should actually be compared. If we merely suggest canceling VAT, they may object. But if we say, look, it's only 25 billion liras we are talking about here... Then the matter would be evaluated with precise numbers known, in principle and in terms of how it reflects on the balance sheet, on the state. A whole different story if it's just a drop in the ocean, for example. This requires a very comprehensive work though. I mean, the amounts of VAT collected from all CSOs and foundations would have to be recorded for 2 or maybe 3 years to form a statistic." (Foundation, Large Scale, With Status)

Contrary to the situations where civil society organizations are in end consumer status in terms of value added tax, in cases where organizations file tax returns themselves or tax returns are filed due to the withholding taxes applied while they receive payments, the data is already submitted to the tax administration and is available for use for statistical purposes.

The second point we will underline is the fact that the tax administration does not consider it a necessity to support civil society despite the financial difficulties experienced by civil society. Nevertheless, investors continue to be supported with quite generous tax incentives despite the lack of statistics regarding their effectiveness in our country. It is observed from the statements of a civil society organization's representative in our qualitative research that this different treatment is questioned:

"While we don't have a very large income, economic enterprises are established to generate earnings in line with the purposes and activities of foundations, as you know. Yes, it is a commercial enterprise, subject to (corporate income tax liability). It is not exempt from any tax. So, it is another problem to be paying these taxes additionally, while actually serving the foundation's purposes. I mean, although occasional incentives and practices are introduced for importation or exportation, this sector, which works for the public benefit, is completely ignored. It just doesn't make any sense to me." (Foundation, Large Scale, With Status)

We hope that our three publications titled "Tax Regulations Concerning Associations and Foundations", "Taxation of Economic Enterprises of Associations and Foundations" and "Public Benefit and Tax Exemption Statutes", where we analyze the current situation regarding the fiscal system for associations and foundations, without prejudice to the aforementioned restrictions, and list our recommendations to be used as reference in the design of new tax rules, contribute to the sustainability of civil society in Türkiye.

Introduction

The legal framework for civil society organizations (CSOs) generally allows organizations to be established for any legitimate purpose, which can include both private benefit and public benefit purposes. However, most states generally prefer to provide benefits to a subset of these organizations based on their purposes and activities rather than providing benefits to all CSOs indiscriminately.¹¹ If we define CSOs as autonomous organizations established to provide services for the common good on a not-for-profit basis, states set certain conditions to incentivize these organizations, which play a role in the mitigation of their public service burden, and grant special statuses to some CSOs that meet these conditions. Tax exemptions and exceptions are among the rights granted to CSOs based on these statuses.

The OECD (Organization for Economic Co-operation and Development) defines public benefit organizations (PBOs) as organizations that provide goods and services for the public benefit. According to a report, which examines a total of 40 OECD member and accession countries, while countries may have differing practices, the conditions that organizations are expected to meet in order to obtain the status of public benefit organization can be grouped under three main themes: i) Not-for-profit requirements, ii) Worthy purpose requirements, iii) Public benefit requirements.¹² CSOs which acquire public-benefit organization status after fulfilling the conditions required as per the respective country's legislation under each theme become eligible to benefit from tax advantages for their activities (such as tax incentives for donors, income tax exemption, capital gains tax exemption, and VAT tax exemption or reduction). Research shows that while tax advantages are not the main driver to motivate donors, they may influence the decision to make donations, as well as the amount donated. The Charities Aid Foundation (CAF) has conducted extensive global research comparing the tax incentive systems of 26 different countries around the world. One of the main findings of the research is that there is a positive relationship between tax incentives and donors, with higher incentives generally leading to higher donations. Therefore, CAF underlines the significance of an effective regulatory framework pertaining to tax advantages for donations.¹³

11 Moore, David., Hadzi-Miceva, Katerina. and Nilda Bullain. 2008. Europe: Overview of Public Benefit Status: A Comparative Overview of Public Benefit Status in Europe, *the International Journal of Not-for-Profit Law*, Vol. 11, Issue 1, NOVEMBER 2008.

12 Taxation and Philanthropy, *OECD Tax Policy Studies*, No. 27, OECD Publishing, 2020, p.43.

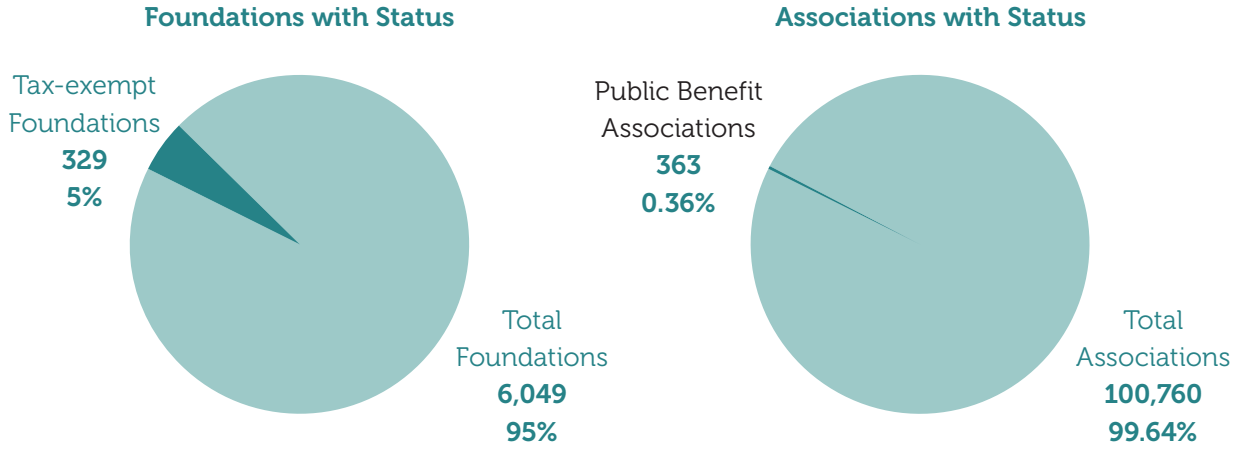
13 DONATION STATES An international comparison of the tax treatment of donations. Charities Aid Foundation (CAF). 2016, p. 5-6.

Although there are varying regulations in European Union countries due to cultural, historical, socio-economic differences and traditions, statuses that provide tax advantages to non-profit civil society organizations¹⁴ exist in most countries. In its recommendation decision titled “COUNCIL RECOMMENDATION of 27 November 2023 on developing social economy framework conditions”, which was published in the Official Journal of the European Union on 29.11.2023, the Council of the European Union expanded the scope of the third sector, referring to it as “social economy”. As defined in the Directive, social economy refers to a set of private law legal entities that provide goods and services to their members or the society, encompassing organizational forms such as cooperatives, mutual societies, associations (including charities), foundations or social enterprises, as well as other legal forms. According to the Directive, organizational forms that operate in accordance with the key principles and characteristics of “(i) the primacy people as well as social or environmental purpose over profit; (ii) the reinvestment of all or most of the profits and surpluses to further pursue their social or environmental purposes and carry out activities in the interest of their members/users (‘collective interest’) or society at large (‘general interest’); and (iii) democratic or participatory governance” are presumed to constitute “social economy”.¹⁵ Paragraph 19 of the Recommendation titled “Taxation”, suggests that member states review whether they have a tax system that enables the development of the social economy and, if not already available, develop tax incentives such as corporate income tax exemptions or tax advantages for donors.

In Türkiye, the “public benefit association” or “tax-exempt foundation” statuses are the most important means for CSOs to benefit from tax advantages. The requirements for obtaining these statuses, as well as the procedures and principles for gaining and losing these statuses, are regulated in different sections of the legislation on associations and foundations and are accompanied by certain tax concessions.

14 In the Turkish context, the phrase civil society organizations, which is an umbrella concept since it corresponds to associations and foundations, has been used to refer to the types of organizations defined with various expressions such as philanthropic entities, public benefit organizations, etc. in the publications where we examined different country examples. In the subsequent parts of the study, the concept of civil society organizations is preferred.

15 The Council of The European Union, “Council Recommendation of 27 November 2023 on Developing Social Economy Framework Conditions” (C/2023/1344), Official Journal of the European Union. <https://eur-lex.europa.eu/eli/C/2023/1344/oj>



As of 2024, the number of tax-exempt foundations in Türkiye is 329¹⁶, while the number of associations with the status of public benefit association is 363.¹⁷ To summarize these advantages, which are detailed in our first publication titled “Tax Regulations Concerning Associations and Foundations” and listed in the Table-1 below, these statuses, which are currently granted to a very small number of CSOs, allow donors to deduct their donations from their tax bases with or without certain limits. Although there is no general value added tax (VAT) exemption for all CSOs, public benefit associations and tax-exempt foundations are provided with exemptions for purchases of certain goods and services related to their activities carried out for dissemination of science, fine arts and educational, cultural and social purposes. In addition, public benefit associations are granted exemptions and exceptions regulated by the Stamp Duty Law, Fees Act, Property Tax Law, Inheritance and Transfer Tax Law and the Law on Municipal Revenues. On the other hand, the advantages provided to tax-exempt foundations are regulated under the Stamp Duty Law, Fees Act, Property Tax Law, Inheritance and Transfer Tax Law, and the Law on Foundations.

16 Revenue Administration, List of Foundations Granted Tax Exemption, <https://www.gib.gov.tr/yarim-ve-kaynaklar/yararli-bilgiler/vergi-muafiyeti-taninan-vakiflarin-listesi>

17 https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov.tr/istatistikler/Kamu-Yarari/kamu_yararli_demekler.pdf

Table 1. Tax advantages provided civil society organizations with status and their donors

Article of Law	Scope	Tax Advantage
Tax advantages which are granted for donors and benefit CSOs with status under the Income Tax Law		
ITL, 89(4)	Public benefit associations and tax-exempt foundations	Deduction of donations and aids made in return for receipts, without exceeding 5% of the declared income. Up to 10% in certain geographical regions with development priorities.
ITL, 89(7)	Public benefit associations and tax-exempt foundations	Deduction of expenditures and donations and aids for cultural and touristic purposes.
Tax advantages which are granted for donors and benefit CSOs with status under the Corporate Income Tax Law		
CITL, 10 (1) c	Public benefit associations and tax-exempt foundations	Deduction of donations and aids made in return for receipts, without exceeding 5% of the organization's declared profits.
CITL, 10 (1) d	Public benefit associations and tax-exempt foundations	Deduction of expenditures and donations and aids made for cultural and touristic purposes.
Tax advantages that benefit CSOs under the Value Added Tax Law		
VAT, 17 (1) (a)	Public benefit associations and tax-exempt foundations	VAT exemption for their deliveries and services performed for the purpose of disseminating, improving and promoting science, fine arts and agriculture.
VAT, 17(1) (b)	Public benefit associations and tax-exempt foundations	VAT exemption for deliveries and services relating to cultural and educational activities.
VAT, 17(2) (a) (b) (c)	Public benefit associations and tax-exempt foundations	VAT exemption for deliveries and services performed for social purposes.

Article of Law	Scope	Tax Advantage
(In the Case of Associations with Status) Other tax advantages provided to associations		
Stamp Duty Law, Article 9 Exemption, Attached Schedule no. (2), IV/11	Public benefit associations	Stamp duty exemption for receipts of donations given to schools, public benefit associations and those in need.
Stamp Duty Law, Article 9, Exemption, Attached Schedule no. (2), Papers relating to Institutions, V/17	Public benefit associations	Stamp duty exemption for papers which are issued in all kinds of transactions of associations working for the public benefit and whose Stamp Duty must be paid by those organizations.
Fees Act, 59(b)	Public benefit associations	Fee exemption for the registration and annotation procedures of the immovable property and other rights in kind to be acquired by associations and foundations with status, and registration and annotation procedures of the facilities pertaining to the said associations and foundations and the immovable property and other rights in kind to be acquired later by such facilities, as well as the cancellation procedures thereof.
Property Tax Law, 4 (e)	Public benefit associations	Permanent exemption from building tax, provided that they are not owned by or allocated to enterprises subject to Corporate Income Tax.
Property Tax Law, 14(c)	Public benefit associations	Permanent exemption from land tax, provided that they are not owned by or allocated to enterprises subject to Corporate Income Tax.
Law on Municipal Revenues, 19(3)	Public benefit associations	Entertainment tax exemption.
Inheritance and Transfer Tax Law, 3 (a)	Public benefit associations	Inheritance and transfer tax exemption.
Inheritance and Transfer Tax Law, 4 (f)	Public benefit associations	Inheritance and transfer tax exemption for the aids they duly provide in accordance with their purposes as required by their status.

Article of Law	Scope	Tax Advantage
(In the Case of Foundations with Status) Other tax advantages provided to foundations		
Stamp Duty Law, 9, Exemption, Attached Schedule no. (2), Papers relating to Institutions, V/19	Tax-exempt foundations	Stamp duty exemption for all kinds of papers drawn up in their establishment processes.
Fees Act, 59(b)	Tax-exempt foundations	Exemption from land registry and cadastral fees in the registration and annotation procedures to be carried out due to the donation of real estate and other rights in kind.
Fees Act, 38 (3)	Tax-exempt foundations	Fee exemption for donations to be made to such foundations and their establishment transactions.
Property Tax Law, 4 (m)	Tax-exempt foundations	Permanent exemption from building tax, provided that it is allocated for the purpose specified in the foundation's statute.
Inheritance and Transfer Tax Law, 4 (k)	Tax-exempt foundations	Inheritance and transfer tax exemption for the aids they duly provide in accordance with their purposes as required by their status.

In addition, there is a general incentive provision in the Income and Corporate Income Tax Laws that provides tax deduction for donations and aids made to associations and foundations with status, without any limitation in terms of field of activity (ITL, 89/4; CITL, 10/1-c). Accordingly, the portion of the total donations and aids made by income and corporate income taxpayers in return for receipts, which does not exceed 5% of their earnings for that year (10% for income taxpayers, limited to regions with priority in development) is deductible by these taxpayers from their tax bases. Donations and aids made to foundations and associations with status within the scope of cultural and touristic expenditures (ITL, 89/7; CITL, 10/1-d) are also wholly deductible.

On the other hand, the advantage that our legislation formerly provided in the form of corporate income tax exemption of economic enterprises owned by foundations with status, provided that they allocated a certain amount of their income to public services, is no longer applicable. Accordingly, there is no longer a coordination between the condition of incurring expenditures in line with the charitable purpose for tax exemption status and the advantageous corporate income taxation regime. The recompense for the condition of incurring expenditures in line with the purpose by associations and foundations with status has been restricted to the tax deduction granted to their donors, and concessions in certain taxes other than income and corporate income tax.¹⁸

In addition, the legislation allows organizations to form endowment and exempts CSOs from inheritance and transfer tax as well as corporate income tax on endowment donations.¹⁹

As we have emphasized above, only a very limited number of CSOs with status are able to benefit from the tax advantages briefly mentioned here. One of the main findings of the "Monitoring Matrix on Enabling Environment for Civil Society Development, 2020-2021 Türkiye Report"²⁰ published by the Third Sector Foundation of Türkiye (TÜSEV) in 2023 is that the requirements for obtaining public benefit and tax exemption status are limiting for associations and foundations. According to the results of TÜSEV's research, which constitutes the basis of the said report, granting the status of public benefit association or tax-exempt foundation to a limited number of CSOs as per Presidential Decrees causes inequality among CSOs. A significant number of CSOs are unable to meet the requirements for obtaining these statuses, while the majority of CSOs that can meet the requirements are of the opinion that the procedure for granting these statuses is not objective and prefer not to make applications at all, believing that it will not yield any results.²¹

In addition, according to the findings of the quantitative phase of the Fiscal/Tax Framework Research, most of the civil society organizations with status have low levels of awareness of the tax advantages that are granted to donors and benefit organizations, as well as those granted directly to the organizations. Accordingly, 60% of the associations with status are not aware of the tax advantages shared above in Table-1. Foundations with status, on the other hand, have better knowledge of the legislation. Among the foundations with status, the rate of those who stated that they were not aware of different types of tax advantages is around 30%.

18 Detailed information about the tax systems applicable to associations and foundations and their economic enterprises is included in our first two publications.

19 Law no. 5737 on Foundations, Article 77.

20 Published as one of the activities which the Third Sector Foundation of Türkiye (TÜSEV) started to carry out in October 2021 together with the Association of Civil Society Development Center (STGM) and which is within the scope of the Monitoring Freedom of Association Project funded by the European Union Delegation to Türkiye, aiming at raising awareness on the legal and financial legislation concerning CSOs, monitoring and improving the enabling environment for civil society, and strengthening the public-CSO cooperation. The report is available at the following link: <https://portal.tusev.org.tr/media/public/YasalCalismalar/MM20212022TürkiyeReportEN.pdf>

21 Doğan, D. and Engin, G. 2023. Monitoring Matrix on Enabling Environment for Civil Society Development 2020-2021 Türkiye Report. TÜSEV Publishing, Publication No.94, p.33.

In addition to discussing the legislation and practices in Türkiye regarding the statuses granted to CSOs in comparison with international practices, this study focuses on the experiences of associations and foundations in the process of obtaining status (application, evaluation, benefiting from the advantages of status and loss of status) based on the findings of the Fiscal/Tax Framework Research, and presents CSOs' views and evaluations on these issues. In this context, the study consists of six chapters. The first section discusses the status of public benefit associations and tax-exempt foundations, as well as the requirements for application; the second section examines the evaluation process of status applications for associations and foundations; the third section discusses the responsibilities required by the status, audits and loss of status for associations and foundations; the fourth section evaluates the benefits that having statuses provides to CSOs other than tax advantages; the fifth section presents the problems CSOs experience while benefiting from the advantages provided by statuses, and finally, the sixth section presents policy recommendations on statuses based on a combined analysis of the legislation, international practices and research results.

I. Statuses of public benefit association and tax-exempt foundation and application requirements

Public benefit status, which would provide tax advantages to non-profit organizations, is essentially a fiscal arrangement. The arrangement can be made by incorporating certain provisions into the existing tax legislation, as well as by enacting an entirely separate legislation on public benefit. In many countries such as Germany and the Netherlands, which constitute examples for the first method, public benefit activities and tax advantages granted to non-profit organizations are defined within the framework of tax legislation. In the second method, which we observe in the cases of Bosnia and Herzegovina, Bulgaria and Romania, certain provisions defining the public benefit status were included in the legislation on non-profit organizations, but there were delays in incorporating the new regulations required by these provisions into the tax legislation. For example, in Bulgaria, the necessary amendments to the Tax Law could be made only two years after enactment of the law on non-profit organizations which defined the concept of public benefit. The biggest obstacle faced by countries adopting this approach, including Türkiye, is the existence of separate legislation for each type of organization, such as the Law on Associations and the Law on Foundations.²²

In Türkiye, the conditions that must be met by associations and foundations in order to apply for status are regulated by separate laws and secondary legislation and vary. Public benefit association status is regulated under the Law No. 5253 on Associations. The acquisition and loss of public benefit association status, the required documents and other principles and procedures are regulated under the Regulation on Associations prepared by the Ministry of Interior. As for the acquisition of tax-exempt status by foundations, the Law no. 4962 on the Amendment of Certain Laws and Provision of Tax Exemption to Foundations and the General Communiqué (Series no: 1) on the Provision of Tax Exemption to Foundations²³ constitute the main regulatory documents.

As stated in Law No. 4962, the conditions, procedures and principles regarding the utilization and loss of tax exemption by tax-exempt foundations shall be determined by the Ministry of Treasury and Finance.²⁴ Accordingly, foundations that will apply for tax exemption are expected to meet the conditions regarding the field of activity, duration of activity, bookkeeping, assets and annual income, and the manner of spending the income. These conditions are set out in the "General Communiqué (Series no: 1) on the Provision of Tax Exemption to Foundations" prepared by the Ministry of Treasury and Finance.

22 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yararı Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.26

23 "General Communiqué on the Provision of Tax Exemption to Foundations" (Series No:1) published in the Official Gazette dated 3.4.2007 no. 26482, Ministry of Treasury and Finance, Online: <https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=11220&mevzuatTur=Teblig&mevzuatTertip=5>

24 The Law no. 4962 on the Amendment of Certain Laws and Provision of Tax Exemption to Foundations, Article 20.

As emphasized above, the number of foundations granted tax exemption in Türkiye as of 2024 is 329. When we calculate their proportion to the total number of foundations, which is 6,049²⁵ according to the current data shared by the Directorate General of Foundations, it is observed that only 5.45 per cent of foundations have status. On the other hand, this proportion is extremely low for associations. Out of 100,760²⁶ active associations, only 363 associations, corresponding to 0.3 percent, have obtained the status of public benefit association. This low number of organizations with status prompted us to reflect on the reasons for this situation in our research. Though regulated separately by the legislation, we believe that it is important to examine the conditions required in the status applications of associations and foundations, the documents required during application and the departments and decisive authorities that receive the applications altogether, and to discuss and evaluate them again in comparison with international practices. According to the findings of TÜSEV's Fiscal/Tax Framework Research, 65% of the CSOs interviewed stated that they intentionally did not apply for these statuses. It should be noted here that while none of the foundation representatives who participated in the survey gave this answer, 8.9% of the association representatives stated that this was the first time they had heard of such a special status granted to associations. This points to the necessity to support associations in terms of awareness about the statuses.

When asked about the reasons for not applying, the CSOs who had not made this application generally stated that the requirements were too detailed and challenging, the application documents (such as the declaration of assets) containing confidential information of the board members had a deterrent effect, the purpose of establishment did not meet the required criteria, and the status application evaluation process was open to political influence. A CSO representative interviewed during the qualitative phase of the Fiscal/Tax Framework Research also stated that, after obtaining the status, the workload relating to the responsibilities that must be fulfilled for maintaining the status and the related supervision processes would necessitate qualified human resources, and organizations that lacked such personnel were discouraged from applying for the status.

The application requirements, which will be discussed under separate sub-headings in the following sections, are presented in the Table-2 below.

25 Directorate General of Foundations, "New Foundations" Access date: 11 April 2024. <https://www.vgm.gov.tr/vakif-sorgulama/vakif-sorgulama?Page=1&FoundationCategoryId=5>

26 Directorate General for Relations with Civil Society, "Number of Associations", Access date: 11 April 2024. <https://www.siviltoplum.gov.tr/dernek-sayilari>

Table 2. Conditions required in the status applications made by associations and foundations

Application conditions	Association ²⁷	Foundation ²⁸
Public Benefit	If its purpose is to produce solutions for the needs and problems of the society and to contribute to social development	Aiming to fulfill a service or services included in the budgets of general, annexed and special budget administrations; carrying out activities which are open to the public and capable of reducing the public service burden of the state
Duration of Activity	At least one year of activity	At least one year of activity
Financial Liabilities	The purchase and sale transactions exceeding 200,000 Turkish Liras in the last year must be carried out in accordance with competitive requirements, at least half of the income obtained during the year must be spent for this purpose, assets and annual income must be at a level capable of attaining the purpose specified in the association's statute (Regulation on Associations, 49)	(for the year 2024) Foundations with an Activity Period of at least 1 Year having at least 9,010,000.00 TL worth of income generating assets and at least 811,000.00 TL of annual income For Foundations with an Activity Period of 6 Months; having at least 18,020,000.00 TL worth of income generating assets and at least 1,622,000.00 TL of annual income In determining the annual income; aids from the budgets of general and special budget administrations and income in the form of donations are not taken into account
Worthy Purpose	Its purpose and the activities it carries out must be capable of producing solutions at local or national level to the needs and problems of the society, in addition to those of their members, and contribute to social development (Regulation on Associations, 49)	As its field of activity, the organization must adopt it as a purpose to carry out activities in relation with one or more of the fields of health, social assistance, education, scientific research and development, culture and environmental protection and afforestation and such activities of the foundation that applies for tax exemption should be open to the public and should be at a level sufficient to reduce the public service burden of the state

27 <https://www.siviltoplum.gov.tr/kamu-yararına-calisan-demek-statusu>

28 <https://www.gib.gov.tr/yardim-ve-kaynaklar/yararli-bilgiler/vergi-muafiyeti-icin-basvuruda-bulunacak-vakiflara-yonelik>

Application conditions	Association ²⁷	Foundation ²⁸
Manner of Spending the Income	Spending at least half of the income generated during the year for this purpose (Regulation on Associations, 49)	It must be written in the foundation's official statute that at least two-thirds of its gross income will be spent for the purposes of the foundation and these conditions must be complied with in the last year or on the basis of the average of the last two years (at least three-quarters of the annual gross income of foundations which are granted tax exemption by the President / Council of Ministers Decision and which are established exclusively for the continuation and support of the activities of public universities, must be spent for the development of the physical, technical and sociocultural facilities of the universities and for the education staff and students of the university in line with these purposes)
Geographical Area	No restrictions	Not aiming to serve a specific region or a specific audience
Documents Required for Application	"a) A report regarding the activities carried out, the services performed and the works planned to be carried out in the future by the association in terms of public benefit, b) A list of the movable and immovable properties of the association, c) A copy of the decision taken by the board of directors to be considered as one of the associations working for public benefit" (Regulation on Associations, 50)	An application letter, 5 copies of the official statute of the Foundation, information and documents on income-generating assets and annual income, activity report including the activities carried out in the last 5 years in relation to health, social assistance, education, scientific research and development, culture and environmental protection and afforestation topics as written in the official statute and included among the objectives
Application Authority	Associations should apply to the local administrative authority where they are located	To the Ministry of Treasury and Finance
Decision	The Ministry of Treasury and Finance's proposal and Presidential decision, upon the opinion of the Ministry and relevant ministries, if any (Regulation on Associations, 48)	By the President if the preliminary examination of the Ministry of Treasury and Finance, the opinions of the Directorate General of Foundations and other relevant organizations and the audit report of the Ministry of Treasury and Finance are positive (General Communiqué Series No: 1, Article 2)

International practices also vary in this area. With respect to whether application conditions are required for obtaining tax advantages in the OECD member and accession countries, it is observed that civil society organizations are not required to have been operated for a certain period of time and can apply for statuses providing tax advantage even before they start their activities, i.e. during the establishment phase, in Canada, France, Ireland, New Zealand, Colombia, New Zealand, Colombia and Germany. In addition, regulations that favor civil society organizations are noted as well. For example, in France, the tax administration must respond to applications within 6 months. If no notification is issued from the tax administration in 6 months, it is assumed that the organization has obtained a tax advantage. Furthermore, the tax administration must justify its negative decisions and public benefit organizations can reapply within two months in such cases.²⁹ On the other hand, in some OECD member and accession countries, an application process is not defined for civil society organizations to benefit from tax advantages³⁰. While enabling a reduction in the administrative burden for both organizations and the assessing authority, this situation may lead to accountability issues. For example, in Norway, there is no application or approval process for civil society organizations to directly benefit from tax incentives. However, public benefit organizations must apply to the tax administration and fulfill accounting and auditing requirements in order to receive donations with tax incentives.³¹

It is observed that countries that facilitate the acquisition of such statuses by not requiring strict conditions for obtaining them focus on audits and monitoring during the status utilization processes. This practice, which stands out as a governance preference, seems to facilitate the acquisition of status while at the same time preventing abuses. An examination of OECD countries in terms of the conditions to be met after obtaining the status demonstrates that while the conditions required from organizations vary among countries, they are addressed under four titles: record-keeping conditions, annual reporting condition, constitutional requirements and operational plan condition. The first condition, i.e. the record-keeping condition, is considered necessary for effective supervision. For example, the Canadian Tax Administration conducts random audits³² to assess whether organizations that benefit from tax advantages continue to be eligible for this advantage and to ensure their compliance with the rules. In these audits, the Canadian Tax Administration expects organizations to meet the annual expenditure requirement (payment quota); keep reliable and complete books and records; and issue complete and accurate official donation receipts.³³ On the other hand, Australia, Colombia, Estonia, Lithuania, Estonia, Lithuania and Singapore require annual reporting. Some countries (e.g. Ireland, New Zealand, Estonia, Mexico and the Netherlands) require organizations to file their articles of association or statutes with the administration in order to benefit from tax advantages.³⁴

1. Public benefit requirement

The Law on Associations and the Regulation on Associations, which are the regulatory documents on public benefit association status in Türkiye, do not provide a clear definition of the concept of public benefit; however, the requirements stating that “the purpose must be to produce solutions to

29 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.49.

30 Refers to the tax deductions, exemptions or special tax rules applicable to persons or organizations that meet certain conditions.

31 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.50.

32 Audits at approximately 1% of civil society organizations every year.

33 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.55.

34 Ibid., p.56.

the needs and problems of the society and to contribute to social development” and “the purpose of the association and the activities it undertakes to realize this purpose must be of a nature and extent that will yield results beneficial to the society” are listed among the requirements for public benefit association status under the Regulation on Associations and the Law on Associations respectively. The concepts that stand out for the acquisition of public benefit association status is the conduct of activities that produce solutions to the needs and problems of the society and that serve purposes that will yield beneficial results for the society. The State Supervisory Board’s 2010 report examining the status of public benefit associations underlines that our legislation is not sufficiently clear about the purposes and activities covered by the public benefit practice, and that there are differences in the regulations of the Ministries of Interior and Treasury and Finance in the process of obtaining public benefit status. The report therefore recommends making a clearer and more comprehensible definition of the concept of public benefit³⁵, as well as eliminating the regulatory differences between the ministries.³⁶ For example, countries such as the Netherlands, Germany, France, Hungary, Poland, etc. list the purposes that serve the public benefit under different articles in their legislation, thereby stipulating more objective criteria for the statuses.³⁷

While the regulation on foundations’ acquisition of tax exemption in the Turkish legislation does not make a direct reference to the concept of public benefit, it provides the requirements that the activities of the foundation should aim to fulfill a service or services included in the budgets of general, annexed and special budget administrations,³⁸ and that its activities should be open to the public and at a level sufficient to reduce the public service burden of the state.³⁹

An examination of the practices in OECD member countries in this regard demonstrates that the institutionalizations of associations and foundations defined by different country regulations and practices are considered together under the umbrella concept of philanthropic entities, and the practices emphasize the requirement to pursue a worthy purpose aiming to provide public benefit in order to be considered as a civil society organization. In general terms, this emphasis relates to the scope of the benefit provided, when determining the worthy purpose. Accordingly, the worthy purpose of a public benefit organization should aim to benefit the public as a whole or a sufficient section of the public. If the circle of beneficiaries does not constitute a sufficient section of the public, the entity’s purpose would only be for the private benefit of a few persons and therefore not meet the necessary requirements to qualify as a civil society organization worthy of receiving preferential tax treatment.⁴⁰ Table-3 summarizes whether there are limitations on the population affected by the benefits of the organization’s activities for a civil society organization to be considered a public benefit organization in different OECD member and accession countries, as well as the nature of such limitations, if any. Accordingly, the vast majority of countries allow civil society organizations to tailor their activities to a specific segment of the population if the benefits are associated with a worthy purpose.

35 State Supervisory Board, Examination of the Public Benefit Association Status and Evaluation of the Procedures and Transactions Conducted in Relation to Public Benefit Associations, Research and Examination Report 2010, p. 340.

36 State Supervisory Board, Examination of the Public Benefit Association Status and Evaluation of the Procedures and Transactions Conducted in Relation to Public Benefit Associations, Research and Examination Report 2010, p. 344.

37 State Supervisory Board, Examination of the Public Benefit Association Status and Evaluation of the Procedures and Transactions Conducted in Relation to Public Benefit Associations, Research and Examination Report 2010, p. 340.

38 General Communiqué, Scope.

39 General Communiqué, Article 1.1. Field of Activity.

40 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p. 46.

Table 3. Scope limitation of the benefits of public benefit organizations

	Country	Description
Benefits open to all	Austria	Beneficiaries must be the general public and expressions that indicate specific characteristics such as sex and gender cannot be used.
	France	The benefits of their activities must be open to everyone and cannot be limited by criteria such as gender, profession or religion. Public benefit organizations are considered to act in the general interest and their donors benefit from tax deductions.
	Slovenia	Benefits cannot be limited by characteristics such as qualification, gender, religion, ethnicity or origin.
Benefit can be restricted by specified characteristics	Colombia	Organizations are allowed to benefit only one gender, but they cannot use any other characteristic to restrict the beneficiaries.
	Israel	Civil society organizations are allowed to target only one gender and may specify origin or nationality.
	Lithuania	In Lithuania, there are no rules prohibiting organizations from selecting beneficiaries based on gender or skills, as long as the activity is in line with the Law on Equal Opportunities for Women and Men.
	Mexico	No restrictions regarding origin, religion or nationality are allowed. However, restrictions can be made based on gender and potentially other characteristics, e.g. single mothers.
	Norway	
	Romania	Organizations are not allowed to benefit only one gender, but may define their circle of beneficiaries using other individual characteristics such as skills, religion or nationality.
	Singapore	Organizations are allowed to target only one gender if their activities also benefit society as a whole.
	Switzerland	Organizations are allowed to benefit only one gender, but they cannot use any other feature to restrict the beneficiaries.
	Latvia	Beneficiary target groups can be children, youth, the poor and people with disabilities, but the philanthropic activity must reach people regardless of their abilities, origin, religion or nationality.

Country	Description
Australia	For example, a civil society organization providing support to victims of domestic violence may be allowed to provide services only to women, or a civil society organization with a health promotion purpose may provide services only to men with mental health problems.
Belgium	Belgian law prohibits discrimination on the grounds of age, sexual orientation, marital status, birth, property, religious or philosophical belief, political opinion, language, current or future state of health, disability, physical or genetic characteristics or social origin. However, if a public benefit organization received its accreditation for the purpose of benefiting a specific category of people (e.g. persons with disabilities), it may limit its activities to this specific segment of the population. Such public benefit organizations include associations that specifically advocate for women's rights, with the aim of achieving greater gender equality.
Canada	In Canada, when a civil society organization proposes to restrict its beneficiaries to a particular group, it must demonstrate and justify that the restriction is related to its charitable purpose. Furthermore, an organization cannot provide services only to its members or charge for its services in a way that unfairly excludes or denies access to members of the community.
Estonia	Philanthropic activities may not target only persons with certain characteristics and must benefit an adequate segment of society. If targeting only one gender can be justified by the worthy purpose of the organization, it can be considered an adequate segment of society.
Germany	In 2017, the German Federal Tax Court ruled that a public benefit organization may not exclude women from membership without proper justification. In Germany, member-based organizations may receive preferential tax treatment. Tax advantages can be utilized even by unregistered associations.
India	In India, the activities of a civil society organization may not target a particular religious segment or caste, but may target women, children and vulnerable sections of society.
Japan	In Japan, beneficiaries may be identified according to their characteristics, such as gender, religion or ability, as long as the association with the worthy purpose of the civil society organization is justified.
Netherlands	There is no specific definition of "public benefit" in the Netherlands. The term is defined in a neutral way under the legislation and case law, allowing the existence of different views on whether the organization benefits the public. For example, if an organization's worthy purpose is to promote equal treatment of women and men and therefore focuses only on women, the circle of beneficiaries can be limited by the organization.

Characteristics used to specify who can benefit must relate to the worthy purpose

	Country	Description
Characteristics used to specify who can benefit must relate to the worthy purpose	New Zealand	In New Zealand, civil society activities must benefit a sufficient section of the population. Fees may be charged for access to a benefit, provided that they are reasonably charged. For example, by providing a benefit that can only be accessed by members of a particular group (for example, a scholarship for Māori students). Limitations on public access must be reasonable and appropriate. Where the benefit is provided also to the members of an organization, any limitations on membership must also be reasonable in the context of the public benefit. For example, a doctors' association set up to improve medical practice could reasonably limit its membership to qualified doctors because the real benefit is to a wider public than improving public health.
	Italy	In Italy, most charitable organizations are open to all, with no restrictions on their beneficiaries. On the other hand, some organizations may restrict the benefits resulting from their activities to certain groups with characteristics related to the worthy purpose of the public benefit organization (e.g. charities that help disadvantaged people to find a job).
	Portugal	
	South Africa	
	Sweden	In Sweden, member-based charitable organizations are eligible for public benefit status on the condition that they are open to the public. However, they are allowed to impose certain restrictions (e.g. age limit for a shooting club, ability to play an instrument for an orchestra, etc.). Similarly, the activities of a charitable organization may target only one gender, provided that this is justified by associating the target group with the organization's purpose.
	United States of America	

Source: Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020. Adapted by the authors using the narratives in pp.46-49.

However, in Chile, Greece, Malta and Slovakia, there are no rules on whether organizations can restrict their philanthropic activities to persons with certain characteristics.

In addition, as can be seen from Table-3, there are also countries that allow public benefit organizations to limit the beneficiaries of their activities, as long as they justify such limits by associating their target groups with their worthy purposes.

Across Europe, there is great diversity in the forms of foundations, as well as in legal and regulatory practices. Europe adopts different state-civil society relations and different policy approaches to private action for public benefit, thus different legal traditions of philanthropy.⁴¹

41 Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe. Donors and Foundations Networks in Europe (DAFNE) and European Foundation Centre (EFC) 2021, p.7.

2. Duration

An association may apply for public benefit association status, on the condition that it has been active for at least one year (Law on Associations, 27). Similarly, foundations must have been active for at least one year and their activities during this period must have created an impact that reduces the public service burden of the state (General Communiqué, Series No: 1). In the case of applications made for tax exemption by foundations whose assets and income amount exceed twice the applicable limits presented in the Table-1 for the year of application, the required period of activity is at least six months.⁴²

It is observed from a review of the practices in OECD member and accession countries that Canada, France, Ireland, New Zealand, Colombia, Germany⁴³ and Bulgaria⁴⁴ do not require this duration and the application for the status can be made during establishment. However, there are also countries that require a certain period of activity prior to application, as in Türkiye. This period is 1 year in Belgium, 3 years in Romania⁴⁵ and 6 months in Estonia.

According to the findings of the Fiscal/Tax Framework Research, the requirement to have been active for a certain period of time is not really considered as negative by CSOs. Below are the opinions of the CSO representatives who participated in the focus group and in-depth interviews conducted in the qualitative part of the research and who had positive opinions about the requirement for being active for a certain period of time before application:

"...incomes, expenses, general sustainability... team structure, and the number of years of activity. I think this is important. Because as I said, this tax exemption does indeed provide an advantage, but the whole point of it is reputation. If it is provided to organizations that cannot really fulfill it and negative situations arise there, generalization would immediately follow. So it must remain somewhere trustworthy. As I said, the organization must have been active for a certain year for sure. Because we should see first whether it acts as an association or foundation, Whether it can carry out its own processes. It would be beneficial to observe those." (Foundation, Large Scale, With Status)

3. Financial liabilities

Another condition required for associations and foundations to obtain status is to provide proof of a certain financial power. In Türkiye, associations wishing to obtain public benefit status are expected to carry out purchase and sale transactions exceeding 200,000 Turkish Liras (for the year 2024) in the last year in accordance with competitive requirements, to spend at least half of the income generated during the year for this purpose, and to have assets and annual income at a level sufficient to attain the purpose specified in the association's statute, while foundations are subject to more severe financial liabilities than foundations. Foundations which have been active for at least one year are required to have at least 9,010,000 TL worth of income generating assets and at least 811,000 TL of annual income. On the other hand, foundations which have been active for 6 months are required to have at least 18,020,000 TL worth of income generating assets and at least 1,622,000 TL of annual income⁴⁶. In determining the annual income, aids from the budgets of general and special budget

42 General Communiqué, Article 1.2.

43 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.49.

44 Panov, Luben. 2019. Public Benefit Status. 13th Civil Society Forum. Civic Space, B&S Europe.

45 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.50.

46 These amounts are increased each year by the revaluation rate determined for that year in accordance with the provisions of the Tax Procedure Law and the amounts in question are taken as basis in the following year.

administrations and income in the form of donations are not taken into account. These items are not taken into account due to the expectation that tax-exempt foundations should perform public services and thereby create an impact that reduces the public service burden on the state⁴⁷.

A review of the regulations on the assets and financial liabilities of a civil society organization in European countries indicates that there are rules which require public benefit organizations not to distribute their assets among their members and other persons, including in the event of dissolution, and to use them exclusively to attain public benefit purposes.⁴⁸ Under the Danish Income Tax Law (Article 8A and Ministry of Taxes Order No. 1656 of 19 December 2018), assets must be used exclusively to serve the organization's public benefit purposes; funds must be used for the benefit of a group of people not limited to a population level of less than 35,000 geographically or in any other way, and assets remaining after dissolution must be transferred to another charitable organization located in Denmark or another EU/EEA Member State.⁴⁹ The Estonian Income Tax Law (Income Tax Law of 1999, Article 11) states that "Organizations may not distribute their assets or income, provide in-kind aid or monetary benefits to their founders, members, members of the management or control body, persons donating to them or members of the management or control body of such persons, or persons related to such persons (spouses, entities belonging to the same group, etc), unless the related person belongs to the target group supported by the organization and receives additional benefits compared to other persons in the target group. Upon dissolution, the remaining assets must be transferred to another organization in the list or to a similar organization established in another Member State of the EEC. Organizations' administrative expenses must be in line with the nature of their activity and the objectives set out in their statutes. The remuneration paid to the organization's employees and members of the management or control body may not exceed the amount of remuneration normally paid for similar work in the business sector."⁵⁰ Finally, public benefit organizations must not pursue profits, as regulated under the General Tax Law (Article 5b) in the Netherlands. They must not have more assets than are reasonably needed for the accomplishment of their public benefit purposes. Administrative costs of public benefit organizations in the Netherlands must be reasonably proportionate to expenses. Remuneration may not be paid to the directors, but they may receive a reasonable honorarium and may be reimbursed for expenses incurred. Assets remaining at the time of dissolution must be transferred to another public benefit organization in the Netherlands or to a foreign organization exclusively or almost exclusively working for public benefit.⁵¹

It is observed that there are also countries which set a minimum amount of income-generating assets for public benefit organizations in Europe. In Italy, a civil society organization is required to have assets worth €120,000 in order to be recognized at the national level. As for establishment of public benefit foundations (among those listed by the "Third Sector Code"), a foundation may be established with a minimum asset of €30,000.⁵² Every foundation in Malta must have a minimum amount of endowment, which is set at €1,164.69 and consists of money or property. However, the

47 Özkan, C. (2003). Vakıflara Bakanlar Kurulunca Vergi Muafiyeti Tanınmasında Yeni Düzenleme-I (New Regulation on the Granting of Tax Exemption by the Council of Ministers to Foundations-I). *Yaklaşım Dergisi*, p.177.

48 FICI, Antonio. Public benefit status and CMD systems for associations and non-profit organizations in the EU, Study Requested by JURI Committee, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, December 2023, p.29.

49 Ibid., p.33

50 Ibid., p.35.

51 Ibid., p.38.

52 DAFNE and EFC, *Comparative Highlights of Foundation Laws*, 2021, p.45.

law provides for an exception for public benefit foundations, in whose case the minimum amount of endowment is reduced to €232.94.⁵³ In Portugal, the law does not specify a minimum amount, but €250,000 is considered sufficient for accomplishment of the public benefit purpose.⁵⁴

According to the findings of the Fiscal/Tax Framework Research, the requirement of having a certain amount of assets and annual income as listed among the application conditions are considered challenging by both associations and foundations. In this regard, it was observed that CSOs interviewed in the qualitative part of the research faced problems that varied according to their purposes and field of activity. Accordingly, the representative of a foundation with status whose assets are largely based on real estate expressed the difficulties they face as follows:

“Once you obtain this exemption, there are 3 constant procedures that you must comply with in the following years. ... for example... every year a different asset size is required. And that number gets so high. But I cannot appraise my real estate. They remain at the same value applicable on the date they are donated to us, on the date they are acquired. Therefore, I think it is a disadvantage that the requirement amount is increased so much, while there is no update in our balance sheets. I think this is a problem for foundations like us. Because it puts us in difficulty in any case. We continuously consult other foundations regarding how they solve this problem.” (Foundation, Large Scale, With Status)

4. Worthy purpose

Another condition that associations and foundations seeking status are expected to meet is related to their purpose. The purpose of the association and the activities undertaken to accomplish this purpose must be of a nature and extent that will yield results beneficial to society (Law on Associations, Article 27). While there is no restriction on topic with regard to the purposes for obtaining public benefit association status, this is not the case with foundations. Accordingly, foundations that apply for tax exemption status must determine their purposes as health, social assistance, education, scientific research and development, cultural and environmental protection and afforestation (General Communiqué, Series No: 1). In addition, these activities are expected to be open to the public and create an impact that reduces the public service burden of the state.⁵⁵

A review of the practices in OECD countries reveals that the term “worthy purpose” is used in reference to a series of purposes which may be pursued by civil society organizations to benefit from tax relief and whose limits are set by the public authority. Accordingly, in order for a civil society organization to access preferential tax advantages, it must have a purpose that the state (e.g. the legislative body or the tax administration) considers worthy. In some countries (e.g., Germany and the United States), public benefit organizations are required to focus their resources on the worthy purposes specified in their application for public benefit organization status. In other words, they may not change their purpose to any of the accepted purposes without going through an administrative process.⁵⁶ In Germany, for example, if a public benefit organization wishes to change its worthy purpose or add a new purpose, it must notify the fiscal authorities. In Türkiye,

⁵³ https://www.transnationalgiving.eu/wp-content/uploads/2022/09/Malta_2020LegalEnvironmentPhilanthropy.pdf

⁵⁴ DAFNE and EFC, Comparative Highlights of Foundation Laws, 2021, p.44.

⁵⁵ General Communiqué, Article 1.1.

⁵⁶ Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.43.

on the other hand, permission from the Ministry of Treasury and Finance must be obtained if the management of a tax-exempt foundation wishes to amend their statute (General Communiqué, Series No: 1, 3.1). In the case of associations, amendments to their statute must be notified to the local administrative authority (Regulation on Associations, Article 17).

The Table-4 below⁵⁷ provides a list of categories of worthy purposes that OECD member and accession countries may choose to support by providing tax reduction to civil society organizations adopting that purpose. As demonstrated by the Table-4, the categories most frequently considered as worthy purposes by countries are social assistance (37), education (35), scientific research (34) and health services (34). Given that the topics identified for foundations in Türkiye are health, social assistance, education, scientific research and development, culture and environment, and afforestation, it can be said that the framework followed is parallel with the general international trend. However, the absence of human rights, child care, disaster relief, and civil society, which are covered in most OECD countries, among the worthy purposes listed in Türkiye, can be interpreted as a deficiency.

Table 4. Topics considered as worthy purpose by country

Countries	Welfare	Education	Science	Health	Cultural	Environmental	Disaster relief	Civil society	Community service	Human rights	Development finance	Childcare	Humanitarian aid (abroad)	Religion	Amateur sport	Animal protection	Civil protection	Consumer protection	Other
Argentina	+		+	+					+			+		+					+
Australia	+	+	+	+	+	+	+	+	+	+	+		+	+	+	+	+		+
Austria	+	+	+	+	+	+	+	+		+	+	+	+	+	+	+	+	+	
Belgium	+	+	+	+	+	+	+	+	+	+	+	+	+			+	+		
Bulgaria	+	+		+	+	+	+	+	+			+	+	+					+
Canada	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+		
Chile	+	+	+		+		+		+		+	+			+		+		
Colombia	+	+	+	+	+	+	+	+	+	+	+	+		+	+		+		
Czech Republic	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Estonia	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Finland	+	+	+	+	+	+		+	+			+			+			+	+
France	+	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+	+	

57 The purposes listed in the top row of the table are umbrella terms. For example, welfare includes organizations that provide shelter to combat homelessness or food banks that distribute food to those in need. The culture purpose could include museums or specific movie theaters but could also apply more generally to heritage organizations or organizations that support art through grants.

Countries	Welfare	Education	Science	Health	Cultural	Environmental	Disaster relief	Civil society	Community service	Human rights	Development finance	Childcare	Humanitarian aid (abroad)	Religion	Amateur sport	Animal protection	Civil protection	Consumer protection	Other
Germany	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Greece	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
India	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Indonesia	+	+	+				+							+	+				+
Ireland	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Israel	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Italy	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+		+	
Japan	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Latvia	+	+	+	+	+	+	+	+		+		+	+		+	+	+		
Lithuania	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Luxembourg	+	+	+	+	+	+	+	+	+	+		+	+	+	+	+	+		
Malta	+																		
Mexico	+	+	+	+	+	+	+	+	+	+	+	+				+	+	+	+
Netherlands	+	+	+	+	+	+	+	+	+	+	+	+	+	+		+	+		
New Zealand	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Norway	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Portugal	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Romania	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Singapore																			+
Slovakia	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
Slovenia	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
South Africa	+	+									+			+	+				
Sweden	+	+	+	+	+	+	+	+		+	+		+	+	+				
Switzerland	+	+	+	+	+	+	+	+	+	+	+		+			+		+	
United Kingdom	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	
United States of America	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
Frequency	37	35	34	34	33	33	33	32	31	31	30	30	30	29	29	28	28	22	

Source: OECD Taxation and Philanthropy OECD Tax Policy Studies, No. 27, OECD Publishing, 2020.

On the other hand, themes that were relatively less frequently considered as worthy purposes were amateur sports, animal rights, consumer rights and civil protection. Furthermore, many countries in Europe exclude political and legislative lobbying or campaigning activities from the scope of public benefit. Different practices are marked again in activities aimed at sports and religion.⁵⁸

In most of the countries listed in Table-4, most of the organizations that meet the worthy purpose and public benefit requirements to receive donations that provide tax deduction are also organizations that meet the requirements for receiving tax advantages. However, the situation is different in Australia, Bulgaria, Canada, Germany, New Zealand, Norway, Sweden, South Africa and the United States.⁵⁹

In Bulgaria, the worthy purpose conditions required to incentivize donations are more flexible than the conditions that determine whether a public benefit organization can receive direct tax support. In Bulgaria, donors can benefit from tax deduction for their donations to public benefit organizations with a worthy purpose; however, with respect to tax advantages granted to organizations, only the Bulgarian Red Cross was considered eligible for direct tax benefits.⁶⁰

The worthy/eligible purpose requirements relating to tax deduction for donors and the requirements determining whether a public benefit organization is eligible for direct tax advantage are not the same in Canada either. In Canada, in addition to the public benefit organizations engaged in the worthy purpose activities listed in Table-4, donors may benefit from tax deduction for donations to journalistic organizations; municipal or public organizations that perform a government function; universities outside Canada with students including Canadians; registered public benefit organizations outside Canada, and the United Nations and its agencies. However, gaining the status of a registered civil society organization that benefits from donations subject to tax deduction is generally more onerous than being accepted as a non-profit organization in Canada. This is due to the fact that an organization wishing to obtain this status in Canada must apply to the Canada Revenue Agency (CRA) and convince the CRA that its activities are actually for the public benefit and provide a real benefit to the public or a significant section thereof.⁶¹ Only a registered civil society organization may issue donation receipts that provide donors with tax deduction and may also be directly exempt from income tax.⁶² In contrast, the requirements relating to the tax deduction provided to donors are more restrictive than the requirements for receiving direct tax support in Norway, Sweden and South Africa. In Norway, for example, only a certain part of civil society organizations that may benefit from tax exemption are eligible to receive donations for which the donor can claim a tax deduction. The purpose of the organization receiving the donation must fall into the following categories, in order to benefit from this right: health care, activities for children and young people involved in culture or amateur sports, religion, human rights, development assistance, disaster relief, and environmental and cultural protection.

58 TÜSEV, Vakıf ve Demeklere İlişkin Vergi ve Kamu Yararı Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.28.

59 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.44.

60 Ibid., p.44.

61 "How to Get a Tax Credit for Donating to a Registered Charity". <https://educaloi.gc.ca>

62 "What is the difference between a registered charity and a non-profit organization?" www.canada.ca

In South Africa, donors to public benefit organizations may benefit from the tax incentive, only if the worthy purposes of these organizations fall in the categories of health, welfare and education.⁶³

The findings of the Fiscal/Tax Framework Research reveal that the purpose restriction for tax exemption status in Türkiye has a deterrent effect on foundations in applying for this status. In addition, 51.5% of the organization representatives who participated in the survey stated that they found the requirement of reducing the state's public service burden "extremely vague".

5. Manner of spending the income

In Türkiye, an association applying for public benefit association status must spend at least half of its annual income for this purpose (Regulation on Associations, 49). As for foundations, the foundation's official statute must state that at least two-thirds of the gross income in the last year or the last two years on average⁶⁴ will be spent in line with the purposes⁶⁵ of the foundation.⁶⁶ In the case of foundations established to maintain and support the activities of state universities, it is stipulated that at least three-quarters of their annual gross income shall be spent on the development of universities' physical, technical and sociocultural facilities in line with these purposes, and on universities' education staff and students.⁶⁷

In the European Union, public benefit status is a legal status granted to civil society organizations generally depending on their compliance with the "asset-lock"⁶⁸ requirements, which refers to "not distributing profits to the members and founders" and "use of assets exclusively for the purposes", regardless of their forms of organization (whether they are associations or foundations). This strict "asset-lock" applies at all stages of a public benefit organization's life span, including the cases where the organization is dissolved and the public benefit status is lost.⁶⁹ In terms of the practices observed in the European Union, Germany and Austria stand out for their regulations on the manner of spending the income. The practices in other countries, including Belgium, the Czech Republic, Cyprus, Denmark, Estonia, Finland, the Netherlands and Sweden, follow these two models, albeit in a less detailed manner.⁷⁰ Accordingly, as regulated under the section 62 of the German Tax Law, which allows funds to be set aside as reserves under certain conditions, an organization shall, in principle, immediately use its funds for the tax-exempt purposes specified in its statute. The use of the funds for the acquisition or creation of assets that serve the purposes specified in the statute would also constitute an acceptable use. According to the definition of the phrase "immediate

63 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.44.

64 The annual gross income that will be taken into account in the fulfillment of the expenditure requirement refers to all incomes of the foundation, including the donations it receives and the incomes derived from the foundation's economic enterprise.

65 On the other hand, under the "General Communiqué on the Provision of Tax Exemption to Foundations" (Series No:5) published in the Official Gazette dated 25.03.2023 no. 32143, expenditures which foundations granted tax exemption by the President incur due to the earthquake at locations declared to be in force majeure in 2023 can be considered as expenses related with the purpose.

66 General Communiqué, Article 1.5. Manner of spending the income.

67 General Communiqué, Article 1.5. Manner of spending the income.

68 Use of the assets exclusively for public benefit purposes.

69 FICI, Antonio. Public benefit status and CMD systems for associations and non-profit organizations in the EU, Study Requested by JURI Committee, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, December 2023, p.21.

70 Ibid, p.22.

use” here, funds are deemed to be used immediately if they are used for the tax-exempt purposes specified in the statute in two calendar years or fiscal years following their accrual at the latest.⁷¹ As regulated by the Article 39 of the Austrian Tax Law, public benefit organizations may use their assets entirely and directly for the purposes specified in their statutes. Under no circumstances may organizations directly or indirectly distribute their profits and assets to their members and other persons.⁷² As it can be understood from this statement, while both countries have not restricted the manner of spending the income by a certain percentage, Germany imposed a time limitation, requiring the incomes to be spent for the purposes within at least two calendar years. The practices in other countries do not set a clear limit, but they generally require the condition that the organization’s assets are used for public benefit purposes. Belgium stipulates that administrative expenses should not exceed 20% of income (Belgian Income Tax Law, Article 145/33),⁷³ whereas Sweden tolerates investment expenditures incurred with the intention of acquiring a property or other facility for a public benefit activity. Income and assets must be used for public benefit purposes to the reasonable extent, as regulated under the Section 3 (ff), Chapter 8 of the Swedish Income Tax Law no. 1999/1229. The Tax Authority may grant exemption for public benefit organizations that intend to acquire a property or other facility or intend to carry out extensive construction, repair or building work on a property in relation with a public benefit activity. The exemption may be granted for a maximum of 5 consecutive years.⁷⁴

According to a report prepared by the European Foundation Center in 2011, 30 European countries were examined to determine whether there are time or amount restrictions on the manner of spending income by foundations, revealing that 18 countries did not impose any such restrictions.⁷⁵ In 12 countries, including Türkiye, various restrictions apply. Accordingly, foundations that do not fulfill their purpose/distribute grants for two years are closed by the court in the Czech Republic, whereas the Finnish tax law states that a foundation must spend a major part of its annual income (excluding its capital gains) within a reasonable time frame. In Germany, the requirement of spending a certain amount of income is regulated again under the tax law. In Ireland, foundations wishing to save their capital for more than two years must obtain permission from the Revenue Administration. In Italy, foundations that originated as banks are required to grant at least half of the annual profit after deducting all statutory funds in subsequent years. Non-profit organizations are obliged to use their profits to fulfill their organizational purposes. Other foundations are also required to make certain grants within a reasonable period of time to avoid becoming dysfunctional and disbanded. In Portugal, at least 50% of the total net income must be allocated to the purposes that qualify the foundation for tax exemption, by the end of the four operating years following the year in which the income is derived. In Slovakia, the expenditure requirement varies according to the type of income. The income that benefits from the tax advantage must be spent in a certain period. In Spain and the United Kingdom, regulations on spending income are regulated under both civil law and tax law. Accordingly, in the United Kingdom, income must be spent within

71 Ibid, p.24

72 Ibid., p.27.

73 Ibid., p.28.

74 Ibid., p.39.

75 Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovenia, Switzerland.

a reasonable period of time, which is generally considered as three years. On the other hand, Spain requires at least 70% of net income to be spent for the public benefit purpose in four years. Foundations in Sweden must use approximately 80% of their incomes for the public benefit purpose within five years as per tax regulations. Finally, the Tax Law of Ukraine (Article 157/11) states that in cases where private foundations with tax-exempt status have not spent 75% of their income by April 1 in the following fiscal year, they must pay income tax at the standard rate over that income.⁷⁶ Remarkably, most countries in Europe do not impose any time or amount restrictions on the spending of income by foundations with status, while countries that do impose such restrictions provide relatively flexible regulations by defining the time limitation over long periods of time such as 2 to 5 years.

In addition, it is observed that restrictions or quota on the manner of spending their income by civil society organizations are applied in Canada. Accordingly, a minimum amount is set in Canada with respect to the income that must be spent annually by registered civil society organizations for their own charitable activities.⁷⁷

It is understood that the restriction on the manner of spending the income and the requirement for spending a certain amount of current income in the respective year are motivated by the administration's efforts to preserve the income-expense balance of the public budget, in Türkiye as well as various country examples. Accordingly, CSOs that will acquire tax advantage if they obtain status are expected to reduce the public burden in their field of activity by at least as much as the tax advantage they receive. In other words, the public administration makes decisions based on the loss of tax revenue due to the statuses granted to CSOs and the savings in budget expenditures due to the activities of CSOs that provide solutions to the needs and problems of the society. At this point, the evaluations and calculations made for CSOs need to be clear, comprehensible, transparent and accountable. It is observed that when the issue is approached solely in terms of the reduction of public burden by CSOs, foundations that provide certain services can obtain tax exemption status, while CSOs working in areas such as human rights and civil society development have more difficulty in accessing these statuses due to the fact that the benefits they generate in terms of reducing the public burden cannot be calculated with similar clarity. However, as seen in the examples of other countries, the activities of CSOs working in areas such as human rights and the development of civil space are also considered worthy purposes and such CSOs are also able to obtain statuses. Therefore, a policy change to ensure that CSOs working in these areas are granted status if other requirements are met could be relevant.

According to the CSOs with status who were interviewed during the qualitative phase of the Fiscal/Tax Framework Research, the tax advantages provided to them are not sufficient and they demand an increase in these advantages, which would enable them to provide more services reducing the service burden of the public sector.

76 Comparative Highlights of Foundation Laws- The Operating Environment for Foundations in Europe. European Foundation Centre- EFC, 2011, p. 39.

77 For detailed information about the calculation of this amount, see, Government of Canada, "Annual Spending Requirement (disbursement quota)". <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html>

“Actually, the benefit provided to the society is more than the tax relief. Especially when the tax burdens on the economic enterprises are lifted, for example, even if only the withholding tax burden on them is removed, a 10% relief would be provided, for example. ...We now use 25% for 2023-2024. But instead of 25%, they can apply 10% for economic enterprises. We would be increasing our impact by an amount equal to that 15% benefit. What would this ensure? I mean, in relation with each organization’s field of activity, of course. For example, we implement a scholarship program. If our taxes are decreased, I can give scholarships to more students. I also have a mobile library. I could have one more and it could reach more places. In fact, we can make a much greater contribution to social transformation in our field of activity. We could have the opportunity to become more qualified and comprehensive. It depends on the fields of activity of private organizations. But if something like this happened, our immediate action would be to increase the number of students that we provide scholarships with. (Foundation, Large Scale, With Status)

On the other hand, the CSOs with status who were interviewed during the qualitative phase of the Fiscal/Tax Framework Research indicated that there is no clear definition made by the administration regarding the expenditure items that can be considered as related with the purpose in terms of the manner of spending income, which constitutes an important problem. Some CSOs even stated that they were unable to spend their income on organizational expenses during the year and had difficulty in making their annual plans due to the requirement to spend two thirds of income on activities related with the purpose.

“Actually, the biggest problem with the two thirds rule, in my opinion, is that the definition is not clear. As you said, what the rule includes and does not include, item by item. We are actually experiencing the biggest problem there. Otherwise, I think the two thirds rule is actually not very bad. I mean, it is in fact quite reasonable to prevent abuse of the system. However, there is no clear definition of what we can and cannot include in the two thirds. For example, I include the personnel expenses of the education department in the two thirds. But this is because nobody came here and made a thorough inspection. We had previously received criticisms and made a few correspondences regarding a matter. We are told that we cannot include any expenses in the two thirds unless they are for public benefit. When you look at it, the person working in the education department is not much different than me. I keep the accounting here and he selects scholarship recipients. He doesn’t do anything different. Nobody checks what we include and what we do not include in those expenses, since we had set up the chart of accounts accordingly at the time. I mean, if somebody came here and noticed it, they could question what we included that in the two thirds. So, in fact, there are things that are very clearly defined to be related with the purpose, but in terms of other operational transactions, how much of them qualify as expenses related with the purposes is unclear. That’s when we experience difficulties. Because as I said, the matter is also open to abuse. It is not wrong for the public sector to demand that foundations keep themselves in order. But the framework needs to be clearly drawn and there is really nothing written in this regard. I mean, unfortunately, there is no clear definition of what you can and cannot include in the two thirds.” (Foundation, Large Scale, With Status)

Furthermore, another potential difficulty regarding the spending requirement is the difficulty in spending 2/3 of the high amounts of income derived in the last months of the year for expenses related with the activity.⁷⁸

6. Geographical area

There are not any explicit spatial geographical restrictions in the legislation for associations to obtain public benefit association status. However, the requirement to produce “solutions to the needs and problems of the society at local, national or international level”⁷⁹, which is one of the conditions required for obtaining public benefit association status, may be deemed by associations as a geographical restriction while deciding on whether or not to apply for status - when few associations may have the financial power to work on this scale -, and consequently, associations may decide not to apply. A representative of an organization who commented on this issue in the Fiscal/Tax Framework Research stated that they found the requirement to provide solutions to the society’s needs at local, national and regional levels challenging.

“The condition that requires the organization to address all members of the society is the most challenging one among the conditions for being considered a public benefit association. Because the idea that an organization that is focused on children like ours does not appeal to all segments of society affects us negatively.” (Foundation, Large Scale, With Status)

In the case of foundations, both a geographical restriction and a beneficiary restriction are imposed by stating that tax exemption will not be granted to foundations aiming to serve a certain region or a certain group of people.⁸⁰ This regulation is often criticized on the grounds that it prevents foundations that carry out activities that aim to restore regions affected by a disaster or to meet the needs of the people in the region who are affected by the disaster, from applying for tax exemption.

A review of European regulations in this field reveals that there is no European country that requires organizations to carry out activities for the public benefit throughout the country. In European countries, such requirements are determined with a focus on the beneficiaries of the organizations’ activities rather than geographical restrictions.⁸¹

7. Documents required

Associations that will apply for public benefit association status must submit a report on their activities, services and future activity plans in terms of public benefit, a list of the association’s movable and immovable properties, and a copy of the decision taken by the board of directors to be considered a public benefit association.⁸² Foundations to apply for tax exemption must submit an application letter, along with 5 copies of the official statute of the Foundation, information and documents on income-generating assets and annual income, and a report including the activities

78 Engin Özden. 2015. Vergi Yükümlülükleri ve Avantajları Boyutuyla Dernekler, Vakıflar ve Bağışçılar (Associations, Foundations and Their Donors in Terms of Tax Liabilities and Advantages), p.122.

79 Regulation on Associations, Article 49.

80 General Communiqué, Article 1.1. Field of Activity.

81 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yaran Raporu AB Ülkeleri ve Türkiye’deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.29.

82 Regulation on Associations Article 50.

carried out in the last five years in relation to health, social assistance, education, scientific research and development, culture and environmental protection and afforestation topics as written in the official statute and included among the objectives.⁸³

In different countries (Belgium, Ireland, Colombia, Estonia, and Romania), practices where organizations have to submit an activity plan to the administrative body can be observed. For example, civil society organizations in Romania must submit an activity report with income statements and expenditure budgets for the three years preceding the application, in addition to annual financial statements. Organizations must also show evidence of cooperation and partnership agreements with public institutions, associations or foundations in or outside the country. Finally, the organization must be able to demonstrate that it has achieved significant results in fulfilling its purpose or provide letters of recommendation received from competent authorities.

In this regard, 36.7% of the representatives of associations interviewed for the Fiscal/Tax Framework Research stated that the application process was bureaucratic and complex. Similarly, 39.4% of the representatives of foundations found the application procedures complex and bureaucratic.

8. Department of application and decision-making authority

Associations wishing to obtain public benefit association status must apply to the local administrative authority in charge of their location, while foundations wishing to benefit from tax exemption must apply to the Ministry of Treasury and Finance with a letter expressing their requests.⁸⁴

Whether the conditions listed in the Regulation on Associations are met in the applications of associations can be determined by reports issued by the association auditors of the Ministry of Interior. Associations which are determined not to meet these qualifications may not reapply for a public benefit status before three years have elapsed from the date of this determination.⁸⁵ Whether an association that is observed to meet the conditions works for public benefit is determined as per a proposal of the Ministry of Interior and the decision of the President, upon the opinion of the Ministry of Treasury and Finance and the related ministries, if any, after the association's application.

A similar process is followed for the applications of foundations as well. After the letter containing the opinion of the Ministry of Treasury and Finance is sent to the President, the decision on granting tax exemption to the foundation is taken by the President.⁸⁶

While differences are observed in the practices of various countries, there are generally three practices in terms of the administrative bodies that evaluate and approve applications.⁸⁷ In some countries, the tax administration is in charge of the application approval process.⁸⁸ The critical point here is whether the tax administration personnel who will carry out the evaluation possess the necessary expertise. In another practice observed in countries, responsibility for the application

83 General Communiqué, Article 2.

84 The Law no. 4962 on the Amendment of Certain Laws and Provision of Tax Exemption to Foundations, Article 20.

85 Regulation on Associations, Article 49.

86 General Communiqué, Article 2. Procedure for the utilization of tax exemption.

87 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.49.

88 Argentina, Austria, Colombia, Estonia, Finland, India, Israel, Mexico, the Netherlands, Norway, Slovak Republic, South Africa, Sweden and Switzerland.

approval process is shared between the tax administration and another competent authority, such as the council of ministers (Portugal), the government (Belgium) or courts.⁸⁹ In France, the Council of State is the highest administrative court, while courts are held responsible for the application approval process in Hungary, Poland and Greece. The potential disruptions in this approach could be delays due to the busy schedules of courts.⁹⁰ In another common practice observed in international examples, the responsibility for application approval is delegated entirely to an administrative department other than the tax administration,⁹¹ such as a ministry. In this case, a potential problem in the delegation of authority to a single ministry is the evaluation of applications with a limited field of expertise. The possibility of arbitrary and politically motivated decisions⁹² should also be taken into account.

In contrast, according to the approach adopted in the UK and Moldova, a special commission authorized to receive and decide on applications is set up.⁹³ The commission can be authorized by a law approved by the parliament, as in the UK, or regulated under the Law on Associations, as in the case of Moldova. Accordingly, commission members include representatives from both the government and civil society.⁹⁴ Under this method, commissions can be comprised of members with different specializations, providing the opportunity for more comprehensive assessments. Furthermore, the process could be faster, as the commission's sole responsibility would be to accept applications and make decisions.

9. Bookkeeping

Associations keep books according to the business account principle. However, associations with public benefit status keep books according to the balance sheet principle.⁹⁵ Foundations are also obliged to keep books according to the balance sheet principle. If a foundation has economic enterprises, separate books must be certified for them and the accounting records of the foundation and the accounting records of the economic enterprise must be recognized separately.⁹⁶

89 Australia, Belgium, Canada, Chile, France, Germany, Greece, Indonesia, Ireland, Japan, Latvia, Malta, Portugal, Slovenia, USA.

90 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yaran Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.31.

91 Lithuania (Center of Registration affiliated to the Ministry of Economy and Innovation of the Republic of Lithuania), Luxembourg (Trade Register and independent auditor), Romania (General Secretariat of the Government), Bulgaria (Central Registration Authority affiliated to the Ministry of Justice).

92 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yaran Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.31.

93 In the UK, the Charity Commission is composed of five commissioners who are politically independent volunteers. In Moldova, the "Public Charity Commission" consists of 9 members, three of whom are appointed by the head of state, three by the parliament and the remaining three by the government.

94 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yaran Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.32 -32.

95 Regulation on Associations, Article 31, Principles for bookkeeping.

96 General Communiqué, 1.3. Bookkeeping.

II. Status acquisition and application evaluation process for associations and foundations

During the evaluation process of associations applying for the status of public benefit association, the request to be considered a public benefit association is submitted to the Ministry of Interior together with the opinion of the governorship within one month, after the association declares its request. The opinion of the governorship clearly states whether the purpose and activities of the applicant association are of a nature and extent that will yield beneficial results to the society and whether it can be considered a public benefit association. Following the submission of this opinion to the Ministry of Interior, and after the opinions of the relevant ministries and the Ministry of Treasury and Finance are obtained as well, the association is accepted as a public benefit association upon the proposal of the Ministry of Interior and the decision of the President. Following this process, the Ministry of Interior notifies the relevant governorship of the decision to be deemed a public benefit association and the governorship communicates the decision to the applicants.⁹⁷

For foundations, the initial assessment of the foundation's application for tax exemption is made by the Ministry of Treasury and Finance. After this preliminary examination is concluded positively, the opinions of the Directorate General of Foundations and other relevant institutions, depending on the purposes specified in the foundation's statute, are obtained with respect to whether tax exemption will be granted to the foundation.

The Directorate General of Foundations and the relevant institutions are required to report their opinions on this issue based on the examinations to be conducted by their own audit staff (by the authorized bodies of the institutions that do not have an audit department) regarding the extent to which the public service burden on the state is reduced thanks to the activities carried out by the foundation that request tax exemption from the date of its establishment until the date of its request for tax exemption, and to send a copy of the examination report and minutes to the Ministry of Treasury and Finance in the annex of their letter. Opinions that are not based on any examination are not taken into consideration in granting tax exemption to the relevant foundation.⁹⁸

If a positive opinion is given by the relevant authorities or if it is reported that there are no obstacles to granting tax exemption, the activities and accounts of the foundation are audited by the Ministry of Treasury and Finance.⁹⁹ These audits conducted by the tax inspectors of the Ministry of Treasury and Finance. The audits cover the activities and operations up to the date of commencement of the audit for a maximum period of five years and a minimum period of one year, depending on the duration of the foundation's activities. During the audit conducted by the Ministry, the extent

⁹⁷ Regulation on Associations, Article 51.

⁹⁸ General Communiqué, Article 1.6.

⁹⁹ General Communiqué, Article 2. Procedure for the utilization of tax exemption.

to which the foundation reduces the public service burden of the state with its activities and whether it meets the other conditions determined by the General Communiqué are determined. The opinion of the auditor on whether the relevant foundation should be granted tax exemption or not is clearly stated in the report.¹⁰⁰ In the event that the report issued as a result of the audit is also positive, this report, a copy of foundation's official statute and the application petition and a letter containing the opinion of the Ministry on this matter are submitted to the President for a tax exemption decision to be taken by the President.¹⁰¹

A review of different countries' practices in applying for tax advantage status reveals that almost all OECD member and accession countries implement an application and evaluation procedure. However, in Canada, France, Ireland, New Zealand, Colombia and Germany, civil society organizations have the opportunity to apply for these statuses also during the establishment phase, before commencing their activities.¹⁰² Providing such an opportunity to organizations before they commence their activities could make it easier for them to obtain tax advantage status in the future, as it requires organizations to make efforts to fulfill the necessary requirements from the very beginning. However, since this method does not provide the opportunity to evaluate the performance of organizations, audits and controls to be carried out in the process following their commencement of activities would be important. Most countries¹⁰³ have special departments or units for the civil society/philanthropy sector within their tax administrations and/or Ministries of Finance. On the other hand, as in the case of Türkiye, Austria, Bulgaria, Chile, Colombia, Czech Republic, France, Indonesia, Lithuania, Latvia, Norway, Portugal, Romania, Slovak Republic and Slovenia do not have a special department or unit within their Ministries of Finance or tax administrations to assess whether civil society organizations meet the requirements to obtain tax advantages.¹⁰⁴

In Hungary and Poland, however, the methods to be employed in the certification of public benefit organizations are set out under a separate legislation on public benefit. This would both increase transparency by ensuring that a certain standard is met and allow organizations to focus on public benefit activities.¹⁰⁵

100 General Communiqué, Article 1.7 Audit to be assigned by the Ministry of Treasury and Finance.

101 General Communiqué, Article 2. Procedure for the utilization of tax exemption.

102 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.49-50.

103 Argentina; Australia; Belgium; Canada; Estonia; Germany; India; Ireland; Israel; Italy; Malta; Mexico; the Netherlands; New Zealand; Singapore; South Africa; Sweden; Switzerland; the United Kingdom and the United States.

104 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.50.

105 TÜSEV, Vakıf ve Derneklere İlişkin Vergi ve Kamu Yaran Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.33.

Furthermore, there are some regulations in Europe for the protection of organizations whose applications for public benefit status are rejected. The measures taken in this context include setting a time limit for the registration decision and granting the right to appeal to an independent arbitrator in the event of an unfavorable decision. For example, in Hungary, courts are given 30 days to finalize applications for public benefit status. If a decision against an applicant organization is taken, the organization has the right to appeal to a higher court in 15 days. Again, Polish courts are obliged to rule on status applications within 3 months at the latest. According to a regulation in Bulgaria, which constitutes another example, the Ministry of Justice is obliged to finalize the applications "as soon as possible" and if the Ministry fails to carry out the registration procedure within 14 days, the certification procedure is deemed to be rejected. Organizations that face this result are granted the right to appeal to the Supreme Administrative Court within 14 days.¹⁰⁶

According to the findings of the Fiscal/Tax Framework Research, one of the most common complaints of organizations applying for status in Türkiye is the delay in responding to applications. During the interviews, it was stated that it takes a certain amount of time for the application to reach the Ministry of Treasury and Finance after receiving opinions from multiple ministries, and that organizations may have to wait for two years in some cases.

"... status is a very difficult matter in Türkiye. It is very difficult to obtain. I have witnessed many associations and civil society organizations make various attempts to obtain the status, but the processes take a long time. Therefore, it is not an easy thing. I know about some whose processes are ongoing, but I have never seen one who could not obtain the status, because there is no such thing as not obtaining it. It just waits there. It is not concluded. It takes such a long time. You never know the result. You cannot get a response, positive or negative. You cannot get a negative answer, to be more precise." (Expert, Financial Advisor)

The exhausting and complex nature of the process was also emphasized.

"... we received support from a consultant. Thanks to that consultant, we prepared everything ourselves, our books, our documents. It is a very complicated system and involves an exhausting process. ... For education, different ministries visit the organization. There were four ministries that concerned us: The ministry of education, because of our contribution to education. The Ministry of Health. And Finance, of course, because of taxation. We have been audited by several ministries, but it is a cumbersome process. As far as I know, it is not easily granted either. The audits were a bit slow. Then the result was announced with the president's approval. But we had a consultant who followed up the process. So, we did not make much effort, in that sense." (Association, Medium Scale, With Status)

¹⁰⁶ Ibid., p.34.

In addition, associations state that they are not sufficiently informed about how the application evaluation process works, thus the process is not transparent and they do not observe a certain level of standardization in practices. This creates concern for associations and raises doubts about the fairness and objectivity of the evaluation process. A prominent reason among those listed by association representatives who argue that the decision process is not objective is the lack of information provided to them about the reason for rejection, in cases where status applications are concluded negatively. Again, when associations were asked about their general evaluations of the application process, the most common complaint was that rejected organizations were not granted the right to appeal. The majority of respondents expressed the view that applications should be evaluated by an autonomous board consisting of experts in the field as well as representatives from the relevant ministry and the civil society. The ambiguity of the concept of public benefit and the lack of a predictable and transparent timetable for the review and finalization of applications are among the most common complaints.

In the survey interviews conducted with foundations within the scope of the Fiscal/Tax Framework Research, foundations which were consulted on the status application evaluation process generally stated that they found the application process complex and bureaucratic. They also pointed to the vagueness of the condition of “reducing the burden of public service” required during the evaluation process and stated that there is a lack of transparency regarding the methodology used to calculate the amount of public service burden. The lack of a predictable timetable for the application review process was also a problem highlighted by foundations.

III. Responsibilities required by the status, audits and loss of status in associations and foundations

Organizations with status also assume certain responsibilities in addition to the advantages provided by the status. For example, in many countries, organizations are required to report their annual financial information (e.g. annual financial statements, accounts relating to the use of assets which are obtained from public sources and declared to be used for public benefit) and information on their activities to the public authority. In addition, audits carried out by the public authority ensure that organizations with status act in a responsible and transparent manner.¹⁰⁷ While there is no obligation for associations with status to report documents annually, foundations with tax-exempt status are expected to report documents such as year-end balance sheets, statements of incomes and expenses and activity reports.

The only reporting liability that must be fulfilled by public benefit associations during the period they hold this status is the declaration of assets. As stated in the Circular No. (2019/7) issued by the Ministry of Interior in 2019, the members of the board of directors and supervisory board of public benefit associations must declare their assets, as a requirement of Article 2, paragraph (f) of the Law No. 3628 on Declaration of Assets, Anti-Bribery and Anti-Corruption. In this context, members of the board of directors and supervisory boards and branch presidents of public benefit organizations are required to submit their asset declarations to the Provincial Governorships (Provincial Directorate of Civil Society Relations) in charge of the location where the headquarters of the association is situated, within one month in case of a significant change in their assets, within one month following the date of the election and commencement of office of the members of the board of directors and supervisory boards, within one month following the date of resignation in case of termination of office, and until the end of February at the latest for the years ending with (0) and (5) for those who continue their duties.¹⁰⁸

In addition, associations working for public benefit are audited at least every two years.¹⁰⁹ These audits may be carried out by public officials appointed by the Local Administrative Authority or the Ministry of Interior.¹¹⁰ Whether the status of public benefit association is lost is also determined through audits.¹¹¹ If it is ascertained at the end of the audits that public benefit associations have lost these qualifications, the decision on accepting the organization as a public benefit association is canceled upon the proposal of the Ministry of Interior and the decision of the President of the Republic, by obtaining the opinion of the Ministry of Treasury and Finance and the relevant ministries, if any. The

107 Ibid., p.36.

108 <https://www.siviltoplum.gov.tr/20197-genelge-mal-bildirimi>

109 Law on Associations, Article 27

110 Law no. 5253 on Associations published in the Official Gazette dated 23/11/2004 no. 25649, Article 19.

111 As stated in Article 27 of the Law on Associations, if it is determined that crimes requiring imprisonment have been committed, based on the reports issued as a result of the audits carried out, the members or relevant personnel serving in the bodies of public benefit associations may be suspended from duty by the Minister of Interior as a temporary measure.

conclusion is declared by the Ministry to the respective governorship, which shall then communicate it to the associations in question.¹¹²

The obligations that tax-exempt foundations must comply with are also listed in the “General Communiqué (Series No. 1)” published by the Ministry of Treasury and Finance. Accordingly, the management of tax-exempt foundations must obtain permission from the Ministry of Treasury and Finance before making any amendments to their official statutes. In the event of amendments made without this permission, provisions on the cancellation of the foundation’s tax exemption are implemented.¹¹³

In addition, the financial statements and reports that tax-exempt foundations must regularly submit to the Ministry of Treasury and Finance are also specified. Accordingly, tax-exempt foundations must send a copy of the balance sheets and income-expense statements to be drawn up at the end of the period and a copy of the final budgets demonstrating the results of their activities for one year to the Ministry, together with the annual activity report and the certification report issued by a certified public accountant, within the first three months of the year. Foundations which have an economic enterprise are obliged to submit the balance sheets and income statements of their economic enterprises as well.¹¹⁴ Furthermore, all documents other than the annual activity report must have been certified by a sworn-in certified public accountant in accordance with the principles stipulated by the Law no. 3568 and the related General Communiqué and documents submitted without certification are considered not to have been submitted at all.¹¹⁵

As mentioned above in the section discussing the conditions required for application, foundations that are granted tax exemption under the “General Communiqué (Series No. 1)”, must spend at least two-thirds of their annual income, while foundations established to maintain and support the activities of public universities must spend at least three-quarters of their annual gross income for the accomplishment of their purposes within the year in which the incomes are obtained. Incomes that cannot be spent for the purposes within the year of generation for reasons outside of the foundation management’s control are included in the estimated budget for the following year and spent entirely for the foundation’s purposes in that year. If this situation continues without a valid reason (such as two consecutive years), it would constitute a violation of the tax exemption conditions.¹¹⁶ However, surplus income may be kept in a fund account for three years to be used in investments for accomplishing the purposes related to the activities written in the foundation’s official statute. Permission must be obtained

112 Regulation on Associations, Article 52

113 General Communiqué, Article 3.1.

114 On the other hand, this due date was extended by the end of the month when the force majeure ends, for foundations that were affected by the earthquake that took place in Kahramanmaraş on 6.2.2023, as per the “General Communiqué on the Granting of Tax Exemption to Foundations” (Series No:5), which was published in the Official Gazette dated 25.03.2023 no. 32143.

115 General Communiqué, Article 3.2.

116 General Communiqué, Article 3.3. Establishment of funds.

by applying to the Ministry of Treasury and Finance in order to carry out this practice. In the event that the investment for which the establishment of a fund is permitted cannot be completed within the three-year period, the said period may be extended for two more years if the Ministry considers the reasons for the delay acceptable.¹¹⁷ At this point, the lack of a clear distinction made by the administration between “investment that increases assets” and “investment for the accomplishment of purposes” is one of the difficulties that foundations may face in establishing funds. While foundations may resort to obtaining written opinion from the Revenue Administration in such cases, it would be more effective if the administration worked on a regulation that will eliminate the whole ambiguity.¹¹⁸

Foundations may lose their tax exemption status if they fail to comply with the obligations discussed above. If it is determined during the audits conducted by the Ministry of Treasury and Finance that a foundation failed to comply with the legal liabilities, conducted activities for purposes other than the purposes of health, social aid, education, scientific research and development, culture and environmental protection and afforestation written in their official statutes, are unable to achieve the purposes written in their official statutes considering the activities carried out by them in recent years and failed to fulfill the obligations specified in the General Communiqué, the foundation in question is demanded by the Ministry of Treasury and Finance to provide explanation about the issue. In cases where the foundation management fails to provide the explanation within the period of time allowed by the Ministry, the explanations provided are not deemed sufficient, or the explanations are deemed sufficient but the foundation repeats similar violations despite the warning made by the Ministry, the Ministry of Treasury and Finance requests the President to revoke the tax exemption of the foundation by consulting the Directorate General of Foundations as well. Foundations whose tax exemption is revoked by the President may not apply for tax exemption again until five years have elapsed from the date of revocation. Foundations that apply for tax exemption after the expiration of this period may be granted tax exemption again, provided that they meet the conditions specified in this General Communiqué.¹¹⁹ At this point, there are debates due to the ambiguity about whether the date when the event causing the loss of exemption occurs or the date of revocation of the tax exemption by the President should be used in determining the date of losing the tax exemption. Accordingly, it is argued that, in terms of tax logic, it would be more accurate to consider the date when the event causing the loss of exemption occurs as the date of losing the exemption.¹²⁰

Most of the representatives of the organizations with status who were interviewed for the Fiscal/Tax Framework Research stated that they had received this status many years ago, and while they had not experienced any loss of status, they were concerned about the risk of losing status and had difficulties in fulfilling some responsibilities.

“The status was obtained before my time. They have been saying it for a long time that the organization went through a strict audit for a year to obtain it in the first place. But of course, that’s not it. The process does not stop after you obtain the status. We also undergo a strict audit for its continuation at the end of each year.” (Foundation, Medium Scale, With Status)

117 General Communiqué, Article 3.3. Establishment of funds.

118 Engin Özden. 2015. Vergi Yükümlükleri ve Avantajları Boyutuyla Dernekler, Vakıflar ve Bağışçılar (Associations, Foundations and Their Donors in Terms of Tax Liabilities and Advantages), p.123.

119 General Communiqué, (Series No:1), Article 4. Vergi muafiyetinin kaldırılması (Revocation of tax exemption)

120 Engin Özden. 2015. Vergi Yükümlükleri ve Avantajları Boyutuyla Dernekler, Vakıflar ve Bağışçılar (Associations, Foundations and Their Donors in Terms of Tax Liabilities and Advantages), p.126.

The foundation representatives interviewed for the study emphasized that they particularly have difficulty in meeting the obligation to spend at least two-thirds of their annual income for their purposes.

“Our status as a public benefit foundation is only advantageous for our donors. It is not an advantage for us. We are obliged to spend a certain rate of our income and face the risk of loss if we do not. So, what happens? We are constantly doing follow-up work. I mean, what will my income be this year? There can be changes in our budgets. How much is two thirds of that? It is absolutely necessary to spend two thirds of it this year. It is almost the same thing if you take the average of two years into account. So, in years when you make high income, you feel the need to spend it somewhere. In a year when your income drops a little bit, you wonder how you can save money. So it puts us in this vicious cycle. ...Yes, but in today’s economic conditions, sustainability and continuity, I mean, I think continuity is more urgent than sustainability right now because of the economy. Sometimes this forces to make unnecessary expenditures. We are reluctant to spend the money in order to preserve our freedom. For example, let us assume that we provide scholarship to children. Giving scholarship to children actually means giving it for five years, because we commit five years to children if they have good report cards. But we don’t know whether this foundation will have enough money input to fulfill that commitment for the next five years. And despite this unknown, we are obliged to spend money in that year because of this law. Because the law only allows us to postpone the money spending obligation if we build a physical school with a name, whose construction takes three years. Only in case we construct a school or dormitory, and a construction takes one to two years.” (Foundation, Large Scale, With Status)

“Finally, there is also a requirement for preserving the tax exemption. ...It also puts us in a lot of difficulty. And why? For example, I have personnel employed to continue the activities of the foundation. These expenses are recognized under general management expenses and we cannot treat them as expenses related with the purpose. We cannot include them in the two-thirds calculation. The company, I mean the foundation, rents property to carry out its own activities. It rents a building, the headquarters. The building has electricity, water, gas, and similar expenses. Vehicles are allocated to employees, which bring leasing payments, fuel costs. All these items add up to a very high figure, which cannot be used in the two-thirds calculation. We need a study and a regulation regarding the expenses which can be used or which can be included in the calculation of the two-thirds ratio.” (Foundation, Large Scale, With Status)

In addition, it has been stated that the rule of spending two-thirds of the income also creates problems when foundations wish to make investments to expand their activities and increase their ability to conduct income-generating activities in this regard.

"... we earn income and we are supposed to spend it for our purpose. So, we have to spend 2/3 of the income in a year, but when we want to invest in real estate or something else in that year, we are not allowed to do that and we are compelled to spend 2/3 for our purposes and spend the remaining 1/3 for general management and other investments. This restriction is challenging for us. There may be similar problems in other foundations again. For us, an example requirement could be where we use a certain part of our income for investments and then 2/3 of the remaining income is divided into purpose-related and general management expenses. What would that make us? We are in a constant struggle to achieve an asset size, then try to come up with a way to make a real estate investment or something else to fill the gap there, if any. It is a constant struggle of balance. We have difficulties in explaining this to both independent auditors and the board of directors." (Foundation, Large Scale, With Status)

An analysis of the practices in different countries regarding the loss of tax advantage status reveals that the department which is authorized to grant the public benefit status is also granted the authority to revoke it. Accordingly, organizations that are granted public benefit status maintain this status as long as they fulfill the audit and reporting requirements. Although many European countries have adopted the annual declaration method, some countries consider this status valid for a certain period of time. For example, this period is determined as 3 years and organizations must undergo a re-qualification assessment at the end the period in Germany and Belgium. Finland, on the other hand, sets this period as 5 years and grants the right to appeal to independent courts also in cases where the re-qualification is concluded negatively.¹²¹ Furthermore, Germany introduced regulations which can be described as ban of political involvement in the termination of a non-profit organization's tax advantage and public benefit status. The issue is regulated under the title "Political activities for party-political purposes" in the German Law on Non-Profit Organizations. Accordingly, a tax-exempt non-profit organization may not spend its assets to directly or indirectly benefit political parties through campaigning and may not act as a political party. Tax-exempt non-profit organizations that engage in political party activities lose their tax exemption status.¹²²

Furthermore, it is observed that although practices vary among countries, the conditions required for application also play a role in the loss of the status. The conditions of keeping records, annual reporting, compliance with constitutional requirements and activity plan, which are required to be fulfilled by civil society organizations during application, are also effective in losing the tax advantage status in OECD countries.¹²³ Regular record-keeping is essential for organizations to be effectively audited. Annual reporting, on the other hand, is important for the public administration to assess whether the civil society organization with status continues to operate in line with its worthy purpose while benefiting the public and without pursuing profits. Australia, Colombia, Estonia, Lithuania and Singapore implement the annual reporting requirement so that the public administration can monitor the activities of civil society organizations and assess whether they

121 TÜSEV, Vakıf ve Demeklere İlişkin Vergi ve Kamu Yararı Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.32 -33.

122 Non-Profit Law (Germany). <https://cof.org/content/nonprofit-law-germany#exemptions>

123 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020, p.54.

still meet the requirements.¹²⁴ Compliance with constitutional requirements is significant for determining that the organization is operating according to the rules set by tax laws. On the other hand, activity plans are helpful for assessing organizations' future plans. In addition, it is observed that the accountability obligation is regulated according to the size of the organization (more detailed reports as the level of annual income increases) in the UK.¹²⁵

In this context, the recommendations set out in a research report dated 2008 prepared by TÜSEV are still applicable for Türkiye. Accordingly, the report proposed that, in addition to the development of separate "Financial Reporting Standards" for non-profit organizations, special accounting standards should also be developed and enforced for associations and foundations. Furthermore, use of predetermined forms and standardization of reporting for foundations and associations to be used in annual audits and reporting was presented as an idea. It was also suggested that audited financial statements of foundations and associations with status are regularly disclosed to the public and shared on their web pages, again for purposes of transparency and accountability.¹²⁶

124 Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, 2020. p.56.

125 TÜSEV, Vakıf ve Demeklere İlişkin Vergi ve Kamu Yararı Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations), 2008, p.37.

126 Ibid., p.38.

IV. Benefits other than tax benefits provided by the statuses to CSOs

We have mentioned above that the public benefit associations and tax-exempt foundation statuses in Türkiye provide tax advantages that benefit the donors of these organizations. The associations and foundations interviewed in the qualitative part of the Fiscal/Tax Framework Research were asked about their experiences with other advantages of these statuses. Almost all respondents agreed that these statuses bring prestige and reputation to organizations, increase their credibility, and increase the amount of donations made to these organizations after obtaining their status.

“On the one hand, there is a practical and material payoff, but what the exemption provides is basically reputation and credibility. Sometimes it gives you leverage. Remember how [proper noun] said “maybe not everyone should have it”? Because when we talk about credibility, the first thing we say is that not everybody has it. Having it and ensuring its continuity -actually, the most important thing is to ensure its continuity after it is obtained- is what makes us strong. A person or a company intending to make a donation is either an income taxpayer or a corporate income taxpayer, in the case of companies. There are two foundations that provide education activities. Let’s say I trust both of them in terms of reputation. If I donate to one, I have no tax advantage. But donating to the other one provides me tax advantage. I am sure that majority of companies or persons would donate to the foundation with exemption. For that reason, the energy and effort spent by the other party to compensate for this disadvantage is really challenging and difficult for them, while it is facilitating for us. Why? Because it is our powerhouse. Yes, we are trusted. On top of that, we also have an exemption. We can say that, this is what you donated to us; you can deduct it from your taxes up to five percent of your corporate profit. Maybe it would be an advantage to increase the five percent limit for companies.” (Foundation, Large Scale, With Status)

“Of course, it is both a prestige to get this status and of course, it is also important to be able to maintain it, not to lose it; being able to protect it also matters. We do whatever we can to achieve that, in terms of rules, systems and from a financial point of view. Everything here is done properly, transparently and explicitly. We operate it as properly as we can, which is a good thing, of course, it definitely has a benefit. It is an advantage for those who donate, and also creates a reputation in terms of reliability. Because this status is not handed out to everyone, and when it is granted, it should be protected and appreciated. We are aware and conscious of this.” (Association, Large Scale, With Status)

"I know that when our personnel working for the donation projects visit companies and tell them about the tax exemption, even the tax exemption itself is a mark of prestige as it implies that we have something not everybody has, regardless of everything else." (Foundation, Large Scale, With Status)

There were also CSO representatives who stated that statuses have a positive impact on the institutionalization of organizations and on the increase of their recognition across Türkiye.

"When you receive tax exemption, you actually have to meet certain criteria. This ensures the development of the organization. That is the only thing we can talk about. You obtain the tax exemption and submit a report to the Directorate General of Foundations for that purpose. Afterwards, you are audited. As you go through audits, you need other things. We needed an internal audit department. We needed a compliance risk department. We needed to conduct independent audits every time. This actually pushes you to become open, transparent and supervisable. That is how we benefited from it. That is how we grew. It definitely helped our institutionalization by triggering it. ... It does not affect the audience we reach, but it affects institutionalization. That's how we got here. (Foundation, Large Scale, With Status)

"Our purpose is actually to reach every part of Türkiye. I am talking about the foundations. Not just one, but all cities. We are known well in Istanbul, but if this is not the case with other cities, it would help us gain recognition. This is how we approach the matter, we want to do work, but we also want to do it equally for everyone and treat everyone as such. We want everyone to know about us, but how? Thanks to the status." (Foundation, Large Scale, With Status)

V. Problems encountered while benefiting from the advantages provided by statuses

It is observed that the statuses are generally very limited in terms of tax incentives for CSOs apart from the tax deduction provided to donors of organizations with status. CSOs demand certain tax advantages due to the financial burden imposed on them by taxes. The vast majority (77.4%) of CSOs surveyed in the Fiscal/Tax Framework Research believe that organizations with special status should be exempt from Value Added Tax (VAT). Similarly, exemption from Special Consumption Tax (SCT) and Stamp Duty was supported by 66.9% of respondents, while exemption from other taxes such as Property Tax, Fees and Motor Vehicle Tax also received significant support with 55.6%, 62.9% and 50.8% respectively. However, there is also an argument that tax advantages for civil society organizations may lead to a loss of income in the public budget. In this context, thorough and evidence-based assessments are necessary with respect to the impact of tax benefits to be provided to civil society on the public budget. The Ministry of Treasury and Finance and the Presidency of the Strategy and Budget should provide data and issue regular reports on the extent to which existing tax advantages cause tax income loss, as well as projections on the extent to which tax income loss will occur when the scope of tax advantages is expanded. Such data can be shared regularly with the public through reporting similar to the “list of tax expenditures” published under the Central Government Budget Law and the “report on tax expenditures” published by the Revenue Administration.

In both the quantitative and qualitative phases of the research, CSOs expressed positive views about the tax advantages of having a status, but also mentioned the withholding tax burden they have to pay in various situations as a problem. Particularly civil society organizations whose income largely consists of real estate rental income emphasized that the withholding taxes applied to income from immovable property (ITL, 94/5-b) impose a financial burden. Withholding taxes applied to dividend income, which is among the incomes of associations and foundations that are subject to withholding tax (ITL 94/6-b-i) were also indicated among the elements that constituted a financial burden.

“Our foundation has a particularly important real estate portfolio, both in terms of our costs and when we want to make an investment. So, we may have active business relating to them. We ask the other party if we should conduct a transaction under the economic enterprise so that we can get rid of that burden. I mean, for VAT deduction. But then, withholding tax arises during dividend payments. Therefore, when considering the corporate income tax plus withholding tax, it is more advantageous to conduct the transaction again within the foundation. So in summary, that VAT issue becomes a monkey on our backs. I mean, there is essentially an advantage, but overall, many companies can be more advantageous than us. I think the Council of State had previously taken a decision regarding the dividend issue. We also have an ongoing litigation. Should withholding tax be applied to dividends paid by economic enterprises or not? We even won the case in the first stage, and then the higher court canceled it. The process is still ongoing.” (Foundation, Large Scale, With Status)

“Overall, no matter how you try to avoid the VAT issue, you somehow fail to do that. I do not think that the withholding tax issue is likely to be solved. It is currently the heaviest burden on us. At the end of the day, we also issue all the withholding tax returns. On the other hand, tenants also pay withholding tax for a property leased from the foundation. This, for example, is a disadvantage for us. Because the other party may prefer to rent it from a company. When they rent it from us, instead of paying it with VAT, they are subject to an additional burden again due to the withholding tax.” (Foundation, Large Scale, With Status)

Furthermore, bureaucrats from the public administration also expressed the view that the tax advantages provided to CSOs with status are not sufficient.

“In other words, although the title of tax-exempt foundation or public benefit association is given and we receive documents as if the foundation is exempt, foundations and associations are subject to tax provisions in the same way. Only for the donations and aids for taxpayers that donate to them. Therefore, this is an indirect incentive for the foundation. Because when giving a donation or aid, taxpayers may prefer to donate to a foundation that is recognized as tax-exempt. Consequently, it has an indirect effect of increasing donations and facilitating the achievement of foundations’ purposes, but there are no exemptions granted to foundations or associations per se. They are still responsible for withholding tax, and all other ones.” (Opinion of a Bureaucrat from the Tax Inspection Board)

On the other hand, the negative impacts of the lack of regulations which benefit organizations with status under the Stamp Duty Law have also been expressed. Accordingly, it was emphasized that when donors are required to pay stamp duty on large donations, this has a deterrent effect and stamp duty exemption should also be granted to organizations with status. The demand for stamp duty exemption was supported by 76.9% of foundations with status among the CSOs that participated in the quantitative phase of the Fiscal/Tax Framework Research.

“Again, we do not have any exemption regarding stamp duty. This causes us great difficulty, especially in donation protocols. When the other party wants to donate very large amounts, we go through a process related to stamp duty. In fact, since they are not very familiar with the definition of tax exemption at first, they think that we are exempt from all kinds of taxes and we sometimes enter into discussions regarding the necessity to pay stamp duty. But at the end of the day, stamp duty presents an issue for us.” (Foundation, Large Scale, With Status)

In addition, property tax exemption was also demanded in relation with the spending requirement. In the calculation of the part of the income that must be spent, expenses such as property tax and repair and maintenance, which are inevitably incurred to derive the income, are not taken into account. This situation is indicated as a significant problem by organizations with status.

“...The property we rent has a significant property tax expense... As for the two-thirds issue, it causes serious difficulty for us, as we cannot net off the expenses of our real estate. I actually derive an income from those transactions, but since I have to calculate the 2/3 on the gross income ... Therefore, this tax issue creates significant difficulties for foundations like us which have substantial real estate portfolios, complicating the two-thirds calculation... All kinds of repair and maintenance of the real estate, property tax and all similar expenses have always been considered by the foundation as unavoidable, since the real estate was inherited and the foundation feels like they should utilize the property, some of which actually carry the note “not for sale”, making it impossible for us to transact on them anyway. So I must incur this cost under any circumstance. I receive rental income from the property, on the other hand I receive donations from the wreath activities. We used to subject them to the two-thirds calculation after netting them off. But finally, I think it was in 2020, we received a criticism and a letter about it. At first, they asked us why we were netting them, because they didn't fully understand what was in their content. After we explained the matter to them in detail, they briefly told us that the two-thirds calculation must be made based on the gross amount. Therefore, they did not consider these amounts as public-benefit costs. If we have to associate them with taxation, the property tax, repair and maintenance and personnel costs -to which I partially agree; I do not have much of an objection to that-, but when it comes to real estate, our hands are really tied. This is because, I have to utilize it in some way; I should have a system where I can sell any real estate as soon as I receive it, so that I can get rid of it, if this rule stays the same. Otherwise, I have to incur certain costs for the property so that I can generate some value from it. The property tax is already among the obligatory costs. Therefore, if I receive 100 liras of rent for example, I should be able to allocate 67 liras of this

amount to scholarships. But a real estate rent for 100 liras costs at least 50-55, 15 points of which would be property tax in any case... The two-thirds issue has always been like this in recent years ... if you look at our old annual reports, it was always 90-90%, but after 2020 -2021, to be more precise- we started to correct it as they told us and now it is always 68-69-70... Recently, we have built a few schools, you know, that's how we have recovered, but ... since we are always at the limit, it has started to make us feel on edge.” (Foundation, Large Scale, With Status)

The results of international research on the positive impact of status ownership on donations have been discussed above. On the other hand, different experiences regarding the matter were expressed in the qualitative and quantitative phases of the Fiscal/Tax Framework Research. Among the associations that participated in the quantitative research, 60% of those with income above 500 thousand TL stated that status ownership had a positive impact on the amount of donations they received. Only 41% of foundations with income of 5 million or more stated that they perceived this positive impact. According to the responses collected in the focus group and in-depth interview sections of the qualitative research, although large-scale foundations considered the 5% tax deduction advantage provided to corporate donors as positive, they stated that it was insufficient and should be increased.

“The only advantage is the deduction of donation amounts by the companies that donate to us. But the deduction amount is also low, limited to 5%. Maybe if they can increase that, donations to associations like ours would increase. Because there are too many associations and foundations. The deduction is specified as 5% of the earning. Yes. This restricts donations. Otherwise, companies could help more organizations. (Association, Large Scale, With Status)

“The rate is too low. Therefore, the five per cent rate could be increased further so that donating is more attractive for companies. Only the donations made directly to educational institutions, or to places defined by the law they have enacted are 100% deductible. Those are disaster areas, aid functions abroad, and so on. So, I think expanding that definition a little more and raising that five percent rate a little higher would attract companies and may motivate them to allocate resources.” (Foundation, Large Scale, With Status)

VI. Recommendations for solution regarding statuses

Experts including associations and foundations' representatives, personnel in charge of financial affairs, financial advisors, bureaucrats and lawyers, who were consulted by us during the quantitative and qualitative phases of the Fiscal/Tax Framework Research about the utilization of the advantages provided by statuses, application for statuses, evaluation and audit phases, shared their evaluations as well as their recommendations for solutions. In this sub-section, these recommendations are presented in parallel with the topics covered in the report, sometimes with reference to the participants' own statements.

- 1. The distinctions in the criteria required for foundations and associations should be reviewed and minimized, by providing an inclusive definition for civil society organizations that work for public benefit. These statuses should be granted to all organizations that meet certain conditions.**
- 2. The definition of public benefit should be clearly made and the scope of activities that are considered "worthy purposes" for the public benefit should be expanded. While defining public benefit, fields of activity should be determined as broadly and flexibly as possible, taking potential future needs into account as well.**
- 3. The evaluation process for status applications should be based on a transparent timetable and waiting periods should be shortened.**
- 4. Organizations whose status applications are rejected should be provided with decisions with justification, as well as the right to appeal.**
- 5. The condition requiring CSOs to spend a certain portion of their annual income (half for associations and 2/3 for foundations) on their purpose, which is listed among the conditions for applying for status and the reasons for losing status, should be revised. Under the current regulation, personnel expenses are also included in management expenses and these expenditures are prohibited from exceeding 1/3 of CSOs' annual income, leading to attempts to restrict personnel expenses at CSOs which do not provide services. Consequently, their personnel assumes multiple responsibilities, which not only negatively affects their well-being, but also reduces the sustainability of CSOs. Therefore, the inclusion of personnel expenses in expenditures related to the purpose could have a positive impact on the sustainability of CSOs.**
- 6. In order to ensure self-control by organizations, the Revenue Administration should prepare guidelines and checklists regarding the expense items which are deemed as related and unrelated expenses, with clear, comprehensible and explicit definitions, so that there are no hesitations.**

7. The beneficiaries of organizations' activities, i.e. their target groups should be set as the criterion for organizations to be granted status, rather than the geographical scope of their activities. In other words, the status application of a civil society organization that targets a certain segment of society, such as women or the elderly, and provides services directly to these groups should also be evaluated. A criterion that adopts the idea that this service will benefit the entire society should be defined.
8. The extent to which the organizations examined in status applications reduce the public service burden should be evaluated using an impartial and transparent method and shared with the public, so that the ambiguity of the requirement to reduce the public service burden is eliminated.
9. Status applications of all civil society organizations should be accepted by a single administrative body (commission, board) whose sole responsibility is to accept and decide on applications, and this body should be comprised of different stakeholders of the process (representatives of civil society, ministries, courts, bar associations, financial advisors, professional organizations, etc.).
10. If an independent institution or board is not set up, the application evaluation method applied by the Ministry of Science, Industry and Technology in granting R&D Center and Design Center Statutes could be used as an example. In the practice followed by the Ministry, applications are received in the form of a report, the applicant is examined on-site separately by two lecturers from different universities who are experts in the subject matter of the application, applicants whose applications meet the specified criteria are then invited to a panel consisting of an industry representative, two lecturers from two different universities and a Ministry official, to deliver a presentation and their applications are evaluated and the status is granted by this four-person board on the same day after the presentation. In addition, those whose applications are rejected have the right to appeal, and their appeals are examined and responded to using a specific method as well.¹²⁷ If this method were to be followed, the relevant ministries could seek the opinion of an independent advisory board and make decisions based on this opinion.
11. Status application, evaluation and monitoring-supervision processes should be digitalized. This would end the complex and bureaucratic structure subject to complaints and establish a mechanism that is more easily monitored by organizations and the public administration.

¹²⁷ TÜSEV, Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations, TÜSEV Publishing, 2018, p.31.

“We live in a century with really advanced technology. All kinds of declarations, all kinds of information, all kinds of documents, records, bank transactions are recorded. Therefore, there is a mechanism. Is STIGM responsible for this? In this sense. Or should we be responsible for it? I do not know, but they could be monitored through constant surveillance. It can be prevented. Therefore, you distinguish the ones working properly and prevent those that are not. Yes. Let me also say that I think the best part of it would be the elimination of concerns on the public’s side about where their money goes. If people see that their donations are used fairly and suitably for that purpose, they would want to contribute more and provide more help.” Opinion of a Bureaucrat from the Ministry of Treasury and Finance, Tax Inspection Directorate)

- 12. The deduction rate of the tax advantage that allows income and corporate income taxpayers who donate to associations and foundations with status to deduct up to 5% (10% limited to priority development regions) of their earnings from their tax base should be increased. There is a consensus among civil society organizations that this rate should be increased. International practices also support this view. Furthermore, granting this incentive to all foundations and associations would contribute significantly to promoting the culture of giving in Türkiye and supporting the financial sustainability of civil society organizations. In this case, another method that could be adopted is allowing the deduction of these donations from the tax base at gradually increasing rates, taking different characteristics (having or not having status, field of activity, purpose, etc.) of civil society organizations into account.**

“Another point is that, if you are a foundation with tax exemption or an association with public benefit status, when a commercial organization donates to you, it can deduct up to five percent of its earnings from its tax base. For example, a decision was published following the earthquake. I do not remember the organizations it covered exactly. But it allowed all aids given to AFAD and the Red Crescent to be deducted from taxes, at a rate of 100%. Ok, but how do we go on then? The statutes have to be clearly defined, as I said. We already work together with AFAD and the Red Crescent. We make at least as much effort as them. This five percent exemption also needs to be rearranged, I don’t know, is it on your list? Five percent is a low figure, and if an organization really works for public benefit, this five percent should be increased too, based on certain criteria. It could be twenty percent. Or a different rate could be determined according to specific studies, or according to AFAD, but the five per cent rate should be increased” (Foundation, Large Scale, With Status)

- 13. The scope of the practice of entirely deducting the donations made to food banking organizations within the scope of Income Tax Law 89(6) from the tax base should be expanded to areas such as the provision of materials necessary for housing, education and stationery.**

“The scope of food banking can also be expanded, for example. There are tax deductions in 3-5 categories. Donors benefit from this. ... Food, fuel, clothing. Its category could be expanded. For example, a company is engaged in computers instead of food as its main field of activity. If there are computers not used or overstocked by it, or computers that it wishes to donate, they could donate them all and deduct them from their taxes. This would make sure that they both make these donations and subject them to tax exemption.” (Association, Medium Scale, With Status)

14. The Ministry of Treasury and Finance and the Presidency of the Republic of Türkiye Strategy and Budget Department should prepare regular reports including data and projections regarding both the extent to which the current tax advantages granted to CSOs cause tax income loss and the extent to which tax income loss will occur when the scope of tax advantages is expanded and should share these reports with the public.

Finally, civil society organization representatives and experts who were interviewed during the qualitative phase of the Fiscal/Tax Framework Research were asked about their views and experiences on whether status should be granted to all CSOs or only those that meet certain criteria, as well as what these criteria should be. The first response is the proposition that all CSOs should be granted tax exemption.

"I think civil society organizations should definitely be exempt from taxation. Because we are really doing something for the public good and as a result, the sector we call the third sector is actually trying to somehow implement the mechanism of checks and balances in the country. But such activities cannot be carried out at the desired level and can be short-lived due to these heavy tax liabilities. ... In my opinion, the tax liability should be abolished completely. That's how it should be for the civil society. Organizations should be rid of this liability, which exists like a weight on their shoulders, as they already continue their activities with limited budgets." (Association, Small Scale, Without Status)

"Another important matter concerning tax liabilities is ensuring that the whole system is more comprehensible. Especially in certain areas. This applies maybe to a majority of them. It is not really correct to make distinctions among civil society works. By certain areas, I meant some facilitating efforts for the public benefit status. In terms of tax liabilities, particularly social security and withholding tax liabilities. It is incorrect to levy any VAT at all. It should be abolished altogether. We should disregard it. For other ones, the rates should be almost zero. The state should actually take action to strengthen civil society organizations in this regard." (Association, Medium Scale, Without Status)

"Since the civil society works for the public benefit or the state's benefit, it should actually be exempt from such taxes. It has no commercial purpose. Their affairs have no commercial purpose and should therefore be exempt from stamp duty. Stamp duty is also a burden that has to be carried." (Association, Medium Scale, Without Status)

"These exemptions should be provided in some way or other to organizations, whether small or large, that mitigate the public's burden." (Foundation, Large Scale, With Status)

"This right should be granted to all civil society organizations, since they are actually institutions working for the public benefit. ... Specifically with respect to associations, associations except regional and village associations generally work for the public benefit anyway. Let us take an education association for example. After all, nobody gets into associations for their personal gain. Their motivation and efforts are for the public, the society. And most of the time, they get nothing in return. Very rarely, some of them maybe receive honoraria and similar fees, but in our experience people generally make sacrifices. So I think civil society organizations, especially associations, are organizations of sacrifice and should be granted significant exemptions." (Focus Group 4- Opinion of a financial advisor)

The second main focus of the responses to the question on whether the status should be granted to all CSOs or only to those that meet certain criteria and what these criteria should be was the concern expressed by bureaucrats, especially those from the public administration, about the emergence of unfair competition and the risk of abuse of the advantages provided by the status through its use for tax evasion purposes. In addition, they expressed the view that if a good supervision and monitoring mechanism could be established, it would be possible for more CSOs to obtain these statuses in the resulting environment of financial trust.

“The expectation is that this [status] will not be used for abuse, for tax evasion. Organizations would be monitored anyway, if there are audits, efforts to ensure constant surveillance, and the necessary infrastructure is established. Therefore, we would move towards a situation where public benefit association status can be established automatically. But of course, it is also necessary ensure that technological level at associations, in terms of bookkeeping, data tracking. This would provide accountability and transparency both to their own members and to the state. If everyone can observe transparency in this area, this status could become a structure that is established automatically.” (Opinion of an Expert Bureaucrat from the Ministry of Treasury and Finance, Tax Inspection Directorate)

According to another opinion that was expressed, tax exemption and special statuses should not be granted to all CSOs, but the application criteria should be diversified so that there is a higher number of CSOs that are eligible to apply for the statuses. It was concluded that the lack of details provided regarding the criteria for application for statuses in the current situation causes bureaucracy.

15. Recommendations for solution included increasing the criteria and defining a tax exemption status graded according to the level of fulfillment of those criteria, defining a status application and evaluation process where differences are minimized for associations and foundations and accreditation of the organizations by an umbrella organization.

“The certain criteria that we are talking about is the number of personnel, volume, the areas and countries of activities, etc. These are the clearest criteria. Because otherwise, there are confusions about why a certain organization is granted status while another one is not. So, the clearest way is to establish certain criteria. And to establish them with fairness. The criteria that determines the organizations that will actually work for the public benefit should be identified and statuses should be granted accordingly. Then this bureaucracy would no longer exist. They would be like, “just establish your foundation and I will watch you for three years to see if you really meet these criteria or not.” It is very difficult to measure them in the current situation. There is only one criterion, that is, the two-thirds criterion. So there is a lot of bureaucracy. Because the decision maker cannot make clear evaluations. If these statuses are more well-grounded and restricted to certain criteria for both associations and foundations and the exemptions are granted accordingly -for example, we discussed 10 exemptions with you-, Like, 10 exemptions for the highest status, and only some exemptions for those at the bottom, and so on and so forth, these periods would be shortened. There should be a grading.” (Foundation, Large Scale, With Status)

"I don't know what the current application process involves; Let me be clear about that. A few years ago, we did research to look into it. I made some research both on aid collection and public benefit status. I am not really sure how it is currently. But again, it all comes down to qualified personnel. Because when you obtain the public benefit status, you have to do quarterly, semi-annual reporting; you have to report your work. You not only report financial processes, but also administrative processes, the efforts spent in your activities. So many obligations apply. The planning, organization, subsequent administrative processes, financial processes; all of them constitute a whole new workload. But when you look at it from the very beginning, as I said, some areas are already about specialization; they directly benefit the public. It should definitely be simplified a little more. There should be some tiers. Like for example, there could be different grades like first, second and third under the public benefit status, And tax rates or stuff could change accordingly. That is my humble opinion. Because the more you give, the more labor you put in, the more you should have the chance to get something out of it. Maybe a balance like that should be established there. I mean, it should be considered. A change like this could be made. Otherwise, people do not even dare enter that area." (Association, Medium Scale, Without Status)

"...of course there should be criteria. Because in the end, they are probably applied to prevent some issues, some possibilities of abuse regarding the exemptions and statuses. Unfortunately, we cannot say that all foundations carry out work entirely for their purposes, in a very proper manner. Therefore, I also think there should be a distinction. But this distinction should not be made only based on criteria set by the state, like size, turnover, etc. They should maybe exist too, but I think the sector should have more say in this matter. A system could be developed within the civil society itself, rather than just by the public sector and the state." (Focus group interview (2), Foundation, Large Scale, With Status)

"Public benefit status for associations and tax exemption for foundations create significant confusion in terms of public support. This is an observation. The definition of public benefit for associations is very broad, while it is limited for foundations. There should be a common definition of public benefit for associations and foundations." (Foundation, Small Scale, Without Status)

Conclusion

In Türkiye, the “public benefit association” or “tax-exempt foundation” statuses have become the most important means for CSOs to benefit from tax advantages. The conditions that associations and foundations must meet to obtain the statutes and the relevant application and evaluation processes are defined by legislation. This study comparatively analyzes the legislation on the statuses in Türkiye and international examples, discussing them together with the findings from the qualitative and quantitative research phases of the TÜSEV Fiscal/Tax Framework Research.

We can summarize the recommendations for solution that were revealed within this framework under four titles: the need for conceptual clarity in the status processes; demands regarding the application requirements and processes; demands regarding the tax advantages provided by the statuses; and a call for a reform that would require a redesign of all status processes.

The need for conceptual clarity:

The concept of public benefit should be defined clearly and fields of activity that are considered as “worthy purposes” for the public benefit should be determined as broadly and flexibly as possible, taking potential future needs into account as well. The rights and freedoms stipulated in the Constitution, the responsibilities of being a social state of law, and the human rights conventions entered into by Türkiye could be taken into account when determining the relevant topics. In addition, more inclusive areas of activity should be determined, while the scope of the discretionary power of the administration should also be clearly defined.

It would be appropriate to add “any other activity carried out to support or promote public benefit” or a similar expression to the list of fields of activity to be listed in the new regulation, in order to ensure that the fields of activity are interpreted to respond to the period’s requirements and new needs to emerge. The expression “public benefit” here refers to the conduct of activities that benefit society, rather than fulfillment of the requirements pertaining to the public benefit status.

The beneficiaries of organizations’ activities, i.e. their target groups should be set as the criterion for organizations to be granted status, rather than the geographical scope of their activities on region or country level and the size of the population targeted by them. The extent to which the organizations examined in status applications reduce the public service burden should be evaluated using an impartial and transparent method and shared with the public, so that the ambiguity of the requirement to reduce the public service burden is eliminated.

Status application requirements and processes:

Public benefit status should be granted by an independent body that is easily accessible to all organizations, rather than a political authority that is difficult to reach, such as the Presidency. Status applications of all civil society organizations should be accepted by a single, independent administrative body (commission, board) whose sole responsibility is to accept and decide on applications, and different stakeholders of the process (representatives of civil society, ministries, courts, bar associations, financial advisors, professional organizations, etc.) should be involved in the establishment of the body in question.

The evaluation process for status applications should be based on a transparent timetable and waiting periods should be shortened. Organizations whose status applications are rejected should be provided with decisions with a justification, as well as the right to appeal. The condition that CSOs spend a certain portion of their annual income (half for associations and 2/3 for foundations) on their purpose, which is listed among the conditions for applying for status and the reasons for losing status, should be revised. It was recommended that personnel and management expenses be included in the expense items considered as expenditures related with the purpose. Furthermore, in order to ensure self-control by organizations, the Revenue Administration should prepare guidelines and checklists regarding the expense items which are deemed as related and unrelated expenses with clear, comprehensible and explicit definitions, so that there are no hesitations.

Requests and recommendations regarding the tax advantages of the status:

Associations and foundations with status should be exempted from employer's share of social security premium payments, which they assume as the taxpayer, and employee's share of social security premium payments, which they assume as the party responsible for tax. The deduction rate of the tax advantage that allows income and corporate income taxpayers who donate to associations and foundations with status to deduct up to 5% (10% limited to priority development regions) of their earnings from their tax base should be raised. There is a consensus among civil society organizations that this rate should be increased. International practices also support this view. Furthermore, granting this incentive to all foundations and associations would contribute significantly to promoting the culture of giving in Türkiye and supporting the financial sustainability of civil society organizations. As a method that could be adopted in this regard, donations made to these CSOs could be allowed to be deducted from the tax base at gradually increasing rates, considering CSOs' different characteristics such as having status, field of activity, purpose, etc., in order to promote the activities carried out for public benefit and the culture of giving. The scope

of the practice of entirely deducting the donations made to food banking organizations within the scope of Income Tax Law 89(6) from the tax base should be expanded to areas such as the provision of materials necessary for housing, education and stationery.

A call for reform:

The criteria required in status applications should be redesigned and increased. In addition, a tax exemption status that is graded according to the level of fulfillment of the criteria could be established so that more CSOs are supported. A status application and evaluation process that minimizes the differences for associations and foundations could be established. Status application, evaluation and monitoring-supervision processes should be digitalized. This would end the complex and bureaucratic structure subject to complaints and establish a mechanism that is more easily monitored by organizations and the public administration. Thus, the civic space would be regulated and a ground for increased trust in civil society would be created.

References

- Charities Aid Foundation (CAF). 2016. DONATION STATES An international comparison of the tax treatment of donations. May 2016. <https://www.cafonline.org/docs/default-source/about-us-publications/fwg4-donation-states>
- Doğan, D. and Engin, G. 2023. Sivil Toplum için Elverişli Ortam İzleme Matrisi (Monitoring Matrix on Enabling Environment for Civil Society Development), 2020-2021 Türkiye Report. TÜSEV Publishing, No:94. <https://portal.tusev.org.tr/media/public/YasalCalismalar/MM20212022TürkiyeReportEN.pdf>
- Donors and Foundations Networks in Europe (DAFNE) and European Foundation Centre. 2021. Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe. <https://philea.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2021.html>
- Éducaloi. 2024. How to Get a Tax Credit for Donating to a Registered Charity. <https://educaloi.qc.ca/en/capsules/the-tax-benefit-of-giving-to-a-registered-charity/#:~:text=To%20obtain%20registered%20charity%20status,a%20significant%20section%20of%20it>
- European Center for Not-for-Profit Law (ECNL). 2021. Tax Benefits Stimulating Philanthropy
- European Foundation Centre. 2011. Comparative Highlights of Foundation Laws The Operating Environment for Foundations in Europe. http://www.efc.be/programmes_services/resources/Documents/ComparativeHighlightsOfFoundationsLaws_2011.pdf
- European Foundation Centre. 2011. Comparative Highlights of Foundation Laws: The Operating Environment for foundations in Europe. <https://philea.issuelab.org/resource/comparative-highlights-of-foundation-laws-the-operating-environment-for-foundations-in-europe-2011.html>
- European Foundation Centre. 2015. Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe. http://efc.issuelab.org/resource/comparative_highlights_of_foundation_laws_the_operatin_environment_for_foundations_in_europe_2015
- European Union. 2023. Council Recommendation of 27 November 2023 on developing social economy framework conditions. Official Journal of the European Union, 29.11.2023, C/2023/1344. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202301344#:~:text=The%20measures%20focus%20on%20creating,its%20potential%20are%20more%20visible.
- FICI, Antonio. 2023. Public benefit status and CMD Systems for Associations and Non-profit Organizations in the EU, Study Requested by JURI Committee, Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies.
- Government of Canada. 2024. "Annual Spending Requirement (disbursement quota)". <https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/operating-a-registered-charity/annual-spending-requirement-disbursement-quota/disbursement-quota-calculation.html>
- Government of Canada. 2024. "What is the difference between a registered charity and a non-profit organization?" <https://www.canada.ca/en/revenue-agency/services/charities-giving/giving-charity-information-donors/about-registered-charities/what-difference-between-a-registered-charity-a-non-profit-organization.html>
- McGill, Lawrence T. 2016. Number of Registered Public Benefit Foundations in Europe Exceeds 147,000. Philanthropy Europe Association (PHILEA). <https://philea.eu/wp-content/uploads/2019/08/pbf-report-2016-9-30-16.pdf>

Moore, David., Hadzi-Miceva, Katerina. and Nilda Bullain. 2008. Europe: Overview of Public Benefit Status: A Comparative Overview of Public Benefit Status in Europe, the International Journal of Not-for-Profit Law, Vol. 11, Issue 1, NOVEMBER 2008. <https://www.icnl.org/resources/research/ijnl/a-comparative-overview-of-public-benefit-status-in-europe-2>

OECD. 2020. Taxation and Philanthropy, OECD Tax Policy Studies, No. 27, OECD Publishing, Paris <https://doi.org/10.1787/df434a77-en>.

Özden, E. 2015. Associations, Foundations and Their Donors in Terms of Tax Liabilities and Advantages, Doctoral Thesis. Thesis no: 388306. Hacettepe University, Institute of Social Sciences, Department of Finance, Ankara. <https://tez.yok.gov.tr/UlusalTezMerkezi/tezSorguSonucYeni.jsp>

Özkan, C. 2003. Vakıflara Bakanlar Kurulunca Vergi Muafiyeti Tanınmasında Yeni Düzenleme-I (New Regulation on the Granting of Tax Exemption by the Council of Ministers to Foundations-I). Yaklaşım Dergisi, 130, 173-179.

Panov, Luben. 2019. Public Benefit Status. 13th Civil Society Forum. Civic Space, B&S Europe. <https://civicspace.eu/wp-content/uploads/2021/11/13th-CSF-Report.pdf>

Philanthropy Europe Association (PHILEA). 2023. Public-Benefit Foundations in Europe: Comparative analysis and aggregate figures across 26 countries. <https://philea.issuealab.org/resource/public-benefit-foundations-in-europe-comparative-analysis-and-aggregate-figures-across-26-countries.html>

Philanthropy Europe Association (PHILEA). 2022. The Philanthropy Environment in Europe. <https://philea.issuealab.org/resource/the-philanthropy-environment-in-europe-december-2022.html>

State Supervisory Board. 2010. Examination of the Public Benefit Association Status and Evaluation of the Procedures and Transactions Conducted in Relation to Research and Examination Report. Ankara. https://www.huzurevleri.org.tr/docs/ddk_rapor_201001.pdf

Third Sector Foundation of Türkiye (TÜSEV). 2004. Comparative Report on Public Benefit for Foundations and Associations. TÜSEV. http://tusev.org.tr/usrfiles/files/kamu_yarari_raporu.pdf

Third Sector Foundation of Türkiye (TÜSEV). 2008. Vakıf ve Derneklere İlişkin Vergi ve Kamu Yararı Raporu AB Ülkeleri ve Türkiye'deki Uygulamalar ve Öneriler (Report on Taxes Related to Foundations and Associations and Public Benefit: Practices in EU Countries and Türkiye and Recommendations) [https://www.tusev.org.tr/usrfiles/files/TUSEV-Vergi_Kamu_Yarari_Karsilastirma_ve_Oneriler_Raporu\(1\).pdf](https://www.tusev.org.tr/usrfiles/files/TUSEV-Vergi_Kamu_Yarari_Karsilastirma_ve_Oneriler_Raporu(1).pdf)

Third Sector Foundation of Türkiye (TÜSEV). 2018. Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations. [https://www.tusev.org.tr/usrfiles/images/VergiRaporu.20.12.18.web\(1\).pdf](https://www.tusev.org.tr/usrfiles/images/VergiRaporu.20.12.18.web(1).pdf)

Legislation (Laws, Regulations, Guidelines, Regulations)

Law on Associations

Regulation on Associations

"General Communiqué on the Provision of Tax Exemption to Foundations" (Series No:1) published in the Official Gazette dated 3.4.2007 no. 26482, Ministry of Treasury and Finance. <https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=11220&mevzuatTur=Tebliğ&mevzuatTertip=5>

"Public Benefit Association Status", Directorate General for Relations with Civil Society. <https://www.siviltoplum.gov.tr/kamu-yararina-calislan-dernek-statusu>,

"Explanations for foundations that will apply for tax exemption", Revenue Administration. <https://www.gib.gov.tr/yardim-ve-kaynaklar/yararli-bilgiler/vergi-muafiyeti-icin-basvuruda-bulunacak-vakiflara-yonelik>

The Council of The European Union. 2023. "Council Recommendation of 27 November 2023 on Developing Social Economy Framework Conditions" (C/2023/1344) Official Journal of the European Union. <https://eur-lex.europa.eu/eli/C/2023/1344/oj>



This publication has been prepared with the financial support of the European Union. The content of this publication is the sole responsibility of TÜSEV and does not necessarily reflect the views of the European Union in any way.