

7.2. Establishment

Pursuant to Art 27, anyone may use his assets, either in full or in part, to establish a foundation through a deed or testament and upon approval by Grand-Ducal Decree³⁷. The certified declaration of foundation establishment is presented to the Ministry of Justice for approval. Upon receipt of the approval, the establishment is published in the Luxembourgian Official Gazette, the *Mémorial, Recueil des Sociétés et Associations*, and is also entered in the commercial and company register. Moreover, the members of the administrative board must present and publish the annual financial statements and a budget.

The administrative board constitutes the only statutory body of a foundation. The founders may determine the content of the foundation statutes. The foundation statutes include the use of the foundation's assets in the event of dissolution. The Foundation Act does not stipulate a minimum amount of capital; however, in general practice a minimum initial capital of EUR 25,000 is required. If the foundation statutes do not state otherwise, the foundation is established for an indeterminate period of time.

7.3. Existing foundation

The exclusion of the aim to make profit does not mean that the foundation may not own any funds. Funds are required in particular for the pursuit of the set foundation purpose; also ancillary economic activity is permitted as a rule if the profits are exclusively used for the foundation purpose.³⁸ The foundation Act explicitly limits the ownership of real property; foundations may only own land or buildings insofar as these are required to achieve the foundation purpose.

Gifts may be made to a foundation during a person's lifetime (*inter vivos*) or upon death (*causa mortis*).

The Tax Act has not taken up the definition of "foundation" included in the Foundation Act. Art. 12 and 25 of the Corporation Tax Act stipulate that contributions in cash and in kind in the framework of the establishment of a foundation are exempt both from capital tax as well as from the registration fee. This is only valid in the case of legally recognised foundations in accordance with the Foundation Act.

Foundations are in principle liable to corporate income tax, wealth tax and trade income tax. Corporate tax exemptions exist for foundations directly performing church-related, charitable or public utility activities. The same requirements for exemption are also valid for wealth tax and trade income tax. As a general rule, only the income earned on commercial activity or assets is taxed, while the foundation in itself remains tax-exempt. This partial taxation only

³⁷ Cf. *ibid.*, p 1142.

³⁸ Cf. *ibid.*, p. 1147.