

9.2. Tax Treatment

In Switzerland, direct federal taxes are governed by federal law via the Federal Act on Direct Federal Tax (*Bundesgesetz über die direkte Bundessteuer, DGB*), whereas direct cantonal taxes are regulated by cantonal laws. For municipal taxes and church tax, tax rates which are based on the cantonal base rate apply. The Tax Harmonisation Act (*Steuerharmonisierungsgesetz*) ensures that the definitions of tax subjects and the assessment bases are at least not essentially different.

Foundations that are exclusively and irrevocably of public utility are exempt from direct taxes as are personnel provision foundations. In principle, corporate foundations are taxed as other legal persons.

In the following, we will explain what the taxation of a corporate foundation in the canton of Zug /Zug capital looks like. Within Switzerland, Zug is considered a tax haven and is thus suited as a competitive model to the Austrian private foundation.

Fiscal Treatment of Foundation Endowments

For tax purposes, the endowment of a non-public utility foundation is regarded as a gift (inheritance) in Switzerland. Inheritance or gift tax only exists at cantonal level. Inheritance tax is only levied in the canton of Schwyz, whereas in the canton of Zug, direct succession and spouses (domestic partners) are exempt from inheritance and gift tax. Tax rates range between 10% and 20% depending on the amount of the assets received. The case of foundations is particular insofar as the tax liability depends on the degree of the donor's relationship to the beneficiary. For direct succession and partners, the rate is zero at all; non-related persons have to pay the full rate. As regards distant relatives, different reduced rates depending on the relationship apply. Moreover, the municipalities may levy additional taxes of up to 100% of the cantonal tax. Thus, in comparison to the foundation entrance tax (*Stiftungseingangsteuer*) of 2.5% in Austria, the tax regime in the canton Zug is only more favourable for close relatives.

The above-stated regulations are valid for donors domiciled in Zug. If the donor resides in Austria, the fiscal consequences depend on applicable double taxation agreements. Austria has signed no double taxation agreement concerning gift tax with Switzerland. As a result, the donor has to pay a foundation entrance tax in Austria for the endowment of the foundation abroad. At present, the Austrian foundation entrance tax is generally 2.5%; however, it should be noted that the tax rate may increase to 25% if no comprehensive administrative assistance and enforcement treaty exists with the country in question (Section 2 (1) No. 3 of the Austrian Foundation Entrance Tax Act (*Stiftungseingangsteuergesetz*)). As the administrative assistance provisions in the double taxation agreement concluded between Austria and Switzerland (Articles 26/26a) are not comprehensive to the extent required, Austria-based donors generally have to pay the 25% tax rate on endowments to Swiss-based foundations. Therefore, creating a foundation in the canton Zug from Austria is unattractive from a fiscal perspective.