

eingangswert) was at the request of the donor granted upon repatriation of the assets. In the past, these rules concerning the taxation of donations were (regardless of the type of the donations) often heavily criticised by donors, foundations and beneficiaries alike. Manifestly, these critical voices have been loud enough to bring about an amendment of the law. The new Gift Notification Act (Schenkungsmitteilgesetz) stipulates that distributions of assets related to assets donated after 31 July 2008 remain tax-exempt as long as these distributions of assets are exceeding the balance sheet profit determined pursuant to company law plus retained profits (which are reflected in the revenue reserves and the hidden tax reserves related to the assets donated at the beginning of the fiscal year). Distributions of assets are only tax-exempt if a so-called evidence account for tax purposes (Steuerliches Evidenzkonto) is kept. For the tax exemption the distributions have to be covered by the evidence account

Fiscal Consequences of the Private Foundation's Liquidation

The Gift Notification Act has also resulted in a number of taxation changes in connection with the dissolution of private foundations. In principle, payments related to the dissolution of a private foundation are considered as income from capital assets and are therefore subject to capital income tax in an amount of 25%. However, if assets are repatriated to the donor upon the dissolution and provided that the donor has revoked the foundation, the taxable amount is reduced by the amount of the value of the assets donated to the foundation as of the date of their donation (the value of these assets is determined on the basis of the evidence account for tax purposes). However, the donor may only revoke the foundation if he has explicitly reserved the right to do so. The right to revoke the foundation must be laid down in the declaration of establishment.

In other respects, the general rules on the taxation of donations apply to payments in connection with the liquidation of private foundations. As a result, donations are in principle – independent of their nature – subject to capital income tax in the amount of 25%. If the donations consist of assets donated after 31 July 2008, distributions of assets remain tax-exempt as long as these are exceeding the balance sheet profit determined pursuant to company law plus retained profits (which are reflected in the revenue reserves and the hidden tax reserves related to the assets donated) and, once again, provided that an evidence account for tax purposes is kept at the beginning of the fiscal year and that the distributions are covered by the evidence account.

2.3. Conclusion

Austria remains very attractive as a country for private foundations that manage significant assets. This is attributable to two factors: On the one hand, it is relatively easy to establish a private foundation in Austria; and on the other hand, the fiscal framework is still very favourable. With the abolition of the estate and gift tax with effect on 1 August 2008 an important reason to establish a foundation ceased to exist. However, private foundations still offer advantages in terms of income taxation which cannot be denied. While the so-called foundation

entrance tax continues to apply upon the donation of assets to the benefit of the foundation, the initially fixed rate of this tax, which was meant to replace the estate and gift tax, was halved from 5% to 2.5%. In comparison to the advantages still offered by private foundations, the foundation entrance tax seems moderate indeed, and in practice, it will not prevent prospective founders from establishing a private foundation in Austria. Foundations seem to remain very attractive as they offer far-reaching advantages compared to those enjoyed by individuals or corporations. Given the tax-exemption of equity income from shareholdings at the level of the foundation in many cases and the reduced tax rate of 12.5% applicable to the majority of the remaining capital income, foundations offer considerable tax advantages if profits are retained in the foundation. In contrast, individuals realising the same income are in principle immediately subject to a capital income tax in the amount of 25%. At the level of foundation beneficiaries, the capital income tax has to be paid only upon effective receipt of payments; and any reduced tax rates levied at the level of the foundation are offset against the capital income tax to be paid by the beneficiaries. Moreover, in many cases, private foundations provide some possibility to achieve virtual tax-exemption for capital gains on the disposal of assets. This is not possible for individuals having realised comparable capital gains.

At the end of 2007, there were approximately 3,000 private foundations in Austria, with estimated assets of EUR 60 billion.⁴

⁴ Der Standard, 18/12/2007, p. 17 et seq.