

Legal persons engaged in a non-profit activity, legal estates and associations are subject to an annual tax rate of 0.17% in lieu of inheritance tax if their assets amount to more than EUR 25,000.

In connection with the establishment of a foundation upon death, the inheritance regulations of “reduction” and “restitution/allowance” are to be considered. Endowments may not amount to more than fifty percent of the assets if the endower leaves behind one child; one third if the endower leaves behind two children and one fourth in the case of three or more children. Relating to spouses endowments may correspond to the full amount to the assets.

3.2.2. Current taxation

Taxation of the Foundation

Pursuant to Article 150, an annual amount of 0.17% is to be paid, as a tax compensation for the inheritance tax, on the entire property of the foundation (with the exception of securities that the foundation holds in own trading companies). In accordance with Article 220 of the Belgian Income Tax Act, the foundation is subject to taxation for legal persons with its income. The tax assessment basis is composed of the following forms of income:

- **Income from immoveable assets**

if the real property is used commercially, the net rental is to be taxed on the amount that exceeds the indexed cadastral income. The net rental corresponds to the gross rental less the rental costs (flat rate of 40% for developed properties or 10% for non-developed properties). The applicable tax rate amounts to 20 %¹⁷. If the real property is not used commercially, only land and building tax is levied.

- **Income from moveable assets and capital**

is subject to withholding tax at source which has the effect of final taxation for the recipient (15% or 25% depending on the type of income).

- **Income from „diverse sources“ and „non justified payments“**

This includes the added value realized in the sale of properties, which is taxed at a rate of 16.5% or 33%. A tax of 309% may be levied for payments the recipients of which are not disclosed to the financial authorities; these payments also include unjustified salaries and remuneration payments.

Taxation of the administrative office

In accordance with Article 181 of the Income Tax Act, different rules may apply to foundations that are operated as administrative offices; these are treated as legal persons for tax

¹⁷ Cf. *ibid*, p. 696

purposes if certain conditions are met. In this case, the foundation must comply with the regulations on certification and pursue its activity without the aim of making profit; moreover, the dividends must be directly assigned to the certificate holders based on the size of their shares.¹⁸

Application of corporate taxation

In the case of extensive commercial activity of the foundation, its income may be subject to corporate tax of 33.99% applicable to domestic companies.

Certification

Dividends held in the foundation assets in the framework of the activity of securities certification are not included in the tax assessment base as these are directly attributed to the certificate holders in accordance with the principal of fiscal transparency. In this case, the issuer of the certificates pays the final withholding tax at source levied on the dividends directly to the tax authorities.

For certificate holders, the income from the disposal of certificates is tax-exempt (in the case of companies). The same applies to private persons; however, under certain conditions, their income from the disposal of certificates may be subject to taxation under the category of "Miscellaneous income".

Income from certificates is considered as dividends at the level of a company; as a result of arrangements for parent and subsidiary companies, it is tax-exempt to the extent of 95%.

3.2.3. Dissolution

Dissolution of a foundation occurs upon application by a founder or its legal successor, the managing director, the public prosecutor's office in accordance with Article 39 Association and Foundation Act after a court decision, regardless of whether or not the termination was originally provided for upon expiration of a period of time or occurrence of certain circumstances (e.g. fulfilment of the purpose).¹⁹

The dissolution occurs when the conditions defined in the statutes are met or through court decision if the foundation is no longer able to perform its activities. The court appoints liquidators to distribute the assets. If this is not possible, the government is responsible for undertaking a distribution that comes closest to the original purpose of the foundation. However, the statutes should contain a provision which precisely defines the proceedings in the event of dissolution.

¹⁸ Cf. *ibid*, p. 697.

¹⁹ Cf. *ibid*, p. 692 et seq.