

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.

The distribution of assets to the donors results in no taxes levied; it is merely a form of ownership transfer subject to a general fee of EUR 25. If the foundation is subject to corporate tax, a tax of 10% will be levied on reserves paid out to donors upon dissolution.

3.3. International Context

The Belgian International Private Law is based on the company seat theory, which means that the legal capacity of a foundation is judged in accordance with the law of the country in which the registered office is located. In determining which domestic law is applicable, not the registered seat set out in the statutes is relevant, but the place where the business activity is actually performed. A foundation relocated from abroad to Belgium is strictly subject to Belgian law.

In Belgium, abroad-based foundations are subject to the same reporting regulations and supervision as foundations established under Belgian law²⁰. Tax advantages are listed in Article 104, which apply under the following conditions:

The beneficiary must have legal capacity under Belgian law.

The foundation may not be aimed at profit-making (neither for the benefit of the founder nor for that of its members).

The foundation must engage in special activities: scientific, cultural, environmental activities or activities for the benefit of developing countries, disabled, elderly or needy people or victims of natural disasters.

The general management costs or administrative costs may not exceed 20% of the total foundation resources. Public approval is granted for 3 years at a time.

3.4. Conclusion

Generally, it can be said that the private foundation in Belgium is not yet developed very far. The statutory regulations in the Association and Foundation Act are not always precise and clear.²¹ (For Kocks&Partners2006, it was not possible to comprehensively evaluate the actual importance of private foundations).

- Given to the strict reporting and supervisory regulations and the right of third parties to inspect the files of foundations, Belgian foundation law does not offer the same global conditions as Liechtenstein. Private foundations primarily serve the certification of securities.

²⁰ Cf. *ibid*, p. 694.

²¹ Cf. Theisinger (2006), p. 19.