

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.

- In the event of a transferral of assets to a foundation, a creditor may engage in oblique or indirect action (*action oblique / indirekte vordering*), which allows a creditor to exert, in the name of its debtor, the rights of the debtor if the debtor refuses to exert them.
- In general no major tax advantages for establishing a foundation exist.
- While earnings realised by public foundations are tax-exempt, capital income and gains from the disposal of companies or shareholdings are subject to taxation.
- Individual donors may deduct their contributions up to a maximum of 10% of their total net income or, in absolute terms, up to a maximum of EUR 250,000. Corporate donors may deduct a maximum of 5% of their gross income but may not exceed the maximum limit of EUR 500,000.
- Limitations and requirements/preconditions
According to applicable law, the government must supervise all public utility foundations with assets exceeding EUR 10,000. A draft law suggests that this amount be increased to EUR 100,000.

The government supervision includes:

- Approval of statutes
- Annual financial statements and budgets must be published (in the Belgian State Gazette)
- Endowments exceeding EUR 10,000 are subject to approval by the government
- The government has the right to determine whether a foundation still fulfils its purpose
- The Belgian Ministries of Finance and Justice control and/or supervise the foundations and may apply sanctions (including their liquidation).

In Belgium, there is a strong protection of creditors and heirs in connection with the transfer of the donor's assets to a foundation. There are no mixed foundations (foundations pursuing a purpose other than a public utility purpose to an extent of more than 50%).