

For example, the government supervisory authority may annul a resolution taken by the founder in its capacity as foundation body if this resolution contravenes the original foundation purpose. As a matter of nature, in such cases, the authority has to examine whether its measure is consistent with the principle of proportionality.

## **4.2. Tax Treatment**

### **4.2.1. Private Utility Foundations**

Foundations that do not serve a public utility purpose do not benefit from any tax advantages.

### **Tax Treatment of Foundation Endowments**

#### **▪ At the level of the Foundation**

If a foundation is established *causa mortis*, inheritance tax applies to endowments; if it is set up *inter vivos*, gift tax is levied. These endowments are subject to taxation in the unfavourable tax class III.

The only exception to this rule is the family foundation. Here, the income of the foundation is considered as income of the beneficiaries for tax purposes. As a result, the foundation income may be attributed to tax class I. This favourable treatment does not apply to later donations to the foundation, which are subject to the unfavourable tax class III.

Inheritance and/or gift tax are levied on the basis of the following tax rates:

Endowments up to and including (amounts in Euro)	Rate Tax class I	Rate Tax class II	Rate Tax class III
52,000	7	12	17
256,000	11	17	23
512,000	15	22	29
5,113,000	19	27	35
12,789,000	23	32	41
25,565,000	27	37	47
above 25,565,000	30	40	50

The currently applicable inheritance tax law distinguishes between 3 inheritance tax classes; tax class I is the most favourable, tax class III the least favourable.

Degree of relationship	Tax class	Tax allowance
Spouses	I	307,000
Children, step children, children of deceased children	I	205,000
Grandchildren, parents and grandparents (in the event of inheritance)	I	51,200
Parents, grandparents (except in the event of inheritance), sibling, nephews, nieces, step-parents, parents-in-law/children-in-law, divorced spouses	II	10,300
Domestic partners	III	5,200
Other	III	5,200

Furthermore, in individual cases, other exemptions may apply. However, every 30 years, the foundation is subject to notional inheritance taxation which offsets any tax advantages it may have benefited from. Loopholes for creative taxpayers are very limited; these may establish several family foundations to optimise tax allowances.

Real estate transfer tax may be due on the transfer of real estate. In most cases, however, family foundations are set up without consideration and therefore not subject to real estate transfer tax.

#### ▪ **At the level of the founder**

For founders, hidden reserves may be revealed upon withdrawing of assets, which would have consequences with regard to earnings tax.

#### ▪ **Regular Tax Treatment of the Foundation**

The income of private foundations is subject to the full corporate tax rate of 15% and the solidarity surcharge of 5.5% of the corporate tax. Moreover, notional inheritance taxation on family foundations takes place every 30 years in order to ensure that the foundation assets are not parked for generations without inheritance tax being levied on them.

Payments to beneficiaries as well as the deduction of the substitute inheritance tax (Erbsatzsteuer) do not reduce the corporate tax assessment base.

### **Taxation of Payments to Beneficiaries and upon liquidation**

#### ▪ **At the level of Beneficiaries**

Payments by the family foundation to the beneficiaries are subject to personal income taxation as income from capital. As part of the corporate tax reform 2008, the half-income tax rule

was replaced by the final withholding tax as of 1 January 2009. Income (capital income and capital gains) is now taxed at a uniform final withholding tax rate of 25% (plus solidarity surcharge).

- **Upon liquidation**

Acquisition upon liquidation of the foundation is considered a gift inter vivos. In this case, as in the establishment of a foundation, family foundations benefit from tax advantages (see “Tax Treatment of Foundation Endowments”).

#### **4.2.2. Public Utility Foundation**

The meaning of “public utility” is defined in German law: To be considered as a public utility foundation, a foundation’s activities must be exclusively and directly aimed at altruistic promotion of public welfare. Support of a foreign public must result in positive impacts on the German general public.

#### **Tax Treatment of Foundation Endowments**

The transfer of assets in connection with the establishment of a public utility foundation is exempt from inheritance and gift tax as well as from real estate transfer tax.

At the foundation level, assets may be recorded at their book value if the donation is tax-deductible as a special expense at the level of the donor. For the donor, the transfer of assets has the advantage that he does not have to reveal hidden reserves as would have been the case in the event of a withdrawal of these assets.

The donor may, within certain limits, record the endowment to a public utility foundation as a special expense.

#### **Regular Tax Treatment of the Foundation**

Public utility foundations are exempt from corporate tax and value-added tax (for general welfare, events or youth welfare) or subject to a reduced value-added tax rate of 7% (for other services). Moreover, public utility foundations are exempt from tax on land and buildings.