

trustee is a financial institution, a securities company, an investment company, a pension fund or an insurance enterprise. In Luxembourgian legal practice, however, the law also applies trustees that are natural persons.

Transfers of trust property without consideration are subject to gift tax; the applicable tax rate depends on the degree of relationship. No additional special regulations exist. If the founder of a trust or the trustor himself is the economic beneficiary of the trust/fiduciary contract, the profit is taxed at his level in accordance with fiscal transparency. In the case of a third-party beneficiary, taxation depends on the respective structure of the trust or fiduciary contract; here, the profit may be considered as an “independent legal estate” pursuant to Section 159 Income Tax Act and is then accordingly treated for tax purposes.⁴⁰

7.5. Dissolution

If a foundation is no longer in a position to perform its purpose, its dissolution may be decided and a liquidator can be appointed. The liquidation proceeds are exempt from corporate tax. Dissolution profit from the foundation business activity is to be taxed pursuant to Article 55 et seq.

7.6. International context

Luxembourgian legislation applies, on the basis of French and Belgian law, the so-called company seat theory: Abroad-based foundations with legal capacity are recognised as legal persons also in Luxemburg. It is permissible to move a foundation’s seat from Luxemburg into another country.

⁴⁰ Cf. Beissel/Gabriel (2007), p. 1159.