

The rules, governing bodies and registered office are set out in the foundation statutes. Another important element in the foundation statutes is the purpose and a detailed description of the main activities. The purpose is subject to some restrictions in that it may not consist in the execution of payments to the founders or members of the foundation's executive bodies (benefits which are immaterial or social in nature are however permissible).

A foundation is allowed to make profits and may operate a commercial enterprise⁴². In many cases, foundations have a supervisory board comparable to the supervisory board of a capital company. If a foundation has 50 or more employees, a workers' council has to be set up.

In principle, there are no mandatory rules as to the capital formation, which means that no capital contribution is required upon establishing a foundation. However, the regional court (*Rechtbank*) can file to have the foundation wound up if the assets are insufficient to achieve the purpose. Within the foundation, capital is accumulated through grants, donations, legacies, as well as through subsidies and profits from a company.

8.2. Foundation Forms

General

There are no specific regulations in the Netherlands concerning the management of foundation assets or their taxation. The Foundation for Cultural and Social Initiatives was established by the Dutch Foundation for the Promotion of Notarial Science (*Stichting tot Bevordering der Notariële Wetenschap*), the *Prins Bernhard Cultuurfonds*, the Royal Trade Association of Notaries (*Koninklijke Notariële Beroepsorganisatie*) and the Dutch Bar Association (*Nederlandse Orde Van Advocaten*) to ensure that certain provisions regarding the social or cultural nature of foundations be adhered to. In addition, the *Centraal Bureau Fondsenwerving* establishes guidelines and makes relevant information available to the public. Foundations established in accordance with these guidelines and which are active in the charitable, cultural, scientific, and other public utility areas receive a quality label.

As other legal persons, foundations are generally required to keep books and to prepare balance sheets and a profit and loss statement.

Special Foundation Forms

▪ Dependend Foundations

Assets can be placed in more than one foundation, which means that activities associated with risk are placed in a separate foundation which is also called a support foundation or a cooperation foundation.

⁴² Cf. *ibid*, p. 1170.

- **Civic Foundations**

This type of foundation especially serves non-profit and charitable purposes.

- **Family Foundations**

The introduction of the family foundation in Dutch law has basically resulted in an exception concerning the prohibition of benefits to family members of the founder. Assets are paid into a foundation as part of asset planning; the foundation manages these assets for the holders of share certificates. What is particular about this foundation form is that no inheritance or gift taxes are levied on the assets endowed to the foundation. The foundation files an annual tax declaration over the services provided. After 60 years, the foundation ceases to exist de jure.

Private fund foundations, which are similar to family foundations, exist in parts of the Kingdom such as in the Dutch Antilles and Aruba.

- **Company-related Foundations**

In the Netherlands, it is quite common to include foundations in groups of companies. By means of establishing a foundation, the voting rights associated with and the beneficial interest in shares can be separated (in the case of a trusteeship). This permits companies listed on a stock exchange to create special protective constructs or to enable preferred participation. What is particular in this context is that the statutes of company-related foundations may stipulate that some resolutions by the board of directors require the approval of another foundation, with the advantage that the existence of such provision is not public.

- **Trust Company**

The trust company (Stichting Administratiekantoor) is used to separate legal ownership from economic activities. The trust company can be involved in the certification of shares.

- **Investment Funds and Pension Funds**

In the context of Dutch foundation law, pension funds represent an interesting construct as they do not comply with two fundamental principles of foundations: First, pension funds have members and second, they make payments.

- **Government Foundations**

The government also uses the legal form of foundation, in which government bodies may be directly or indirectly involved. Due to a variety of rules on subsidies, such foundations may depend on government bodies.

Dissolution of Foundations

The foundation statutes can be modified if this is provided for in the foundation statutes. The same rule applies to a change of the legal form, a merger or a division of the foundation, which may represent grounds for dissolution.

Normally, a foundation is dissolved upon a resolution of the board of directors. The grounds for dissolution can be set out in the foundation statutes. The statutes must include a provision on the distribution of the foundation assets. Special procedures involving a liquidator are also provided for.

If in the framework of dissolution, a payment is made to a company which is liable to corporate tax, the payment is to be included in the profits of this company. If a payment is made to a natural person, it is to be included in income under *Box 1*. In all other cases, the payment must be allocated to *Box 3* (capital income tax). Acquisitions are subject to gift tax if no exceptions apply.

International Context

As a general rule, the registered office of the foundation must be located in the Netherlands. In accordance with the European Court of Justice ruling concerning the SEVIC System AG from 13 December 2005, this is contrary to the freedom of establishment. It is thus possible, legally and in practice, to relocate the registered seat of a foundation based in the Netherlands within the European Economic Area.

8.3. Tax Treatment of Foundations

Dutch tax law generally distinguishes between foundations established for public utility purposes and foundations set up to operate a business. If a foundation pursues public utility purposes, the endowments are subject to reduced taxation with regard to inheritance and gift tax and capital transfer tax⁴³. Since 1 January 2006, a general exemption has been in place. As a result, donations to the foundation may be deducted for purposes of income and corporate tax. If the foundation operates a business, it is subject to corporate tax.

Regular Taxation

▪ Inheritance, Capital Transfer and Gift Tax

Inheritance, capital transfer and gift tax are, as a general rule, based on the market value of the foundation. If the foundation is created by more than one person, the founders are considered a single person. This prevents the splitting of gifts to avoid capital transfer or gift tax. Along these same lines, if several donations are made within a calendar year, these donations are treated as a single donation for tax purposes.

At the level of a natural or legal person who acquires a foundation as a result of an inheritance, capital transfer or donation, acquisitions of non-public utility foundations are taxable in

⁴³ Capital transfer tax has to be paid on a donation or legacy if the donor or legator was domiciled outside the Netherlands at the time of his death or at the time the donation was made. The assessment base is the value of assets in the Netherlands after deduction of liabilities in the Netherlands.