



The Austrian Private Foundation ("Privatstiftung")

Asset protection and estate planning

In 1993, Austria established the Private Foundation ("Privatstiftung") in its domestic law. It is a separate legal entity without shareholders for the purpose of asset protection and succession planning. The Austrian Private Foundation soon became very successful and internationally well recognised. Since then, we have given advice and support to many founders with regard to the establishment of the Foundation and the structuring of assets. Today we can look back on a high number of cases of successful implementations and solutions with regard to civil and tax law.

Civil law facts



The Austrian Private Foundation is a legal entity without shareholders, through which assets are contributed by the founder ("Stifter") without consideration for a certain purpose defined in a special deed ("Stiftungsurkunde"). Based on its content, the members of the executive board ("Stiftungsvorstand"), which usually consists of persons, originally introduced by the founder, administration of the assets as well as distribution to the beneficiaries ("Begünstigte") can be defined.

For the purpose of flexibility, detailed regulations can be specified in an additional deed, in particular the establishment of an advisory board ("Beirat"). For the advisory board substantial control and participation rights should be granted in the founder's interest and/or for the protection and benefit of beneficiaries.

Main subject is the separation of assets (asset protection), which prior resolution of inheritance law issues, which requires detailed planning and consideration, in order to optimize and account the prior resolution of inheritance law issues, which have become even stricter as a result of the latest reform of inheritance and compulsory portion law.

Tax law facts



The contribution of financial assets, shareholdings (eg. art work is subject to a 2.5% foundation entrance tax). As a general rule, the tax base is the market value of the assets contributed. Depending on the legal form, shareholding can lead to a lower taxation. The contribution of real estate, however, is subject to a real estate transfer tax of 6%, based on a special value ("Grundstückswert") of the real estate.



The income of the Private Foundation itself is subject to 25% corporate income tax. However, a Private Foundation can receive income of all 7 types of income. Due to an exemption, domestic and foreign dividends are generally exempt from corporate income tax. Income from financial assets (e.g. realized capital gains, interest received from bank accounts, from publicly offered bonds and from mutual funds) or income from the sale of private real estate are subject to a 25% interim corporate tax ("Zwischensteuer"). In this regard, the interim tax will be credited when the income is distributed to the beneficiaries.



Distributions by the Private Foundation to beneficiaries are basically subject to a 27.5% withholding tax. Payments from the originally contributed assets, though, are taxneutral as soon as all retained earnings to date have been distributed. Similar applies if a Private Foundation is revoked or a Sub-Foundation is established. In an international context, tax consequences of distributions have to be analysed case by case. As there are situations in which Austrian withholding tax is not levied.

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