

The legal and tax framework for foundations

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The purpose of a foundation under Swiss law is the dedication of assets to a special purpose (Art. 80 CC). It is established by public deed or by testamentary disposition, acquires legal personality upon its entry in the commercial register and is placed under the supervision of the public body to which it belongs, federal or cantonal, according to its sphere of activity.¹ The supervisory authority ensures that the assets are used in accordance with the purpose, examines the accounts and may take measures in the event of a breach.

A public-benefit foundation enjoys tax exemptions where it pursues a public-service or public-benefit purpose, without profit motive and without consideration for its founders and donors. The donations it receives are deductible from the donors' income, within the limits set by federal and cantonal law, while inheritances and gifts in its favour are exempt from cantonal duties.² These advantages make the foundation the preferred instrument of structured philanthropy.

A foundation is subject to demanding governance. Its board must act in the interest of the purpose, manage the assets with diligence, keep accounts, have its accounts audited where the law so requires and report to the supervisory authority. Conflicts of interest between board members, founders and beneficiaries must be prevented. A recent reform of foundation law has relaxed certain rules, in particular concerning amendment of the purpose and remuneration of board members.³

Swiss law draws a strict distinction between the public-benefit foundation and asset-holding structures with a private purpose. Part E recalled that family foundations are limited to purposes of education, endowment and support (Art. 335 CC). A foundation that in reality served the proprietary interests of its founders would lose its exemptions and could be recharacterised. Practitioners must pay close attention to this distinction, in particular where families combine philanthropy with estate planning.

Element	Regime
Establishment	public deed or testamentary disposition, entry in the commercial register
Supervision	federal or cantonal authority according to sphere of activity
Tax exemption	public-service or public-benefit purpose, without consideration
Donations	deductible within the statutory limits
Inheritances and gifts	exempt from cantonal duties
Transparency register	foundations and associations exempt from registration

Caution. The tax exemption of a foundation presupposes a public-benefit purpose pursued without consideration. Structures that mix philanthropic interests with private proprietary interests expose themselves to loss of the exemption and to recharacterisation. Every project must be the subject of a prior legal and tax analysis.

1 Notes

1. Art. 80 CC: “A foundation is established by the endowment of assets for a particular purpose” (droit-bilingue.ch); Art. 84 para. 3 CC, codifying the complaint to the supervisory authority, introduced by the revision that entered into force on 1 January 2024 (SwissFoundations); in Geneva, the Autorité cantonale de surveillance des fondations et des institutions de prévoyance (ASFIP) exercises supervision on the basis of Art. 84 CC and Art. 61 OPA (asfip-ge.ch). ↩
2. Art. 56 let. g DFTA (droit-bilingue.ch): exemption is granted to “legal entities that pursue public-service or public-benefit purposes, in respect of the profit exclusively and irrevocably dedicated to those purposes”, economic purposes in principle not qualifying as being in the public interest; Art. 33a DFTA: deduction of donations in cash and in the form of other assets to exempt legal entities having their seat in Switzerland, up to 20 per cent of net income, provided they amount to at least CHF 100 per tax year. ↩

3. SwissFoundations, “Le nouveau droit des fondations entrera en vigueur le 1er janvier 2024” (swissfoundations.ch): revision stemming from the Luginbühl parliamentary initiative (14.470), adopted by Parliament on 17 December 2021; innovations: extension of the founder’s reserved right to amendment of the organisation (Art. 86a CC), relaxation of minor amendments to the deed (Art. 86b CC), form of amendments (Art. 86c CC) and codification of the complaint to the supervisory authority (Art. 84 para. 3 CC). ↩

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